

SUPREME COURT OF THE STATE OF MONTANA

Gordon v. Gordon

2006 MT 222N (2006) · No. DA 06-0070 · Decided September 6, 2006

SUMMARY

The Montana Supreme Court reviewed an appeal from a marital dissolution judgment involving the division of the parties' marital estate and liabilities. The court held that substantial evidence supported the District Court's findings, the legal issues were controlled by settled Montana law, and there was no abuse of discretion. The judgment was affirmed in a noncitable memorandum decision.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Brian Morris; Karla M. Gray; Patricia Cotter; W. William Leaphart; John Warner
JURISDICTION	Montana
DECIDED	September 6, 2006
DOCKET	DA 06-0070
DISPOSITION	affirmed
PROCEDURAL POSTURE	Billy James Gordon appealed the Montana District Court's findings of fact, conclusions of law, order dissolving the parties' marriage, and division of the marital estate.
STANDARD OF REVIEW	The Supreme Court reviews dissolution proceedings and property distributions to determine whether the district court acted arbitrarily, without conscientious judgment, or beyond the bounds of reason resulting in substantial injustice. The district court may adopt any reasonable property valuation supported by the record.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision; not citable as precedent under the Montana Supreme Court's Internal Operating Rules.
PARTIES	Billy James Gordon v. Tammy Ann Gordon

TOPICS

- dissolution of marriage
- equitable distribution
- appellate procedure
- standard of review
- family law procedure

PRACTICE AREAS

family law

appellate procedure

real estate

QUESTIONS PRESENTED

1. Whether the District Court improperly adopted Tammy's amended proposed findings of fact and conclusions of law.
2. Whether substantial evidence supported the District Court's findings and whether the court misapprehended the evidence or made material factual errors.
3. Whether the District Court abused its discretion in determining the marital estate, valuing the property and liabilities, and distributing the marital estate.

HOLDINGS

1. A district court may adopt a prevailing party's proposed findings and conclusions when the findings are sufficiently comprehensive and pertinent to the issues and supported by the evidence.
2. The District Court did not abuse its discretion in determining, valuing, and distributing the marital estate because substantial evidence supported its findings and the distribution was not arbitrary or unreasonable.

KEY QUOTATIONS

“We review a district court’s order and dissolution proceedings to determine whether the court acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice.” (¶ 5)

“It is manifest on the face of the briefs and record before us that substantial evidence supports the District Court’s findings of fact, that the legal issues are clearly controlled by settled Montana law that the District Court correctly interpreted, and that there was no abuse of discretion by the District Court.” (¶ 6)

FACTUAL BACKGROUND

Billy and Tammy Gordon were married for twenty-four years and had no minor children. Their residence and twenty acres comprised most of the marital estate. The District Court awarded that property to Tammy, divided the remaining assets nearly equally, and assigned most liabilities to Tammy, including the mortgage on the awarded property and a short-term, high-interest credit-card debt.

PROCEDURAL HISTORY

The parties filed for dissolution after twenty-four years of marriage and had no minor children. Following a trial on April 15, 2005, the District Court entered its order on August 25, 2005, awarding the marital residence and twenty acres to Tammy and dividing the remaining assets and liabilities. Billy appealed the property distribution.

DISPOSITION

affirmed

CASES CITED

- Hurley v. Hurley, 222 Mont. 287, 296, 721 P.2d 1279, 1285 (1986)
- Collins v. Collins, 2004 MT 365, ¶ 16, 324 Mont. 500, ¶ 16, 104 P.3d 1059, ¶ 16
- In re Marriage of Bee, 2002 MT 49, ¶ 34, 309 Mont. 34, ¶ 34, 43 P.3d 903, ¶ 34
- In re Marriage of Harkin, 2000 MT 105, ¶ 31, 299 Mont. 298, ¶ 31, 999 P.2d 969, ¶ 31

OPINION

PER CURIAM.

No. DA 06-0070 IN THE SUPREME COURT OF THE STATE OF MONTANA 2006 MT 222N
_____ TAMMY ANN GORDON, Petitioner and
Respondent, v. BILLY JAMES GORDON, Respondent and Appellant.
_____ APPEAL FROM: District Court of the Thirteenth
Judicial District, In and for the County of Yellowstone, Cause No. DR 04-1194 The Honorable
Gregory R. Todd, Judge presiding.

COUNSEL OF RECORD: For Appellant: Benjamin J. LaBeau, LaBeau Law Firm, Billings,
Montana For Respondent: George T. Radovich, Attorney at Law, Billings, Montana
_____ Submitted on Briefs: August 23, 2006 Decided:
September 6, 2006 Filed: _____ Clerk Justice Brian
Morris delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana
Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum
decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and its case title,
Supreme Court cause number and disposition shall be included in this Court's quarterly list of
noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Billy James Gordon
(Billy) appeals from the District Court's findings of fact and conclusions of law and order
dissolving his marriage to Tammy Ann Gordon (Tammy) and dividing the parties' marital estate.

Billy and Tammy were married for twenty-four years and living in Yellowstone County at the time
that they filed for dissolution. They had no minor children. The District Court held a trial on the
parties' petition for dissolution on April 15, 2005. Both parties submitted proposed findings of fact
and conclusions of law.

The District Court entered its Order on August 25, 2005. ¶3 The parties' residence and twenty
acres constituted the bulk of the marital estate. The District Court awarded it to Tammy. The
District Court divided the remaining assets nearly equally between Billy and Tammy.

The District Court also divided the parties' liabilities. The District Court assigned most of the liabilities to Tammy, including a mortgage on the residence and twenty acres that it had awarded to Tammy. The District Court noted that the distribution is "nearly equal" and that to the extent that it favors Tammy, "it is also noted that she assumes a credit card debt which is a short term, high 2 interest debt, while Billy only assumes debt on secured assets." Billy appeals the District Court's distribution. ¶4 Billy argues that the District Court erroneously adopted Tammy's amended proposed findings of fact and conclusions of law.

He concedes that nothing prohibits the District Court from adopting the prevailing party's proposed findings, but argues that any proposed findings must be "sufficiently comprehensive and pertinent to the issues to provide a basis for decision" and be supported by the evidence. *Hurley v. Hurley*, 222 Mont. 287, 296, 721 P.2d 1279, 1285 (1986). He contends that the District Court's adoption of Tammy's findings led to a "patently unfair result." Billy further contends the District Court fails to support its findings of fact with substantial evidence, that the District Court misapprehended the effect of the evidence, and made various mistakes.

Finally, Billy argues the District Court abused its discretion in determining the contents of the marital estate, the net worth of the marital estate, the distribution of the marital estate, and the valuation of those distributions. ¶5 We review a district court's order and dissolution proceedings to determine whether the court acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice.

Collins v. Collins, 2004 MT 365, ¶ 16, 324 Mont. 500, ¶ 16, 104 P.3d 1059, ¶ 16. The district court possesses discretion to adopt any reasonable valuation of property supported by the record. In *re Marriage of Bee*, 2002 MT 49, ¶ 34, 309 Mont. 34, ¶ 34, 43 P.3d 903, ¶ 34.

The omission of a particular item from the distribution does not necessarily constitute reversible error if the district court's findings as a whole are sufficient to determine that 3 the distribution of the marital estate was equitable.

In *re Marriage of Harkin*, 2000 MT 105, ¶ 31, 299 Mont. 298, ¶ 31, 999 P.2d 969, ¶ 31. ¶6 We have determined to decide this case pursuant to Section I, paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions. It is manifest on the face of the briefs and record before us that substantial evidence supports the District Court's findings of fact, that the legal issues are clearly controlled by settled Montana law that the District Court correctly interpreted, and that there was no abuse of discretion by the District Court. ¶7 We affirm the judgment of the District Court. /S/ BRIAN MORRIS We Concur: /S/ KARLA M. GRAY /S/ PATRICIA COTTER /S/ W. WILLIAM LEAPHART /S/ JOHN WARNER 4