IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 22-0671

IN RE THE MARRIAGE OF:

SHERRI L. FROST,

Petitioner/Appellant,

and

KEVIN ROY FROST,

Respondent/Appellee/Cross-Appellant,

with

FROST LIMITED PARTNERSHIP,

Respondent/Appellee/Cross-Appellant.

COMBINED REPLY/ANSWER BRIEF OF APPELLANT

On Appeal From Montana Twenty-First Judicial District Court, Ravalli County
Before the Honorable Howard F. Recht

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STATEMENT OF THE ISSUES ON CROSS-APPEAL

1. Did the District Court err by including Kevin's gifted assets in determining the marital estate?

2. Did the District Court err by excluding additional irrelevant and repetitive witnesses?

3. Did the District Court err in barring Frost Limited Partnership from bringing ordinary civil claims in the dissolution proceeding?

SUMMARY OF THE ARGUMENT

The District Court appropriately recognized Sherri's relevant contributions and evaluated Kevin's gifted assets properly under Montana statutory and case law. It did not commit an error by including Kevin's share of FLP nor the Butte property in the marital estate.

The District Court appropriately exercised its discretion to prohibit witnesses from testifying to information already provided by Kevin and his mother. The evidence was cumulative and not sufficiently probative to warrant admission.

The District Court correctly ruled that dissolution actions have a specific allowable scope pertaining to the equitable distribution of the marital estate. Allowing FLP to pursue traditional civil claims in that context would have been a violation of statutory policy and the District Court did not err by dismissing those claims in the dissolution case.

STANDARD OF REVIEW

This Court reviews a District Court's findings of fact pertaining to the division of martial assets to determine if they are clearly erroneous. *In re Marriage of Tummarello*, 2012 MT 18, ¶ 21, 363 Mont. 387, 270 P.3d 28. "If the court's findings are not clearly erroneous, [the Supreme Court] will reverse only if the district court abused its discretion." *Tummarello*, ¶ 21. A district court has "broad discretion to apportion a marital estate in a manner equitable to each party under the circumstances." *Tummarello*, ¶ 23.

This Court reviews a District Court's conclusions of law for correctness. *In re Marriage of Frank*, 2022 MT 179, ¶ 32, 410 Mont. 73, 517 P.3d 188 (citing *Schwartz v. Harris*, 2013 MT 145, ¶ 15, 370 Mont. 294, 308 P.3d 949). Additionally, conclusions of law are reviewed *de novo*. *In re Parenting of P.H.R.*, 2021 MT 231, ¶ 7, 405 Mont. 334, 495 P.3d 38 (citing *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134).

"District courts have broad discretion to determine the admissibility of evidence in accordance with the Montana Rules of Evidence and related statutory and jurisprudential rules." *State v. McGhee*, 2021 MT 193, ¶ 10, 405 Mont. 121, 492 P.3d 518. A District Court's decision pertaining to the admissibility of evidence is reviewed for an abuse of discretion. *State v. Ayers*, 2003 MT 114, ¶ 25, 315 Mont. 395, 68 P.3d 768.

Whether an asserted claim fails to sufficiently state a claim upon which relief may be granted is a question of law reviewed de novo for correctness under the standards of M. R. Civ. P. 12(b)(6). *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 7, 390 Mont. 12, 15, 407 P.3d 692, 696.

ARGUMENT

I. THE DISTRICT COURT ERRED BY VALUING THE FROST LIMITED PARTNERSHIP ACCORDING TO ITS OPERATIONAL VALUE RATHER THAN BY THE VALUE OF ITS ASSETS.

By At trial, Kevin's expert Larry Lund testified that the fair market value of FLP's real estate was $4,590,000. (Tr. at 449, *Decree* at 11-12.) He calculated this by considering the assets as a working ranch and comparing comparable sales. By contrast, Sherri's expert Julie Fillingham considered comparable sales prices for FLP's individually titled pieces of property and calculated the value at $13,744,000. Mr. Lund agreed with Ms. Fillingham and testified that selling the individual pieces of property would produce a higher value, but testified that this was simply not how he was instructed to value the property.

Kevin misrepresents Sherri's argument by framing it as an issue of competing experts and a factual determination by the District Court. Instead, as plainly argued in her opening brief, Sherri maintains that, as a matter of law, the appropriate valuation for FLP was the value of its assets. While it is true that the only expert to testify about the asset value of FLP was Sherri's expert, Julie

Fillingham, the point is not that the District Court simply chose to believe the wrong expert.

Perplexingly, Kevin claims that Larry Lund "considered the different terrain and historical use of the property and determined the highest and best use of the property is as a ranchette, with some recreational improved development." (Kevin's *Answer Brief* at 17.) Mr. Lund's testimony directly contradicts this statement. In fact, when Mr. Lund was asked why he valued it as a ranch his explanation was: "I thought it had been operating as a ranch, so it should be valued in one parcel as a ranch. I wasn't directed to do anything other than value it as a ranch." (Tr. at 438.) He then admitted that breaking the property into its constituent pieces would have resulted in a higher valuation. (*Id*.) Mr. Lund did not value the property as a ranch because that was the most valuable use, but because that is what he was directed to do by Kevin. (*Id*.)

Despite Kevin's argument, Mr. Lund exercised no independent judgment in deciding how to value the ranch. He simply did what he was instructed to do and valued it as a working ranch. Moreover, he admitted that Ms. Fillingham's approach would have produced a higher value. The issue is not the credibility of Mr. Lund's determination or the accuracy of his figures. The District Court's error was not in accepting Mr. Lund's factual determination. The District Court erred by making a legal determination that it was appropriate to accept the inferior

operational value of FLP over the more valuable asset value. Mr. Lund made no determination as to the appropriate method by which to calculate the value of FLP – he simply followed instructions from an unknown entity.

Kevin claims that Ben Yonce is ultimately responsible for the determination of FLP's value. (Kevin's *Answer Brief* at 15-16.) While he applied various discounts to the real estate value, his testimony was simply that he made those calculations based off Mr. Lund's appraisal. (Tr. at 473-74; 489-90.) Nothing in the record reflects that Mr. Yonce directed Mr. Lund to value the assets as a working ranch. Mr. Yonce states that he "asked for … the appraisal of the real estate[.]" (Tr. at 473.) He acknowledged that he received an appraisal from Kevin's attorneys. (Tr. at 474.) He described the appraisal as being prepared by Larry Lund and provided to him. (Tr. at 490.) At no point does Mr. Yonce indicate that he had anything to do with the valuation method.

The appropriate way to value Kevin's FLP interest is by its asset value. To demonstrate that, Sherri argued that her situation was similar to a disassociated partner. Apparently neither Kevin nor FLP are familiar with the concept of an argument by analogy. Obviously, Sherri is not a partner in FLP; likewise, she is obviously not a disassociated partner. However, given the equitable nature of these proceedings, her situation is similar enough to make the analogy instructive. The partners to FLP believed that the appropriate way to value the entity in the event of

a disassociation was by asset value. Montana's legislature likewise believes that the appropriate way to value an entity's value in the event of disassociation is by asset value. The partnership agreement represents the stated preferences of the partners, the statute represents the stated public policy of the State of Montana. Sherri's argument is that, by analogy and in equity, she is similarly situated to a disassociated partner. Her argument is that under the partnership agreement and statute, the appropriate way to value FLP is by the value of its assets.

FLP goes further and argues that Sherri is claiming to be a member of FLP and attempting to sell its assets. This so badly misunderstands the argument that it is difficult to respond to. To be clear: Sherri is not arguing that she is a member of FLP. On appeal, she is not arguing for the sale of FLP's assets. She is arguing that the District Court committed an error of law by valuing Kevin's interest according to its vastly inferior operational value rather than the asset value. Sherri does not need to be a partner to FLP to have a legal interest in how Kevin's interest in FLP is valued.

The issue before the District Court was how to value Kevin's 40% limited partnership interest in FLP. Presented with two different valuation methods, the District Court elected to use the method contrary to the partnership agreement and Montana law. This deprived Sherri of nearly $4,000,000 from the marital estate; a windfall that went exclusively to Kevin. This was error.

II. THE DISTRICT COURT ERRED IN FORCING SHERRI TO CONTINUE TO INTERACT WITH HER ABUSER IN THE SALE OF HER HOME.

The Larry Lund appraised FLP's property as of March 4, 2021. (Tr. at 441.) Ben Yonce completed his report for the value of Kevin's FLP ownership interest on April 18, 2021. (Tr. at 490.) Larry Lund testified about his valuation at trial on June 14, 2022. (D.C. Doc. 373.) The District Court's Findings of Fact, Conclusions of Law, and Final Decree of Dissolution of Marriage was issued on October 31, 2022. (D.C. Doc. 397.) Between Mr. Lund's appraisal and his testimony at trial, 467 days passed. Between Mr. Lund's appraisal and the Decree finally determining the value of FLP's property for the purposes of this marriage, 606 days passed.

During that time, Montana in general and Ravalli County in specific experienced "unprecedented" growth in the values of real estate. (Tr. at 456.) So much so, that both Mr. Lund and Ms. Fillingham agreed that their appraisals needed to be revised upwards. At the time of trial, Mr. Lund testified that his appraisal from the previous year no longer reflected the realities of the real estate market and needed to be adjusted. (Tr. at 451.) The only evidence of an appropriate adjustment came from Ms. Fillingham who suggested adjustments ranging from 20% to 70% based on comparable sales of the smaller pieces of real estate that comprise FLP's holdings.

Despite both experts testifying that an upward adjustment was necessary, the District Court relied on an appraisal from 606 days before entry of the decree, and valued FLP's property at $4,590,000. (D.C. Doc. 397 at 12.) The only evidence before the Court was the appraisals of both experts were no longer accurate and too low. Without explanation, the District Court ignored this undisputed evidence and further devalued Kevin's interest in FLP.

Kevin claims that Mr. Lund "had an opinion that an adjustment might be appropriate." (Kevin's *Answer Brief* at 21.) Such a description is not supported by Mr. Lund's own words. At trial, when asked whether he had an opinion on the appropriate amount of an adjustment he responded: "I have no opinion what that adjustment should be. I have an opinion that there should be an adjustment." (Tr. at 451.) He plainly testified that an adjustment was necessary, not that it might be appropriate.

Kevin further argues that determining an appropriate adjustment was impossible because no applicable sales existed for ranchettes like FLP's property. (Kevin's *Answer Brief* at 21.) This ignores the fact that the only reason no comparison was available was because Kevin had instructed Mr. Lund to value the property as an operating ranch rather than by its individual parts, which also resulted in a lower overall valuation.

It is beyond dispute that a District Court has wide discretion is deciding credibility between witnesses; but this is not without limits. The undisputed evidence was that valuing FLP's property at $4,590,000 was inaccurate and too low. When evidence is ignored, "[i]t is incumbent upon a district court to explain the basis for its deviation, and that explanation must be supported by the evidence in the record." *In re Marriage of Rolfe*, 216 Mont. 39, 46, 699 P.2d 79, 83 (1985) ("*Rolfe I*"). The District Court provided no explanation for its decision to ignore both expert's statement that an upward adjustment was necessary, and no evidence exists in the record to support a determination that $4.5 million was an accurate figure at that time. "If no explanation is made the court has abused its discretion." *Id*.

The ultimate issue is the equitable apportionment of the marital estate. "Equitable apportionment is more important than 'designating the moment' at which the court should value marital property. *In re Marriage of George & Frank*, 2022 MT 179, ¶ 40, 410 Mont. 73, 517 P.3d 188. The ranch consists of pieces of property that could be sold separately for over $14,000,000. Despite this, the District Court applied an inferior method for valuing the assets, applied numerous discounts favorable to Kevin, and failed to follow the advice of both experts on an upward adjustment. This was not equitable apportionment and rejecting the expert's opinions was not supported by the record.

Accordingly, the District Court abused its discretion and this matter should be remanded for an appropriate determination of the ranch's value.

III. THE DISTRICT COURT ERRED IN DENYING SHERRI'S REQUEST REGARDING MAINTENANCE.

Despite clear and obvious evidence that the District Court was severely undervaluing Kevin's interest in FLP, it awarded the entire asset to him, allowing him to reap the entire benefit of the underestimation. Because FLP was undervalued, Sherri was not awarded the entirety of the marital home and instead received only a 90% interest with instructions that it be sold. This division of property forces Sherri to continue to interact with someone who kidnapped, assaulted, and traumatized her. Kevin's assurances that he will not force her to negotiate or be abusive are badly undermined by his approach to this appeal.

Kevin and FLP, his obvious proxy, continue to pursue specious and meritless claims for the obvious purpose of multiplying litigation and forcing Sherri to incur additional attorney fees. Despite an award of the marital estate that gives Kevin nearly $4,000,000 in unaccounted for equity in FLP, both entities are pursuing cross-appeals to further impoverish Sherri.

Sherri's argument regarding the home is not about assigning fault to Kevin, it is about the reality of their continued interactions going forward. Whether he is at fault for the divorce or not, he has inflicted phycological trauma and pain to her

that will never go away. Tying the two together with regard to Sherri's primary asset only serves to perpetuate that abuse and was an abuse of discretion.

IV. THE DISTRICT COURT PROPERLY INCLUDED KEVIN'S GIFTED ASSETS IN THE MARITAL ESTATE AND EQUITABLY DIVIDED THEM.

d In dividing a marital estate, the court is required to "equitably apportion between the parties all assets and property of either or both spouses, regardless of by whom and when acquired." *In re Marriage of Funk, 2012 MT 1*4, ¶¶ 18 –19, 363 Mont. 352, 270 P.3d 39. In dividing any property of either spouse, the District Court is instructed to 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.

Mont. Code Ann. § 40-4-202(1). Additionally, for gifted property the District Court is also directed to consider:

> (a) the nonmonetary contribution of a homemaker;
> (b) the extent to which the contributions have facilitated the maintenance of the property; and
> (c) whether or not the property division serves as an alternative to maintenance arrangements.

Mont. Code Ann. § 40-4-202(1)(a)-(c). A District Court's decision with respect to gifted assets "must affirmatively reflect that each of these factors was considered and analyzed, and must be based on substantial evidence." *Marriage of Funk*, ¶ 19. "These factors, however, are not 'a constraint on the district court's essential mandate, which is to equitably divide all assets of the parties, however and whenever acquired,' based on the unique factors of each case." *In re Marriage of Lewis*, 2020 MT 44, ¶ 21, 399 Mont. 58, 458 P.3d 1009 (citing *Marriage of Funk*, ¶¶ 16, 19).

In deciding to include Kevin's gifted assets, his interest in FLP and the Butte property, the District Court considered substantial evidence and made thorough findings to support its conclusion. The District Court found that Sheri was "the primary caretaker of for the parties' children. When she was not working, she was providing childcare, cooking, cleaning, doing housework and otherwise taking care of the parties' home and property." (*Decree* at 4, ¶ 13.) It found that "[a]lthough 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." (*Decree* at 4, ¶ 16.) It found that "Kevin and Sherri both provided labor for FLP and the Frost Ranching Corporation (FRC)." (*Decree* at 5, ¶ 18.) It found that "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." (*Decree* at 7, ¶ 30.)

The District Court found:

> 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. […] 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.

(*Decree* at 7, ¶ 31.)

The District Court found that "as a result of the kidnapping and personal injuries inflicted on [Sherri] by Kevin, she is no longer able to work even though her employer, Dr. Gannon, attempted to accommodate her disabilities." (*Decree* at 8, ¶ 36.) "Sherri suffers from Post-Traumatic Stress Disorder (PTSD), and experiences ongoing pain and physical limitations." (*Decree* at 8, ¶ 37.) "Sherri is unable to be self-supporting at this time." (*Decree* at 8, ¶ 38.)

Specifically with regard to the Butte property, the District Court found:

> 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.

(*Decree* at 13, ¶ 49(c).)

Despite faulting the District Court for not considering the specific factors found at Mont. Code Ann. § 40-4-202(1), Kevin fails to analyze them directly himself. Instead, he lumps his criticism into three categories that do not reflect the language of the statute: 1) Nonmonetary Homemaker Contributions; 2) Financial Contributions; and 3) Non-Financial Contributions. (Kevin's *Answer Brief* at 33-35.) Sherri will instead analyze the actual factors contained in the statute.

A. Sherri's Contributions as a Homemaker.

In arguing that Sherri failed to contribute as a homemaker, Kevin wholly ignores the substantial findings of the District Court detailed above and instead cherry picks portions of his own testimony that the District Court obviously rejected. (Kevin's *Answer Brief* at 33-34.) The District Court found that Sherri was the primary caretaker for the parties' children, that she sacrificed her career so that Kevin could return to Montana and participate in growing the ranch, and that when she was not working, she was providing childcare, cooking, cleaning, doing housework and otherwise taking care of the parties' home and property.

These conclusions were supported by ample testimony at trial. Sherri testified that she primarily cared for the children. (Tr. at 43-44.) Sherri testified that she took care of the children while Kevin worked at the ranch. (Tr. at 52.) Sherri rejected the idea that Kevin participated equally as a parent in raising the kids and with household tasks. (Tr. at 167.)

The District Court exercised its broad authority with regard to the credibility of witnesses and believed Sherri rather than Kevin. Substantial evidence at trial supported the District Court's findings and satisfied Mont. Code Ann. § 40-4-202(1)(a).

B. Sherri's Contributions Facilitated the Maintenance of the Gifted Property.

The District Court found that Sherri assisted with various activities customarily associated with a ranch and that efforts of both parties to maintain their household, to provide income for the family, and to maintain their assets were deemed to be of equal value. The District Court found that Sherri participated in negotiating a land swap in 2007 to grow hay and that she worked with Kevin to purchase additional land in May 2015 for this same purpose.

Again, ample evidence at trial supported these findings. For example, Sherri testified that she did work for the ranch by bringing Kevin food and water, checking on water and fencing, monitoring the property, checking on cows, and feeding hay. (Tr. at 50.) Sherri testified that she helped with branding, did the injections, pushed cows through the chute, rounded calves, and generally monitored the animals during branding. (Tr. at 50-51.) Sherri testified that she had "quite a lot" of involvement in the estate planning that went into created FLP and FRC. (Tr. at 53.) Sherri testified that the ranch used some of her property to put horses on. (Tr. at 74-75.) Broadly, Sherri testified throughout reflecting an intimate

familiarity with the operations of the ranch reflecting ongoing conversations and efforts between herself, Kevin, and his family over the years of the marriage.

The District Court found this testimony sufficiently credible to determine that Sherri's efforts to maintain the property was equal to that of Kevin's. In reliance on this substantial evidence, the District Court made specific findings sufficient to satisfy Mont. Code Ann. § 40-4-202(1)(b).

C. The District Court Considered that the Property Distribution Served as an Alternative to Maintenance.

Finally, the District Court was required to consider whether the gifted property distribution served as an alternative to maintenance. While Sherri believes that the District Court should have awarded her maintenance in addition to the gifted property, it is beyond dispute that the District Court considered this aspect. The District Court specifically considered and rejected the idea of maintenance, finding that Kevin's criminal behavior against Sherri "rendered her unable to work, a factor the Court needs to consider when considering a maintenance claim." (*Decree* at 14, ¶ 49(g).) However, it ultimately concluded that "Sherri would have difficulty enforcing a maintenance order against Kevin and that a maintenance award would result in needless and continued litigation." (*Id*.) Therefore, it included the gifted property in the marital estate to ensure that Sherri's portion was large enough to sustain her ongoing needs in lieu of maintenance. (Decree at 16-

17, ¶ 51.) In doing so, the District Court satisfied Mont. Code Ann. § 40-4-202(1)(c).

D. Additional Arguments.

In arguing that the District Court erred by including gifted property in the marital estate, Kevin blatantly misstates the law. He argues that: "the law is well-settled in Montana. Assets belonging to a spouse acquired by gift during the marriage are not a part of the marital estate until the non-acquiring spouse contributed to the preservation, maintenance, or increase in value of that property." (Kevin's *Answer Brief* at 38.) In support of this badly outdated mischaracterization, he cites to "*In re Marriage of Lewis*, 2020 MT 44, ¶ 2, 399 Mont. 58, P.3d 1009."

Perplexingly, paragraph 2 of the decision is the restatement of the issues and provides no support for Kevin's proffered interpretation of the law. *Id*. More broadly, the second issue of that decision addresses inherited property but does it in a way consistent with this Court's holdings post-*Funk* and directly contrary to Kevin's language.

Marriage of Lewis makes no mention of any requirement that the non-acquiring spouse must have contributed to the preservation, maintenance, or increase in value of the gifted property. Instead, it references the factors of Mont. Code Ann. § 40-4-202(1)(a)-(c) while making clear that those factors are not a constraint on the District Court's essential mandate to equitably distribute all

property of either spouse, however acquired. *Marriage of Lewis*, ¶ 21. Kevin's efforts to mislead this Court are detrimental to the pursuit of justice and not merely overzealous interpretation. Moreover, it undermines his entire argument with regard to gifted property because it is clear he believes this to be the law in Montana and a fundamental premise for his appeal.

V. THE DISTRICT COURT PROPERLY EXCLUDED ADDITIONAL IRRELEVANT AND REPETATIVE WITNESSES.

Kevin claims that the District Court erred by excluding testimony from Rae Grout, Jason Myer, and Judith Reynolds. According to Kevin, Ms. Grout would have testified that she never observed Sherri assisting with the ranch work. (Kevin's *Answer Brief* at 39-40.) Kevin believes Mr. Meyer would have testified similarly. (*Id*.) And finally, Kevin maintains that Ms. Reynolds would have testified that Marilynn Frost was involved in negotiations related to FLP purchasing land, not just Kevin. (*Id*.)

To put in context, near the end of the second day of trial – which was scheduled to be the last – Kevin informed the District Court that he had several additional witnesses he intended to call and would not be able to complete them in the time allotted. (Tr. at 492.) Kevin's attorney initially raised the issue that the court may find the testimony cumulative. (*Id*.) The District Court requested an offer of proof and after argument from the parties excluded the witnesses. (Tr. at 498.)

The District Court's oral order went on to explain that "[t]he only reason [Kevin] could do what he did is because Sherri doing what she did. So for any of those witnesses, I just find it to be cumulative and not particularly relevant to the issue of an equitable distribution of the marital estate." (*Id*.)

It is worth noting, that at this point Kevin's attorney argued that the testimony was relevant because the District Court as required to consider whether "the spouse contributed to the appreciation of the asset." (Tr. at 498.) This is partially identical to the misstatement of law and misrepresentation of *Marriage of Lewis* addressed in the previous section. Conversely, the District Court correctly identified that it was required to consider maintenance under Mont. Code Ann. § 40-4-202(1)(c). (Tr. at 503.)

Nevertheless, the District Court thoroughly analyzed the potential evidence and decided to exclude it. In explaining its decision, the District Court observed that:

> What I have heard is evidence on both sides as to whether Sherri contributed to the contribution to the ranch, depending upon how you define the ranch. And she has claimed and other witnesses have claimed that she has. There have been witnesses who say, no, she didn't contribute at all. I've heard that. And what I'm saying is having five more people come up and tell me, no, she didn't contribute isn't gonna help me at all. So I don't need to hear that testimony.

(Tr. at 502-503.)

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by … considerations of … needless presentation of cumulative evidence." M.R.Evid. 403. "Cumulative evidence is additional evidence of a different character to the same point." Mont. Code Ann. § 26-1-102(4).

Kevin's witnesses would have testified, generally, that Sherri did not do work for the ranch. The District Court found that this was the same point it had already heard thoroughly from both Kevin and his mother, Marilynn. It was additional evidence of the same character and meets the definition of cumulative. But more importantly, its probative value was substantially outweighed by its needless presentation.

Kevin argues that the witnesses, as neutral third-parties, would have provided support for his testimony and that of his mother. But this misunderstands the nature of the witnesses testimony. These people had only occasional interactions with the Frosts. The fact that their observations did not include Sherri's activities is significantly less relevant than the testimony of Kevin and Marilynn who were constantly involved. Moreover, it is an attempt to prove a negative. The fact that neighbors did not observe Sherri working on the ranch does not mean that Sherri did not work on the ranch, or do work that enabled Kevin to

work on the ranch. This was the crux of the District Court's holding, and rendered the additional witnesses unnecessary, especially given the limited time.

Facing serious time constraints, and the necessity of substantial testimony again from Kevin, the District Court elected to exclude testimony that was repetitive and duplicative of that already heard. It did so consistent with M.R.Evid. 403, and committed no error in doing so.

VI. THE DISTRICT COURT CORRECTLY BARRED FLP FROM ASSERTING COUNTERCLAIMS IN THE DISSOLUTION PROCEEDING.

The District Court determined that in the context of a dissolution action, FLP could not pursue its civil counterclaims against Sherri. (D.C. Doc. 342.) In doing so, the District Court thoroughly analyzed the dissolution statutes, the Commission Comments to Mont. Code Ann. § 40-4-103, and relevant case law. On that basis, the District Court concluded that dissolution proceedings are statutorily distinct from general civil actions and not a venue were relief could be granted under FLP's counterclaims. *(Id*.) To that end, it granted Sherri's M.R.Civ. P. 12(b)(6) motion to dismiss them. (*Id*. at 11.)

Despite the ruling being obviously limited to the counterclaims as brought in the dissolution case, FLP argues that the ruling deprives it of "full access to the Courts just like any other citizen of the state in any other civil dispute." (FLP's *Answer Brief* at 29.) Apparently lost on FLP is the fact that this was not "any other

civil dispute." This was a dissolution proceeding, designed "to be as non-adversarial as possible." (D.C. Doc. 342.) The District Court concluded that it would be contrary to legislative intent for the case to turn into litigation regarding fraud, misrepresentation, and breach of contract. (*Id*.)

"Dissolutions are statutory proceedings. The questions to be determined in a dissolution action are whether the marriage is irretrievably broken, and if so, how to allocate marital assets between the parties and provide maintenance and child support in applicable." *In re Marriage of Heidema*, 2007 MT 20, ¶ 13, 335 Mont. 362, 152 P.3d 112. Relying on this language, the District Court correctly determined that FLP's counterclaims were beyond the allowable scope.

But importantly, the District Court's conclusion was only that those claims could not be brought *in this case*. Nothing about the order prevented FLP from filing its own claim if it believed there was merit. The fact that it chose not to do so, and now seeks reversal of the dissolution in order to harass Sherri speaks volumes about its true goal here. Again, this is nothing other than a obvious attempt by Kevin's proxy to perpetuate the abuse Sherri has experienced at his hands for years. If FLP believes it has valid claims, it should file them in an appropriate action. The fact that it believes reversal of the dissolution is appropriate in order to reach that end is absurd. This is nothing other than an ongoing effort by Kevin to prolong litigation and increase Sherri's expenses.

CONCLUSION

The District Court committed an error of law in valuing FLP according to the lesser operational value rather than the higher asset value. In doing so, it tacitly awarded Kevin an asset worth nearly $4,000,000 while only crediting him for $1.4 million. This discrepancy produced a wildly distorted distribution of the marital estate and a vast windfall to Kevin. Further, the District Court abused its discretion by failing to account for the increased property values of FLP at the time of trial, as recognized and recommended by both experts.

The District Court did not err by including Kevin's gifted property in the marital estate, nor did it err by excluding irrelevant and repetitive witnesses.

DATED: October 16, 2023.

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
Marybeth M. Sampsel

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Combined Reply and Answer Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 5,000 words, excluding the certificate of service and the certificate of compliance.

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
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CERTIFICATE OF SERVICE

I, Mary-Elizabeth Marguerite Sampsel, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant Reply and Answer to Cross Appeal to the following on 10-16-2023:

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