

NEBRASKA SUPREME COURT

Kathryn Ann Tierney v. Lawrence William Tierney

Tierney v. Tierney, 309 Neb. 310 (2021) · No. No. S-20-731 · Decided May 21, 2021

SUMMARY

The Nebraska Supreme Court affirmed an order establishing a 5.24-acre metes-and-bounds parcel for the marital home following a prior appellate modification of the parties’ property division. The court held that the law-of-the-case doctrine did not determine the size of the parcel, that the district court was not required to defer to local zoning authorities under primary jurisdiction or exhaustion principles, and that the appellant waived any challenge to the resulting valuation by failing to raise it and present evidence below.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 21, 2021
DOCKET	No. S-20-731
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lawrence William Tierney appealed from an order of the Custer County District Court determining the metes and bounds of the marital home parcel after a prior appellate decision awarded the marital home to Kathryn while awarding the surrounding tract to Lawrence.
STANDARD OF REVIEW	In a marital dissolution action, the appellate court reviews the case de novo on the record to determine whether the trial court abused its discretion. The appellate court makes independent factual determinations and reaches its own independent conclusions; an abuse of discretion exists when the trial court's reasons or rulings are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lawrence William Tierney v. Kathryn Ann Tierney

TOPICS

dissolution of marriage

equitable distribution

zoning

administrative law

appellate procedure

PRACTICE AREAS

family law

real estate

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court's award of a 5.24-acre parcel accompanying the marital home violated the law-of-the-case doctrine.
2. Whether the district court was required to defer to local zoning authorities under the primary jurisdiction doctrine or require exhaustion of administrative remedies before establishing a metes and bounds description in the divorce action.
3. Whether the district court erred by awarding Kathryn a 5.24-acre tract rather than a one-acre tract.
4. Whether the district court erred by failing to account for any change in value resulting from the larger tract.
5. Whether the district court erred in overruling Lawrence's motion for a new trial or to alter or amend the decree.

HOLDINGS

1. The law-of-the-case doctrine did not bar the district court from determining that the marital home should be accompanied by a 5.24-acre parcel because the acreage and legal description had not been litigated or terminally decided by the Court of Appeals.
2. The district court was not required to refer the metes and bounds issue to local zoning authorities or require Kathryn to exhaust administrative remedies.
3. The district court did not err by adopting Kathryn's proposed metes and bounds description and awarding her a 5.24-acre parcel containing the marital home.
4. Lawrence waived any objection to the district court's failure to adjust the property's valuation because he did not request an adjustment or present evidence on the issue at the trial court level.

KEY QUOTATIONS

"The number of acres for the tract of land including the marital home was not litigated and terminally decided by the Court of Appeals, thus the law-of-the-case doctrine is inapplicable." (316)

"The question presented in this case is not whether the marital home should receive a variance from portions of the Custer County zoning regulations; indeed, no one in this case has sought a variance from the relevant zoning regulations." (317)

"Despite an opportunity to do so, Lawrence offered no alternative to Kathryn's proposed description." (319)

FACTUAL BACKGROUND

Kathryn and Lawrence Tierney were married in 1980, separated in 2015, and owned a substantial marital estate that included several agricultural tracts, the marital home, and ranch outbuildings. The original dissolution decree awarded the red and pink tracts, including the marital home, to Kathryn, but the Nebraska Court of Appeals modified the division by awarding those tracts to Lawrence while affirming the separate award of the marital home to Kathryn. On remand, the district court created a 5.24-acre parcel for the home because Custer County zoning regulations required a minimum five-acre residential lot in the relevant agricultural district. Lawrence offered no alternative legal description or evidence of a different valuation.

PROCEDURAL HISTORY

The district court dissolved the parties' marriage in 2017 and divided their marital estate. The Nebraska Court of Appeals modified the property division, awarding Lawrence the red and pink tracts used in his cattle operation while affirming an award of the marital home to Kathryn. Because the home was located within the red tract, Kathryn moved for a metes and bounds description. The district court awarded her a 5.24-acre parcel based on county zoning regulations and her proposed survey. Lawrence appealed, arguing that the order violated law of the case, improperly intruded on zoning authority, awarded too much land, failed to adjust valuation, and should have been altered or amended.

DISPOSITION

affirmed

CASES CITED

- Tierney v. Tierney, No. A-18-338, 2019 WL 2509047 (Neb. App. June 18, 2019)
- Higgins v. Currier, 307 Neb. 748, 950 N.W.2d 631 (2020)
- Gonzales v. Nebraska Pediatric Practice, 308 Neb. 571, 955 N.W.2d 696 (2021)
- Koch v. Aupperle, 274 Neb. 52, 737 N.W.2d 869 (2007)
- Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020)