

## IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 23-0644

IN RE THE MARRIAGE OF: )  
 )  
MATTHEW ROBERTS, )  
 )  
Petitioner and Appellee, )  
 )  
and )  
 )  
FIDELA ROBERTS, )  
 )  
Respondent and Appellant. )

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BRIEF OF THE PETITIONER AND APPELLEE

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ON APPEAL FROM THE  
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY  
HONORABLE ASHLEY HARADA PRESIDING

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## **I. STATEMENT OF ISSUES**

1. Did the District Court err when it awarded Matthew Roberts the property located in Grenada?
2. Did the District Court err when it awarded Matthew Roberts the Jeep located in Grenada?

## **II. STATEMENT OF THE CASE**

Matthew Roberts (hereinafter referred to as “Matthew”) and Fidela Roberts (hereinafter referred to as “Fidela”) were married on September 17, 1994, in Washakie County, Wyoming. *See CR<sup>1</sup> 80 p.4.* Matthew filed a Petition for Dissolution of Marriage on April 13, 2022, in Yellowstone County, Montana. *See CR 1.* Although Matthew had issued three separate sets of discovery and received an Order Granting his Motion to Compel, Fidela elected not to provide any discovery prior to trial. *CR 80 pp. 1 – 2.*

The Honorable Ashley Harada presided over this matter in three separate bifurcated hearings on November 17, 2022, December 20, 2022, and March 9, 2023. *Id. pp. 2 – 3.* The parties disputed the values of multiple assets and debts throughout the process of this proceeding. On October 6, 2023, the District Court issued the

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<sup>1</sup> All references to the Case Record (“CR”) are designated pursuant to the District Court docket number.

Amended Findings of Fact, Conclusions or Law, and Order with an attached Property Distribution Spreadsheet. *CR 80*.

### **III. STATEMENT OF FACTS**

1. On September 17, 1994, the parties were married in Washakie County, Wyoming. *CR 80, line 6 -7*.

2. On April 13, 2022, Matthew filed his Petition for Dissolution of Marriage, Proposed Parenting Plan and Summons. *CR 1 – 3; CR 80*.

3. On April 14, 2022, Fidela was served with the Petition for Dissolution of Marriage, Proposed Parenting Plan and Summons. *CR 4*.

4. On May 5, 2022, Fidela filed her Response and Counter-Petition. *CR 5*.

5. On May 10, 2022, Matthew issued his First Combined Discovery Requests to Fidela. *CR 8*.

6. On May 18, 2022, Matthew filed his Answer to Counter Petition. *CR 9*.

7. On June 28, 2022, Matthew filed his Notice of Service of Petitioner's Disclosure pursuant to § 40-4-252 M.C.A. *CR 11*.

8. On July 13, 2022, Matthew issued his Second Combined Discovery Requests to Fidela. *CR 12*.

9. On July 26, 2022, Matthew filed a Motion to Compel Discovery and Brief in Support. *CR 17*.

10. On August 2, 2022, the District Court issued an Order to Compel and awarding reasonable attorney fees and costs. *CR 18; CR 80*.

11. On August 31, 2022, Matthew filed his Verified Motion for Contempt and for Sanction for Failure to Comply with Order to Compel. *CR 21*.

12. On September 9, 2022, Matthew filed his Third Combined Discovery Requests to Fidela. *CR 25*.

13. On September 13, 2022, Matthew filed a Motion to Compel Second Discovery and Brief in Support. *CR 26*.

14. On October 6, 2022, Fidela filed her First Combined Discovery Requests to Matthew. *CR 31*.

15. On November 14, 2022, Matthew provided his Answers to Fidela's First Combined Discovery Requests. *CR 34*.

16. On November 17, 2022, the first day of a three-day bifurcated trial occurred. *CR 80*. During this hearing, Matthew was represented by Vincent Salminen, and Fidela was represented by Linda Harris. *Id.*

17. On December 19, 2022, Fidela filed her Answers to Matthew's First Combined Discovery. *CR 19*.

18. On December 20, 2022, the second day of a three-day bifurcated trial occurred. *CR 80*. During this hearing, Matthew was represented by Vincent Salminen, and Fidela was represented by Linda Harris. *Id.*

19. On March 9, 2023, the third day of a three-day bifurcated trial occurred. *CR 80*. During this hearing, Matthew was represented by Vincent Salminen, and Fidela was represented by Moira Murphy. *Id.*

20. On October 6, 2023, the District Court issued the Amended Findings of Fact, Conclusions or Law, and Order. *Id.*

#### **IV. STANDARD OF REVIEW**

When distributing assets, a district court is required to “equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title to the property and assets is in the name of the husband or wife or both.” *See § 40-4-202 MCA*. “District courts have broad discretion in appointing a marital estate.” *In re Marriage of Richards*, 2014 MT 213, 376 Mont. 188, 330 P.3d 1193 (citing *In re Marriage of Crowley*, 2014 MT 42, ¶ 26, 374 Mont. 48, 318 P.3d 1031).

The Montana Supreme Court has held “[w]e will not disturb a lower court’s ruling unless there is clear error amounting to abuse of discretion.” *In re Marriage of Kink*, (1987), 226 Mont. 313, 735 P.2d 311. “The test of abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *Id.* (citing *In re Marriage of Goodman*, (Mont. 1986), 723 P.2d 219, 220, 43 St.Rep. 1410, 1412).



## **V. SUMMARY OF ARGUMENT**

The District Court properly distributed the marital property pursuant to Montana law after receiving evidence and testimony from the parties. Montana law requires an equitable distribution of the assets between the parties regardless of title being in one party's name or both. *See § 40-4-202 M.C.A.* The District Court's election not to provide a specific value for aspects of the marital estate is not a mistake of law.

The property located in Grenada (hereinafter referred to as "Mangrove") and the rebuilt Jeep were two of eight items the District Court designated as "UNKNOWN" value in the final distribution. *See CR 80, Property Distribution Spreadsheet.* Based upon the lack of information and evidence offered by Matthew and Fidela, the District Court had broad discretion to consider the marital estate and assign it within the Court's discretion. *See § 40-4-202 M.C.A.*

## **VI. ARGUMENT**

The District Court did not abuse its discretion in awarding the Mangrove property and the Jeep, both located in Grenada, to Matthew without setting a specific value.

### **1. The District Court Is Not Required to Establish a Specific Value of Each Asset.**

The District Court did not abuse its broad discretion in electing not to place specific values on certain assets, therefore the Court employed conscientious

judgment and did not act arbitrarily. The most analogous case to this matter is *In re Marriage of Lewton*. See *In re Marriage of Lewton*, 2012 MT 114, 365 Mont. 152, 281 P.3d 181. In *Lewton*, the husband had income from a family business and the wife was associated with managing the couple's businesses. *Id.* at ¶ 9. The district court had a considerable task in determining the value of multiple businesses that were owned. *Id.* at ¶ 18. The district court found establishing the value of the businesses, marital assets, extremely difficult as neither party provided substantial evidence outside of their independent testimony. *Id.* The district court also distributed assets, including firearms and tools, without a valuation with estimated values ranging from \$22,000 to \$120,000. *Id.* at ¶ 19.

Just as the matter before this Court where Fidela is arguing that the District Court erred by failing to find the net value of the estate, the husband in *Lewton* made the same argument citing the same cases, to no avail. *Id.* at ¶ 14. This Court previously established the test for property matters in a dissolution of marriage "is whether the findings as a whole are sufficient to determine the net worth and decide whether the distribution is equitable." *Id.* at ¶ 15 [citing *In re Marriage of Walls*, 278 Mont. 413, 417, 925 P.2d 483, 485 (1996)].

Just as in *Lewton*, where the district court found it extremely difficult to value the business because there was little evidence outside of testimony, Fidela and Matthew both testified at length regarding the Mangrove property and the Jeep, but

neither provided an abundance of evidence. *Id.* at ¶ 18; *CR 80 pages 6 – 7*. The District Court provided similar language to *Lewton* by stating “[t]he parties are also part owners of a property in Grenada and a Jeep in Grenada. The details regarding this property are a bit of a mystery.” *CR 80 page 6*.

When analyzing the distribution of the marital estate, the District Court distributed multiple items without a specific valuation, but when reviewing the findings as a whole, it is clear what the District Court determined was equitable and why. The District Court provided multiple explanations in the findings as follows: “There is also a reduction in the amount of equity being paid to Respondent due to the Court having insufficient information regarding money being secreted by respondent and her complete failure to meet discovery demands”; “furthermore, without additional information from Respondent, the Court is left to speculate as to the values of accounts held by Respondent”; “the Court believes Respondent continues to hold a significant amount of money in an IRA and/or 401k”; “there is no doubt Respondent took advantage of the situation and Petitioner was unaware of how much was being spent”; “This is equitable because Respondent received a significant benefit from the operation of the business and it appears Respondent was able to secretly funnel funds from the business to her friends and family for her benefit”. *CR 80, pages 6, 8, 10, and 11*.

In turning to the final explanation provided by the District Court, the District Court addresses the assignment of property as provided in the Property Distribution Spreadsheet by stating:

While this distribution appears to provide a significant amount of assets to Petitioner, the distribution also requires Petitioner to assume the bulk of the marital debt, including huge amounts owed to the IRS, which is accruing interest at a significant rate. Respondent is receiving less property, but she is not being saddled with the debt incurred during the marriage. Additionally, Respondent has been taking and utilizing marital resources for years without the knowledge of Petitioner. Petitioner has provided an extremely generous amount of support for Respondent and Respondent has lived a lovely lifestyle. The distribution is intended to allow Respondent a mechanism to passively earn income (rental properties) while she works at establishing her new career in the entertainment industry. *CR 80 page 13.*

Considering the findings, including the Property Distribution Spreadsheet, the District Court did not abuse its discretion in not assigning values to the Mangrove property and the Jeep as the findings as a whole were sufficient to determine the value of the estate. Furthermore, it is clear the District Court considered all evidence provided by both parties and made an equitable determination regarding the assets and debts of the parties. Therefore, this Court should affirm the District Court's Order.

2. **The District Court Did Not Error When It Awarded the Mangrove Property to Matthew and Did Not Set a Specific Value.**

In the Brief of Appellant, Fidela sets forth the argument that the District Court's determination to leave the value of the Mangrove property and the Jeep as

“UNKNOWN” was a mistake of law. To support this argument, Fidela cites to *Marriage of Dirnberger*, *Marriage of Baer*, and *Marriage of Horton*. As discussed *supra*, Fidela fails to provide any analysis of *In re Marriage of Lewton*, where this Court has addressed the difficulty district courts face when determining the value of the property during a dissolution proceeding. *In re Marriage of Lewton*, 2012 MT 114, 365 Mont. 152, 281 P.3d 181, ¶ 18.

Furthermore, in *In re Marriage of Richards*, this Court reiterated that when the parties’ assets and property are complex, it will not even attempt to review every element and that “[t]rial courts, acting in equity, are granted far-reaching discretion to fashion a fair distribution of the marital property using reasonable judgment and relying on common sense.” *In re Marriage of Richards*, 2014 MT 213, 376 Mont. 188, 330 P.3d 1193, ¶ 38. That is precisely what occurred in this matter, the District Court considered the testimony and lack of evidence Fidela elected to provide to the Court when assigning the assets and liabilities.

In *In re Marriage of Baer*, evidence and testimony were received regarding a motorcycle and a Ford van. *In re Marriage of Baer*, (1998), 1998 MT 29, 954 P.2d 1125, ¶ 32. Based on the evidence received and the testimony, the record reflected these two items were acquired during the course of the marriage. *Id.* Although these were acquired during the course of the marriage, the district court elected to deem them as premarital property and therefore failed to distribute them pursuant to § 40-

4-202 M.C.A. *Id.* This was a quintessential issue because no testimony was received that would lead the district court to consider them premarital property. *Id.* This Court held the district court erred by ignoring the record regarding these two items of property. *Id.* Neither the Mangrove property nor the Jeep were ignored by the Court, instead the Court addressed both. *CR 80 pp. 6 – 7.* Furthermore, the District Court addressed how difficult it was to determine values based on Fidela’s absolute failure to comply with discovery. *CR 80.*

In *In re Marriage of Dirnberger*, the district court “made no specific finding as to marital **debt**, or as to the value of the parties’ personal property.” *In re Marriage of Dirnberger*, (1989), 237 Mont. 398, 773 P.2d 330, 332 [emphasis added]. In *Dirnberger*, this Court refers to *In re Marriage of Metcalf*, where the district court failed to consider the **debt** before distributing the marital property. *Id.* [emphasis added]. This failure resulted in a **net deficit** to one of the parties. *Id.* This Court concluded that “the District Court’s failure to make a specific finding as to **liabilities**, thereby precluding a determination of net worth, was an abuse of discretion.” *Id.* [emphasis added]. The liabilities of the marriage in the matter before this Court are addressed, with Matthew taking the lions’ share. *CR 80 pp. 11 – 12.* There is no assertion that either party had a net deficit, but rather Fidela is upset she did not get more of the marital estate even though the District Court assigned “huge amounts owed to the IRS” to Matthew. *Id. p.13.*

In *In re Marriage of Horton*, the major issue was specifically related to the marital residence. *In re Marriage of Horton*, 2004 MT 353, 324 Mont. 382, 102 P.3d 1276, ¶ 5. The parties had agreed the value of the marital residence was \$200,000 with \$40,000 remaining on the mortgage. *Id.* When assigning the marital residence to the wife, the district court assigned a value of \$80,000, a reduction of \$80,000 as a gift from her father. *Id.* Based on conflicting testimony of the parties, ultimately the district court adopted the values asserted by the wife and this Court reversed and remanded the issue of the assignment of \$80,000 as a gift for a reassessment as no basis for this amount was provided by the district court. *Id.* ¶ at 21. As this Court has consistently held “[w]hile articulation of [the] factors [in § 40-4-202, MCA] is encouraged, the absence of specific findings does not automatically warrant remand.” *Id.* at ¶ 18. Instead, this Court “look[s] to determine if substantial evidence exists to support the District Court’s findings.” *Id.* [citing *In re Marriage of Mouat*, (1987), 228 Mont. 430, 743 P.2d 602.] There was sufficient evidence that both parties’ contributions to the marital residence was fairly equivalent in *Horton*, therefore the district court erred in providing an offset for her asserted gift. *Id.* The District Court addressed the contradicting testimony of the parties in this matter by considering the Mangrove property when the District Court provided “[t]he details regarding this property are a bit of a mystery.” *CR 80*, pp. 6 – 7. Based on the

conflicting testimony and the third-party ownership interest of Matthew's brother in Grenada, the District Court awarded the property to Matthew. *Id.* pp. 6 – 7.

Unlike *Baer*, *Dirnberger*, and *Horton*, there are no allegations that items were omitted or deemed premarital by the District Court contrary to testimony and there is no assertion that there is a net deficit to either party. Most notably, Fidela fails to differentiate her position from the one in *Lewton* although *Lewton* provides the precise position she is taking. Instead, Matthew and Fidela both testified regarding the value of the Mangrove property and the Jeep and the District Court properly distributed the marital estate.

***a. The District Court Properly Considered All Evidence Presented Regarding the Mangrove Property.***

It is uncontroverted that the Mangrove property was acquired during the course of the marriage. *Tr.*<sup>2</sup> 12/20/2022 145 – 147; *Tr.* 3/9/2023 31. Matthew testified that the property was purchased for \$90,000 and about \$40,000 was owed. *Id.* at 145 – 147, 176. Fidela testified the land was purchased for \$98,000. *Tr.* 3/9/2023 29; 31. That was the closest the parties got in their descriptions of the Mangrove property during the three bifurcated days of trial in this matter.

Fidela testified the house was 10,000 square feet, 70% complete, and that houses in the area “are in the millions”. *Tr.* 3/9/2023 31 and 34. She further testified

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<sup>2</sup> All references to the trial dates shall be referred to as “Tr.”, followed by the date, followed by the applicable page numbers.



that the building itself has three floors and three separate units. *Id.* at 36. Contrary to Fidela's position in her appeal, during testimony, Fidela testified she was aware that the Mangrove property was jointly owned between Matthew and his brother. *Id.* at 32.

Matthew, on the other hand, testified consistently regarding the Mangrove property stating the house was 1,200 square feet top and bottom floors, about 50% complete, and that the house, when completed, would not be worth more than \$300,000. *Tr. 12/20/2022 146, 176; Tr. 3/9/2023 117.*

Just as in *Lewton*, neither party had an expert testify regarding the value of part of the marital estate and instead relied upon the testimony of the parties. *See Lewton*, 281 P.3d 181, ¶ 18. Similarly, here, the District Court was not presented with expert testimony or an abundance of evidence, but rather conflicting testimony between the parties. Upon three bifurcated days of trial, the District Court considered the evidence received and ultimately determined the Mangrove property should be awarded to Matthew.

Based upon the evidence received, the District Court made an equitable distribution of the marital estate and the District Court's findings, as a whole, are sufficient to determine that the distribution was equitable.

***b. The District Court Properly Considered All Evidence Presented Regarding the Jeep Located in Grenada.***

The District Court heard testimony regarding the Jeep located in Grenada during the second and third days of the bifurcated trial. The District Court heard and determined that Matthew's brother had ownership in the Jeep in Grenada, but once again found this to be part of the mystery to the Court. *CR 80, page 6*. The basis for the Jeep being a mystery is easily determined when considering the transcripts.

Matthew testified that he does not own the Jeep in Grenada, but rather that it is titled in his brother's name. *Tr. 12/20/2022 239*. Matthew further testified that his brother does all of the maintenance for the Jeep and it has over 200,000 miles on it. *Id. 239 – 241*. On the final day of trial, Matthew testified that there was a major expense incurred with importing the Jeep into Grenada, an amount of \$65,000 Grenadian money. *Tr. 3/9/2023 114*. Although the record is not clear on what the exchange rate was at the time the Jeep was imported, the record is beyond clear that the Jeep is registered in Matthew's brother's name. *Tr. 12/20/2022 239*.

The reason it was a mystery is that the value of the Jeep was unknown, just as the ownership interest was unknown, and the Court provided it as a value of "UNKNOWN" because neither party entered any tangible evidence regarding the actual value and ownership of the Jeep.

## VII. CONCLUSION

Fidela puts forth the argument that a district court must always select a value for every asset, a position this Court has specifically declined to assert. *Lewton*, 281 P.3d 181 at ¶ 15. Instead, this Court has recognized the considerable and difficult task district courts face when valuing a marital estate and established the test that the findings as a whole must be considered to determine if the distribution is equitable. *Id.* ¶¶ 15 – 19. Fidela also attempts to add argument that there was unknown information regarding ownership and property rights in Grenada regarding title, citing evidence not in the record.<sup>3</sup> The District Court in this matter analyzed the testimony of the parties and determined that the value of the Mangrove property, as well as the ownership, was a mystery. *CR 80*, pp.6 – 7. Although the testimony of the parties may have provided the Court with the ability to assign a value randomly, Fidela fails to provide any evidence that the District Court abused its broad

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<sup>3</sup> Fidela cited to Exhibit D, an Exhibit refused by the District Court. Brief of Appellant, p.11; *See also Tr. 3/9/2023* 47. Rule 8 M.R.App.P. provides in part “the original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of district court shall constitute the record on appeal in all cases.” Rule 8(1) M.R.App.P. Fidela attempts to introduce facts not in evidence, a practice this Court condemned in *State v. MacKinnon* stating, “that the parties on appeal are bound by the record and may not add additional matters in briefs or appendices.” *State v. MacKinnon*, 288 Mont. 329, 957 P.2d 23, 26 (1998), citing *State v. Hatfield*, 256 Mont. 340, 846 P.2d 1025, 1028 (1993); *State v. Puzio*, 182 Mont. 163, 595 P.2d 1163, 1164 (1979). Finally, this Court stated “[w]e will not tolerate an attempt to introduce extraneous information into the proceedings.” *MacKinnon*, 957 P.2d 23, 26; citing *State v. Hall*, 203 Mont. 528, 662 P.2d 1306, 1312 (1983).

discretion in distributing assets and liabilities in this matter. For the foregoing reasons, Matthew respectfully requests this Court Affirm the Order of the District Court.

**RESPECTFULLY SUBMITTED** this 28th day of March 2024.

/s/ Steven L. Stockdale  
Steven L. Stockdale  
Attorney for Petitioner/Appellee

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance. The word count is 3,681.

**DATED** this 28th day of March 2024.

/s/ Steven L. Stockdale  
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## **CERTIFICATE OF SERVICE**

I, Steven Leon Stockdale, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-28-2024:

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