

NEBRASKA SUPREME COURT

Onstot v. Onstot

298 Neb. 897 (2018) · No. No. S-17-038 · Decided February 9, 2018

SUMMARY

The Nebraska Supreme Court reviewed a dissolution decree involving the division of premarital-home equity and support for a mentally ill spouse under Neb. Rev. Stat. § 42-362. The court affirmed the inclusion of the home's equity in the marital estate and the \$700 monthly spousal-support award, but extended the refinancing period to six months after issuance of the mandate. It vacated the condition terminating support upon the recipient's cohabitation, while recognizing that cohabitation and improved financial circumstances may support a later modification.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	February 9, 2018
DOCKET	No. S-17-038
DISPOSITION	other
PROCEDURAL POSTURE	Mark A. Onstot appealed, and Maria D. Onstot cross-appealed, from a decree of dissolution entered by the Sarpy County District Court concerning property division and spousal support.
STANDARD OF REVIEW	The appellate court reviews dissolution-related determinations of property division and alimony de novo on the record, while initially entrusting those matters to the trial court's discretion and ordinarily affirming absent an abuse of discretion. In a de novo review, the appellate court independently reappraises the evidence but may give weight to the trial judge's opportunity to observe witnesses when the evidence conflicts. Support for a mentally ill spouse under § 42-362 is reviewed de novo on the record and affirmed absent an abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; binding precedent in Nebraska.

PARTIES

Mark A. Onstot v. Maria D. Onstot

TOPICS

dissolution of marriage

spousal support

equitable distribution

family law procedure

appellate procedure

PRACTICE AREAS

family law

divorce

spousal support

equitable distribution

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court properly included the entire equity in Mark's premarital residence in the marital estate when Mark failed to prove the residence's premarital equity.
2. Whether the district court abused its discretion by requiring Mark to refinance the residence and pay Maria for her share of the equity within 60 days.
3. Whether the appellate court could review the award of temporary spousal support when the relevant evidence was not preserved in a bill of exceptions.
4. Whether the district court abused its discretion in awarding Maria \$700 per month in continuing support under Neb. Rev. Stat. § 42-362.
5. Whether the district court could provide that Maria's spousal support would terminate upon her cohabitation with a significant other.

HOLDINGS

1. Although equity existing at the time of marriage in property acquired before marriage is generally nonmarital, the party claiming nonmarital treatment bears the burden of proving the amount of that equity. Because Mark failed to establish the residence's mortgage balance or equity at the time of marriage, the district court properly included the entire equity in the marital estate.
2. The district court abused its discretion by requiring Mark to refinance the residence and pay Maria within 60 days. The deadline was extended to six months from the filing of the mandate in the district court.
3. The court would not consider Mark's challenge to temporary spousal support because the relevant hearing evidence was not preserved in a bill of exceptions.
4. The \$700-per-month continuing spousal support award under Neb. Rev. Stat. § 42-362 was not an abuse of discretion and was affirmed.
5. A trial court may not condition termination of spousal support upon the former spouse's cohabitation with another person. The cohabitation-termination provision was vacated.

KEY QUOTATIONS

"Because he purchased the residence prior to the marriage, Mark claims that it is entirely premarital or, alternatively, that the equity he had prior to the marriage is premarital." (904)

“However, cohabitation, together with a showing that such arrangement improved a former spouse’s overall financial condition, might warrant a modification of spousal support.” (909)

FACTUAL BACKGROUND

Mark and Maria Onstot married in 1999 after Mark had purchased a Bellevue, Nebraska, residence in 1990. At trial, the residence was valued at \$200,000 with a mortgage balance of approximately \$32,500, but Mark presented no competent evidence establishing the residence's mortgage balance or equity at the time of marriage. Maria had significant mental-health conditions and was unable to work, while her monthly expenses exceeded her income; the district court awarded her \$700 per month in continuing support. The district court later added cohabitation with a significant other as a condition terminating support.

PROCEDURAL HISTORY

The district court dissolved the parties' marriage, awarded Mark the premarital residence subject to its mortgage, divided the residence's equity equally, and awarded Maria continuing spousal support under Neb. Rev. Stat. § 42-362. The court later amended the decree to provide that support would terminate upon Maria's cohabitation with a significant other. The Nebraska Supreme Court affirmed the property division and continuing support award, modified the refinancing deadline, and vacated the cohabitation-termination provision.

DISPOSITION

other

REMAND INSTRUCTIONS

The decree was modified to allow Mark six months following the date of the mandate in the district court to refinance the residence and pay Maria. The provision terminating support upon Maria's cohabitation with a significant other was vacated.

CASES CITED

- Marshall v. Marshall, 902 N.W.2d 223 (2017)
- Bergmeier v. Bergmeier, 296 Neb. 440, 894 N.W.2d 266 (2017)
- Black v. Black, 223 Neb. 203, 388 N.W.2d 815 (1986)
- Heald v. Heald, 259 Neb. 604, 611 N.W.2d 598 (2000)
- Harris v. Harris, 261 Neb. 75, 621 N.W.2d 491 (2001)
- Altaffer v. Majestic Roofing, 263 Neb. 518, 641 N.W.2d 34 (2002)
- Peterson v. George, 168 Neb. 571, 96 N.W.2d 627 (1959)
- State v. Dunster, 262 Neb. 329, 631 N.W.2d 879 (2001)
- State v. Biernacki, 237 Neb. 215, 465 N.W.2d 732 (1991)
- State v. Schaneman, 235 Neb. 655, 456 N.W.2d 764 (1990)
- State v. Isikoff, 223 Neb. 679, 392 N.W.2d 783 (1986)

- *Stephens v. Stephens*, 297 Neb. 188, 899 N.W.2d 582 (2017)
- *Else v. Else*, 219 Neb. 878, 367 N.W.2d 701 (1985)

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