NEBRASKA SUPREME COURT

Jennifer Westwood v. Cheryl A. Darnell

299 Neb. 612 (2018) · No. No. S-17-538 · Decided April 13, 2018

SUMMARY

The Nebraska Supreme Court affirmed the district court’s division of the marital estate in the dissolution of Jennifer Westwood and Cheryl A. Darnell’s marriage. The court held that retirement funds withdrawn during the marriage and deposited into a joint account were marital property, and that Westwood failed to prove otherwise. It also held that the district court properly declined to adjust the property division for alleged tax consequences because Westwood presented insufficient evidence.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Steinke, District Judge
JURISDICTION	Nebraska
DECIDED	April 13, 2018
DOCKET	No. S-17-538
DISPOSITION	affirmed
PROCEDURAL POSTURE	Westwood appealed from a marital dissolution decree entered by the Lancaster County District Court that divided the parties' marital estate and ordered her to make an equalization payment to Darnell.
STANDARD OF REVIEW	The appellate court reviews a marital dissolution action de novo on the record to determine whether the trial court abused its discretion. It makes independent factual determinations and reaches independent conclusions, but may give weight to the trial court's opportunity to observe witnesses when evidence conflicts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jennifer Westwood v. Cheryl A. Darnell

TOPICS

equitable distribution · dissolution of marriage · income tax · appellate procedure · standard of review

PRACTICE AREAS

family law | marital property division | tax consequences in divorce

QUESTIONS PRESENTED

1. Whether the proceeds from Westwood's retirement-account withdrawal should have been classified as her separate, nonmarital property.
2. Whether the district court erred by failing to treat payment of Darnell's vehicle loan from the retirement-account proceeds as unjust enrichment requiring adjustment of the property division.
3. Whether the district court erred by failing to account for Darnell's refusal to file joint tax returns when dividing the marital estate.

HOLDINGS

1. Retirement benefits earned during the marriage are marital property, and a party claiming that withdrawn retirement funds are nonmarital bears the burden of proving their nonmarital character. Westwood failed to meet that burden.
2. The unjust-enrichment assignment failed because Westwood did not prove that the retirement proceeds were nonmarital; the asserted unjust enrichment merely restated her request for an equitable adjustment of the property division.
3. A Nebraska trial court may consider an unreasonable refusal to file a joint tax return when equitably dividing the marital estate if the party seeking an adjustment presents evidence of the tax disadvantage, ordinarily including calculated joint and separate returns. Westwood failed to present sufficient evidence.
4. In a marital dissolution action, the appellate court reviews de novo on the record for abuse of discretion, independently determines facts and conclusions, and may give weight to the trial court's witness-observation advantage when evidence conflicts.

KEY QUOTATIONS

> *"The burden is on Westwood to show that the funds in question are nonmarital."* (617)

> *"Therefore, under § 42-365, we hold that if a party seeking an equitable adjustment presents the court with the tax disadvantages of filing separate returns, a trial court may consider a party's unreasonable refusal to file a joint return."* (619-620)

FACTUAL BACKGROUND

Westwood and Darnell married in 2011 and separated in June 2015; they had no children. After Westwood withdrew $75,393.04 from her retirement account, $51,999.99 remained after taxes, penalties, and fees and was deposited into the parties' joint account, where it was used in part to pay marital debts, including both parties' vehicle loans. The parties jointly purchased and later sold their home, with Westwood retaining $11,150.81 in sale proceeds. The district court divided the marital estate and ordered Westwood to make a $3,755.67 equalization payment.

PROCEDURAL HISTORY

The district court dissolved the parties' marriage and awarded each party her personal property, automobile, retirement account, and bank accounts in her own name. It ordered Westwood to pay Darnell $3,755.67 as an equalization payment. Westwood appealed, challenging the classification of retirement-account withdrawal proceeds, the treatment of payment of Darnell's vehicle loan, and the court's failure to account for Darnell's refusal to file joint tax returns. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Osantowski v. Osantowski, 298 Neb. 339, 904 N.W.2d 251 (2017)
- Gangwish v. Gangwish, 267 Neb. 901, 678 N.W.2d 503 (2004)
- Lisec v. Lisec, 24 Neb. App. 572, 894 N.W.2d 350 (2017)
- Lorenzen v. Lorenzen, 294 Neb. 204, 883 N.W.2d 292 (2016)
- Bock v. Dalbey, 283 Neb. 994, 815 N.W.2d 530 (2012)