

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

IN RE THE MARRIAGE OF:

CAUSE. NO.: DA 23-0659

LOUISE SCHAUB,

Appellee and Cross

Appellant,

vs.

DENNIS SCHAUB,

Appellant and Cross

Appellee.

**APPENDIX TO APPELLEE/CROSS  
APPELLANT’S COMBINED  
ANSWER AND OPENING BRIEF**

**APPENDIX TO APPELLEE/CROSS APPELLANT’S COMBINED  
ANSWER AND OPENING BRIEF**

On Appeal from the Twelfth Judicial District Court, Cause No. DR-18-38,  
the Honorable Kaydee Snipes Ruiz presiding.

**APPENDIX**

1. Findings of Fact, Conclusions of Law, and Dissolution Order  
Docket #81..... 13 pgs.
2. Exhibit B: Corrected Amortization Schedule without Interest..... 1 pg.
3. Exhibit C: Corrected Amortization Schedule with Interest..... 1 pg.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# APPENDIX 1

**IN THE HILL COUNTY DISTRICT COURT OF THE STATE OF MONTANA  
IN AND FOR THE COUNTY OF HILL,  
MONTANA 12TH JUDICIAL DISTRICT COURT  
BEFORE KAYDEE SNIPES RUIZ, JUDGE  
315 FOURTH STREET HAVRE, MT 59501 (406) 265-5481**

<p><b>IN RE THE MARRIAGE OF:</b></p> <p><b>LOUISE SCHAUB</b></p> <p>Petitioner,</p> <p>v.</p> <p><b>DENNIS SCHAUB</b></p> <p>Respondent.</p>	<p><b>Case No. DR-21-2018-0000038-DU</b></p> <p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISSOLUTION ORDER</b></p>
--	--

On July 11, 2023, parties convened for a final hearing. Louise Schaub and her counsel, Patrick Flaherty, and Dennis Schaub and his counsel, Jeremy S. Yellin, were present in Court.

**PROCEDURAL HISTORY**

This case is on remand from the Montana Supreme Court with these rulings:

¶12 Just as in *Marriage of Lundstrom*, ¶ 19, “[o]n its face, the property distribution in this case appears to be inequitable.” See also Richards, ¶ 31 (explaining that while “an equitable award does not mean an equal award,” a grossly lopsided division of property may evidence an inequitable property division). The court awarded Dennis the entirety of the marital estate, save Louise’s personal effects in her possession. The court provided scant justification for this grossly lopsided division and did not cite or discuss the factors from § 40-4-202, MCA. The District Court failed to consider the thirty-year marriage between the couple, with a relatively short break before reconciling and remarrying. The District Court failed to consider the unique circumstances of this case, including the fact an unrepresented Louise stipulated to the 2010 property settlement agreement, but she no longer does. The prior property settlement agreement, while relevant to consider, does not serve as a de facto prenuptial agreement in the current proceedings. The court remains obligated to equitable divide the property in the current dissolution proceedings, considering all the factors under § 40-4-202, MCA.

¶13 Further, the District Court did not hold a hearing or otherwise receive evidence to support its property distribution. As we concluded in *In re Marriage of Lundstrom*, ¶ 20, “[t]he imposition of sanctions against [Louise] appears justified. However, we conclude that the District Court’s findings of fact underlying the distribution of the marital estate are clearly erroneous because they are not based on substantial evidence in the record.”

This matter is remanded for reconsideration of appropriate sanctions and an equitable distribution of the marital estate consistent with the requirements of § 40-4-202, MCA.

### **APPLICABLE LAW**

A district court has broad discretion to apportion the marital estate in a manner equitable to each party under the circumstances. *Hutchins v. Hutchins*, 2018 MT 275, ¶ 7, 393 Mont. 283, 430 P.3d 502.

Section 40-4-202, MCA, governs the distribution of a marital estate. The court must equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired. § 40-4-202(1), MCA. In apportioning the marital estate, the court shall consider the duration of the marriage and prior marriage of either party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court must also consider the contribution of a spouse as a homemaker. § 40-4-202(1), MCA. The court must refer to and consider the § 40-4-202, factors in its findings and conclusions. *In re Marriage of Schaub*, 2021 MT 216N, ¶ 1.

The prior property settlement agreement, while relevant to consider, does not serve as a de facto prenuptial agreement in the current proceedings. The court remains obligated to equitably divide the property in the current dissolution proceedings, considering all the factors under § 40-4-202, MCA. *In re Marriage of Schaub*, 2021 MT 216N, ¶ 12.

The first three sentences of § 40-4-202(1), MCA, (the general purpose section of the statute), require a district court to equitably apportion between the parties all property and assets belonging to either or both parties, however and whenever acquired and whether title is in the name of the husband or wife or both. In other words, everything owned jointly or by either party must be equitably apportioned by the district court in a dissolution proceeding regardless of when or how it was acquired. This section of the statute also instructs courts to consider more than a dozen factors, including age, length of marriage, employability, and contributions of a homemaker to the marriage or to the family unit. *In re Funk*, 2012 MT 14, ¶ 1.

The Legislature has included in the last sentence of § 40-4-202(1), MCA, additional instructions pertaining to the distribution of pre-acquired, gifted and inherited property. The statute instructs that the court shall consider those contributions of the other spouse to the marriage, when distributing pre-acquired, gifted or inherited property, including: (a) the nonmonetary contribution of a homemaker; (b) the extent to which such contributions have facilitated the maintenance of the disputed property; and (c) whether or not the property disposition serves as an alternative to maintenance arrangements. On the basis of this portion of the statute, pre-acquired, gifted, and

inherited property have been treated differently from other property acquired during the marriage, when reviewing property distributions. *In re Funk*, 2012 MT 14, ¶ 1.

The factors are not limitations or constraints on the court's overriding obligation and authority to equitably apportion all assets and property of either or both spouses based upon the unique factors of each case. *Funk*, ¶ 19.

When dividing marital property, the trial court must reach an equitable distribution, not necessarily an equal distribution. An equitable award of property in a divorce does not mean an equal award. *Richards v. Trusler*, 2015 MT 314, ¶ 1.

The overarching premise of § 40-4-202(1), MCA, is to finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. While the statute specifies particular matters to be considered in dividing inherited property, the statute does not provide that these considerations constitute a constraint on the district court's essential mandate, which is to equitably divide all assets of the parties, however and whenever acquired. *Richards v. Trusler*, 2015 MT 314, ¶ 1.

#### **FINDINGS OF FACT**

Here, based on the evidence presented, the Court makes the following  
FINDINGS OF FACT:

1. The parties, Louise and Dennis Schaub, were first married on October 28, 1980 and dissolved of that marriage on January 22, 2010, getting back together and re-cohabitating in the latter part of 2010, and by November 2014 the parties had reconciled their differences and entered into a

common-law marriage. Louise later filed a petition for dissolution of marriage on June 8, 2018, which opened this immediate cause.

2. This is a long-term marriage. This is a marriage totaling 34 years together (with a 4-year separation and reconciliation period). The parties have seen one another grow and mature together as well as their assets. Parties raised their children, now ages 41 and 38, during their marriage.
3. The previous dissolution of marriage in January of 2010 has been found unconscionable by the Supreme Court of Montana and the *Findings of Fact and Conclusions of Law and the Settlement Agreement* therein were vacated on or about August 31, 2021.
4. The provisions of the Montana Conciliation Law and, Mont. Code Ann. Sec. 40-3- 101 (1985) et seq. and the Montana Uniform Marriage and Divorce Act, Mont. Code Ann. Sec. 40-4-107 (1985), et seq., do not apply.
5. The Petitioner has been domiciled within the State of Montana for more than ninety (90) days prior to the making of these findings.
6. The marriage is irretrievably broken in that there is serious marital discord and there is no longer any reasonable prospect of reconciliation.
7. The Respondent was served copies of the Summons and Petition and filed his Answer.
8. There are no minor children born as issue of this marriage and Louise is not currently pregnant.
9. The parties began living separate and apart on or about November 23, 2017.

10. Dennis is sixty-four (64) years of age, is an upholsterer by trade but has serious health issues concerning his neck and back. Louise is sixty-one (61) years of age, has had various jobs, and is in reasonable health. Both parties endured significant medical needs and care during the long-term marriage: Louise struggling over the years with substance use disorder and Dennis struggling with ongoing neck and back injuries requiring multiple surgeries. Neither party has any significant retirement accounts or stocks.
11. The wife has been removed from the marital estate and all values are established by the Husband's filings. The husband has disclosed the marital assets and real properties with values that are artificially low and not within the true market value.
12. The parties have limited liabilities and debts.
13. Real Property: The parties own multiple real properties in the State of Montana. These properties have provided the marital estate with rental income and on average produce \$3,150 monthly in revenue to the estate. It is undisputed Husband has withheld all rental income from Wife since the parties separated in November 2017. This roughly equates to a total income of \$223,650.00, not taking into consideration any maintenance/management costs for the rental properties. The value of these real properties is an estimated total of \$263,400 as per the Husband's Financial Disclosure. As detailed further below, the Court finds Husband's estimates of the value of the properties are artificially low--for example, the

proposed value of the real property located at 617 5<sup>th</sup> Street N., Havre, MT is listed at \$11,400 versus the property being listed on Montana Cadastral as \$27,050 for the land and \$15,820 for the manufactured homes on the property. The real property of the parties shall be divided as described in the attached Division of Marital Assets (see Exhibit "A").

- a. 635 5<sup>th</sup> Street North, Havre: This property was acquired in 1981. Husband lists the property's value at \$150,000. This address contains two lots. The Court takes judicial notice the Montana Cadastral lists the market value of this property's back property with the house on it at \$200,000 and the front lot cost value appraised at \$26,475 in 2023. In 2010, Husband was assigned the mortgage debt associated with this property, approximately \$39,000.
- b. 617 5<sup>th</sup> Street North, Havre: This property was acquired at least ten years ago. Husband indicates he's received \$600 per month in rental income from this property for approximately the last 10 years. Husband lists the property's value at \$11,400. The Court takes judicial notice the Montana Cadastral lists the cost value of this property at \$27,090 in 2023, with the separate cost value of the manufactured home not attached to the real property appraised at \$15,820 in 2023.
- c. 502 5<sup>th</sup> Street North, Havre: This property contains two rental units referred to as the blue rental and the pink rental plus Husband's upholstery shop. The blue rental has three units available for rental

income. Husband reports he's received \$225-\$250 per month for the each of the three blue rental units for the past 5 years. Husband reports he has rented the pink rental for \$600 per month for the last 30 years. Husband lists the property's value at \$45,000. The Court takes judicial notice the Montana Cadastral lists the cost value of the property including the buildings at \$188,015 in 2023 and the manufactured home not attached to the real property to be cost valued at \$13,480.

- d. 620 5<sup>th</sup> Street North, Havre: Two rentals are located on this property: a house and a manufactured home. The Court takes judicial notice the Montana Cadastral lists the market value of this property at \$70,300 in 2023; it also listed the manufactured home not attached to the real property as cost valued at \$10,070.
- e. Total Property Value: Using the Montana Cadastral appraisals for 2023, the estimated total value of the properties is approximately \$551,250 versus Husband's financial disclosure estimating the total property value at \$263,400.

14. Business Interests: The husband owns and operates an upholstery business in the County of Hill, State of Montana which has been the primary source of income of the parties. Husband testified between the upholstery and rental business, he made \$60,000 net per year. This being a skilled position with little inventory or cash value beyond the property previously listed, the Court finds there is little to no intrinsic value in the

business itself beyond the property value listed above. Based on ongoing health limitations, Husband intends to phase out and retire from the upholstery business in the coming years. Husband shall retain all business interest in Denny's Upholstery beyond the property listed above.

15. Vehicles: Husband acquired numerous vehicles throughout the marriage, using marital assets, and retained all of these vehicles at the time of the parties' separation in 2017. Using Husband's values taken from the pleadings, these vehicles currently are valued at \$51,850. Husband is to retain his vehicles as described in the attached Division of Marital Assets (see Exhibit "A").

16. Financial Accounts: The parties have previously divided their marital accounts to include checking, savings, retirement, life insurance, stocks and bonds and other financial accounts to their satisfaction. There was no testimony offered that either party was unsatisfied by the division of these accounts. Each party shall retain their own accounts at the time of this decree.

17. Personal Property: The Husband has retained 90% of the personal property and there has been testimony that the wife has been denied equal access to the personal property. The Husband has provided values for these items including housewares, furniture, tools, small gas tools, and guns, totaling \$5,265. The Husband is to retain his personal property as listed in the Division of Marital Assets (see Exhibit "A").

18. Equalization Payment: The assets of the parties and the division of the real property remains lopsided. In an effort to equalize the estate, the Husband shall pay the Wife monthly equalization payments pursuant to the below schedule over the next fifteen years for a total of \$242,400.

November 15, 2023- October 15, 2024	\$1,000 per month, paid on the 15 <sup>th</sup> of each month-- \$12,000 total
November 15, 2024- October 15, 2025	\$1,050 per month, paid on the 15 <sup>th</sup> of each month--\$12,600 total
November 15, 2025- October 15, 2026	\$1,103.00 per month paid on the 15 <sup>th</sup> of each month--\$13,236 total
November 15, 2026- October 15, 2027	\$1,158.00 per month paid on the 15 <sup>th</sup> of each month--\$13,896.00 total
November 15, 2027- October 15, 2028	\$1,216.00 per month paid on the 15 <sup>th</sup> of each month--\$14,592 total
November 15, 2029- October 15, 2030	\$1,277.00 per month paid on the 15 <sup>th</sup> of each month--\$15,324.00 total
November 15, 2030- October 15, 2031	\$1,341.00 per month paid on the 15 <sup>th</sup> of each month-- \$16,092.00 total
November 15, 2031- October 15, 2032	\$1,409.00 per month paid on the 15 <sup>th</sup> of each month-- \$16,908.00 total
November 15, 2032- October 15, 2033	\$1,480.00 per month paid on the 15 <sup>th</sup> of each month--\$17,760.00 total
November 15, 2033- October 15, 2034	\$1,554 per month paid on the 15 <sup>th</sup> of each month--\$18,648.00 total
November 15, 2034- October 15, 2035	\$1,632 per month paid on the 15 <sup>th</sup> of each month--\$19,584.00 total
November 15, 2035- October 15, 2036	\$1,714 per month on the 15 <sup>th</sup> of each month-- \$20,568.00 total
November 15, 2037- October 15, 2038	\$1,800 per month on the 15 <sup>th</sup> of each month-- \$21,600.00 total
November 15, 2038- October 15, 2039	\$1,890 per month on the 15 <sup>th</sup> of each month-- \$22,680.00 total
November 15, 2039- October 15, 2040	\$1,985 per month on the 15 <sup>th</sup> of each month-- \$23,820.00 total

If the Husband fails to pay the Wife within this time period, she will be awarded the sole ownership and right to the marital home located physically at

635 5<sup>th</sup> Street N., Havre, MT. If the Husband passes away prior to the full payment pursuant to the above schedule, Husband's estate shall pay the remainder owed to Wife in full within 180 days of Husband's demise. The Court finds that the attached Division of Marital Assets (see Exhibit "A") is fair and equitable.

**CONCLUSIONS OF LAW:**

Based on the above findings of fact, the Court issues the following Conclusions of Law:

1. The Court is guided by § 40-4-202, M.C.A., which includes the length of marriage; age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; and the opportunity of each for future acquisition of capital assets and income. The Court also considers the contribution or dissipation of value of the respective estates (argued that Wife dissipated the marital estate due to her substance use disorder) and the contribution of a spouse as a homemaker or to the family unit.
2. Based on all of the considerations under § 40-4-202, MCA, the Court finds the attached Division of Marital Assets (see Exhibit "A") is fair and equitable. The Court specifically finds the equalization schedule provides Wife and Husband with a fair distribution of marital assets considering the length of the relationship and contributions of both parties.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

**ORDER--DECREE OF DISSOLUTION OF MARRIAGE**

1. The marriage of the parties is hereby dissolved.
2. Each party shall retain sole ownership of any and all personal property, furniture, appliances, vehicles, real property, bank accounts, retirement accounts, and any other property in that parties' possession. (See Exhibit "A").
3. Husband shall pay the equalization payment beginning on November 15, 2023, pursuant to the equalization payment schedule included above.
4. Neither party is awarded maintenance.
5. Louise and Dennis shall each be responsible for their own attorney's fees incurred herein.
6. All temporary orders issued in this case, including the temporary restraining order issued with the summons, and temporary order of protection herein are hereby vacated and of no further legal force and effect.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

**DIVISION OF MARITAL ASSETS-- SCHAUB-- EXHIBIT A**

	Assets	Value	Husband	Wife
<b><u>Real Property</u></b>				
	635 5th Street N.	226475	226475	0
	617 5th Street N.	42910	42910	0
	502 5th Street N.	201495	201495	0
	620 5th Street N.	80370	80370	0
<b>Total Real Property:</b>		<b>551250</b>		
<b><u>Vehicles</u></b>				
	1957 International Truck	500	500	0
	1962 VW Bug	400	400	0
	2000 Toyota 4-Runner	6000	6000	0
	1975 Traller	500	500	0
	2001 Trailer	400	400	0
	1995 Boat/Trailer	2500	2500	0
	2006 TTR-9 Motorcycle	500	500	0
	1962 Karman Ghia	8000	8000	0
	1971 John Boat	200	200	0
	1996 Ford Pickup	6000	6000	0
	1990 Suzuki Quadrunner	800	800	0
	2007 Honda Shadow	3000	3000	0
	1998 Mazda Pickup	2500	2500	0
	2011 Artic Cat Quadrunner	3500	3500	0
	2004 Trailer	250	250	0
	2004 Prowler Camper	4000	4000	0
	2007 Dea Woo Skidsteer	6000	6000	0
	1948 Ford 800 Tractor	2500	2500	0
	1978 Honda 70 3-Wheeler	300	300	0
	2007 Honda Motorcycle	3000	3000	0
	Two (2) 1980 Yamaha 50cc Motorcycles	1000	1000	0
<b>Total Vehicles:</b>		<b>51850</b>		
<b><u>Personal Property</u></b>				
	Husband's estimated personal property (housewares, furniture, tools, outdoor gas tools, and guns)	5265	5265	0
<b>Total Assets in parties' possession</b>		<b>608365</b>	<b>608365</b>	<b>0</b>
<b><u>Liabilities</u></b>				
	WF Mortgage on Home	-39,023.92	-39023.92	0
<b>Total Assets in parties' possession less liabilities</b>		<b>569341.08</b>	<b>569341.08</b>	<b>0</b>
<b><u>Equalization payment from husband to wife</u></b>				
			-242400	242400
<b>Total Distribution of the Marital Estate</b>			<b>326941.08</b>	<b>242400</b>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# APPENDIX 2



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# APPENDIX 3

Years of Monthly Payments	Yearly	YTY %	Monthly Payments	Interest	E.O.Y Principle	Monthly w/ Interest
November 15, 2023- October 15, 2024	\$12,000.00	1.00	1000	\$0.00	\$230,400.00	\$1,000.00
November 15, 2024- October 15, 2025	\$12,600.00	1.05	\$1,050.00	\$25,047.00	\$217,800.00	\$3,137.25
November 15, 2025- October 15, 2026	\$13,230.00	1.05	\$1,102.50	\$23,525.55	\$204,570.00	\$3,062.96
November 15, 2026- October 15, 2027	\$13,891.50	1.05	\$1,157.63	\$21,928.03	\$190,678.50	\$2,984.96
November 15, 2027- October 15, 2028	\$14,586.08	1.05	\$1,215.51	\$20,250.63	\$176,092.43	\$2,903.06
November 15, 2028- October 15, 2029	\$15,315.38	1.05	\$1,276.28	\$18,489.36	\$160,777.05	\$2,817.06
November 15, 2029- October 15, 2030	\$16,081.15	1.05	\$1,340.10	\$16,640.03	\$144,695.90	\$2,726.76
November 15, 2030- October 15, 2031	\$16,885.21	1.05	\$1,407.10	\$14,698.23	\$127,810.69	\$2,631.95
November 15, 2031- October 15, 2032	\$17,729.47	1.05	\$1,477.46	\$12,659.34	\$110,081.23	\$2,532.40
November 15, 2032- October 15, 2033	\$18,615.94	1.05	\$1,551.33	\$10,518.51	\$91,465.29	\$2,427.87
November 15, 2033- October 15, 2034	\$19,546.74	1.05	\$1,628.89	\$8,270.63	\$71,918.55	\$2,318.11
November 15, 2034- October 15, 2035	\$20,524.07	1.05	\$1,710.34	\$5,910.37	\$51,394.48	\$2,202.87
November 15, 2025- October 15, 2036	\$21,550.28	1.05	\$1,795.86	\$3,432.08	\$29,844.21	\$2,081.86
November 15, 2026- October 15, 2037	\$22,627.79	1.05	\$1,885.65	\$829.89	\$7,216.42	\$1,954.81
November 15, 2027- October 15, 2038	\$23,759.18	1.05	\$1,979.93	-\$1,902.4	-\$16,542.8	\$1,821.40

Court Order: \$242,400.00  
 Total Interest at 8.5% + 3%: \$180,297.23  
 Total: \$422,697.23