

MONTANA SUPREME COURT

In re the Marriage of Monica Kitzmiller-Kerutis and Brian David Kerutis, Sr.

2015 MT 191N (Mont. 2015) · No. DA 14-0549 · Decided July 1, 2015

SUMMARY

The Montana Supreme Court reviewed a dissolution decree involving division of the marital estate, maintenance, attorney fees, and contempt sanctions. The court affirmed most rulings but held that the district court used an inequitable valuation date for Brian Kerutis’s 401(k) and failed to distribute jointly titled Bigfork property. The matter was remanded for further proceedings on those issues.

CASE DETAILS

COURT	Montana Supreme Court
WRITING FOR THE COURT	Jim Rice; Mike McGrath; James Jeremiah Shea; Laurie McKinnon; Beth Baker; Michael E. Wheat
JURISDICTION	Montana
DECIDED	July 1, 2015
DOCKET	DA 14-0549
DISPOSITION	affirmed_in_part_reversed_in_part_remanded
PROCEDURAL POSTURE	Direct appeal from dissolution decree
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	unpublished_non_precedential
PARTIES	Brian David Kerutis, Sr. v. Monica Kitzmiller-Kerutis

TOPICS

- dissolution of marriage
- equitable distribution
- alimony
- attorney fees
- contempt
- appellate procedure

PRACTICE AREAS

- family law
- appellate procedure

QUESTIONS PRESENTED

1. Did the District Court abuse its discretion by waiving the pretrial settlement conference?

2. Did the District Court abuse its discretion by declining to continue the proceedings?
3. Did the District Court abuse its discretion in dividing the marital estate?
4. Did the District Court abuse its discretion by awarding maintenance to Monica?
5. Did the District Court abuse its discretion by awarding attorney fees to Monica?
6. Did the District Court abuse its discretion by imposing sanctions on Brian?
7. Is Monica entitled to attorney fees for the cost of this appeal?

HOLDINGS

1. The District Court did not abuse its discretion by waiving the pretrial settlement conference, as the decision to order the conference was within the court's discretion under M. R. Civ. P. 16(a), and therefore the decision to waive it was likewise discretionary.
2. The District Court did not abuse its discretion by declining to continue the proceedings, as Brian was not entitled to protections under § 37-61-405, MCA, and M. U. Dist. Ct. R. 10 because his representative O'Neil was not a licensed attorney.
3. The District Court made sufficient findings for appellate review of whether the marital estate was equitably distributed.
4. The District Court did not err by declining to find dissipation, as Brian failed to offer evidence demonstrating the marital estate had been dissipated as a result of Monica's gambling.
5. The District Court erred by using the date of the dissolution decree (April 30, 2014) to divide Brian's 401(k); the appropriate valuation date is the date of trial (May 23, 2012).
6. The District Court erred by failing to dispose of the five-acre Bigfork property, which was titled jointly in Brian and Monica's names and thus belonged to both spouses for purposes of § 40-4-202(1), MCA.
7. The District Court did not abuse its discretion in awarding maintenance to Monica, as the court made sufficient findings under § 40-4-203, MCA.
8. The District Court did not abuse its discretion in awarding attorney fees, as there was sufficient evidence supporting the award based on necessity, reasonableness, and competent evidence.
9. The District Court did not abuse its discretion in holding Brian in contempt for removing a Polaris four wheeler in violation of the economic restraining order.
10. Monica's request for sanctions pursuant to M. R. App. P. 19(5) is denied, as Brian had reasonable grounds for the appeal.

FACTUAL BACKGROUND

Brian and Monica Kerutis married in 1989 and separated in 2011. They had no children together. The parties lived on a five-acre parcel in Bigfork considered Jeffrey's (Monica's adult son) property but titled in both spouses' names. Brian appealed the dissolution decree, challenging several aspects including the division of his 401(k) account based on the decree date rather than the trial date, and the court's failure to distribute the Bigfork property.

PROCEDURAL HISTORY

Respondent/Appellant Brian Kerutis appealed from the dissolution decree issued by the Eleventh Judicial District Court, Flathead County, which dissolved his marriage to Petitioner/Appellee Monica Kitzmiller-Kerutis and distributed their marital estate. The Montana Supreme Court affirmed in part, reversed in part, and remanded.

DISPOSITION

affirmed_in_part_reversed_in_part_remanded

REMAND INSTRUCTIONS

Within 30 days after issuance of remittitur, each party shall submit proposals for resolution of the two remanded issues (401(k) division at trial date value and distribution of Bigfork property), including proof of the 401(k) value at the time of trial, a proposed qualified domestic relations order, and a proposed distribution of the Bigfork property. Within 30 days thereafter, the District Court shall issue an amended judgment resolving these issues.

CASES CITED

- Quantum Elec. v. Schaeffer, 2003 MT 29, 314 Mont. 193, 64 P.3d 1026
- In re Marriage of Axelberg, 2015 MT 110, 378 Mont. 528, 347 P.3d 1225
- In re Marriage of Richards, 2014 MT 213, 376 Mont. 188, 330 P.3d 1193
- In re Marriage of Swanson, 220 Mont. 490, 716 P.2d 219 (1986)
- In re Marriage of Halverson, 230 Mont. 226, 749 P.2d 518 (1988)
- In re Marriage of Gingerich, 269 Mont. 161, 887 P.2d 714 (1994)
- In re Marriage of Nevin, 284 Mont. 468, 945 P.2d 58 (1997)