

SUPREME COURT OF THE STATE OF MONTANA

In re Marriage of Harr

2017 MT 167N · No. DA 16-0696 · Decided July 5, 2017

SUMMARY

The Montana Supreme Court reviewed a dissolution decree involving temporary maintenance, division of marital property, and valuation of the parties' Trego, Montana, residence. The court affirmed the temporary-support rulings but held that the district court abused its discretion by valuing the primary marital asset as of trial rather than considering its value at distribution after an extraordinary 28-month delay. The decree was reversed and remanded solely for reassessment of the Trego property and the resulting marital-estate distribution and cash equalization payment.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Beth Baker; Mike McGrath; James Jeremiah Shea; Jim Rice; Dirk M. Sandefur
JURISDICTION	Montana
DECIDED	July 5, 2017
DOCKET	DA 16-0696
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Daryl Harr appealed the Eleventh Judicial District Court's decree dissolving the parties' marriage, including its temporary-support rulings and division of the marital estate.
STANDARD OF REVIEW	The court reviews the division of marital property to determine whether the district court's findings of fact are clearly erroneous and its conclusions of law are correct. Absent clearly erroneous findings, the court reviews the property division and maintenance award for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Daryl Harr v. Joan Shannon-Harr

TOPICS

[equitable distribution](#) [dissolution of marriage](#) [spousal support](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

family law

dissolution of marriage

equitable distribution

spousal support

appellate procedure

QUESTIONS PRESENTED

1. Whether Joan disclaimed any interest in the Trego residence and land.
2. Whether the District Court abused its discretion by awarding temporary maintenance and denying Daryl's first motion to modify the temporary-support order.
3. Whether the District Court properly valued and apportioned the Trego property and the marital estate after the twenty-eight-month delay between trial and decree.

HOLDINGS

1. Joan did not expressly waive or disclaim her right to a share of the equity in the Trego property, and the District Court did not abuse its discretion in rejecting Daryl's argument.
2. The District Court did not abuse its discretion in awarding Joan temporary support or denying Daryl's first motion to modify that award.
3. The District Court abused its discretion by valuing the Trego property at the time of trial rather than reassessing its value and the resulting equalization payment at the time of distribution, given the twenty-eight-month delay and the property's foreclosure and lien status.

KEY QUOTATIONS

“Montana statute “obligates a court to equitably apportion between the parties all assets and property of either or both spouses, regardless of by whom and when acquired. This directive applies to all assets, including pre-acquired property.”” (§ 12)

“Although “[t]he time for proper valuation cannot be tied to any single event in the dissolution process,” we have stressed that it is preferable for property valuation to “occur at the time of distribution” and that “present fair market values should be used.”” (§ 13)

FACTUAL BACKGROUND

Daryl and Joan married in 2008 and separated approximately five years later. Daryl owned substantial assets before and during the marriage, including the Trego, Montana, property on which the parties lived, but his financial circumstances deteriorated after the 2008 recession, losses on a California home, reduced payments on a promissory note, garnishment for prior alimony, debt, and tax obligations. The District Court's decree treated the Trego property as the primary asset underlying a cash equalization payment to Joan, but used its estimated value at the time of the 2014 trial even though the decree issued twenty-eight months later and the property had become subject to foreclosure and liens.

PROCEDURAL HISTORY

The District Court conducted a trial in June 2014 and issued findings of fact, conclusions of law, and a decree of dissolution twenty-eight months later. The court ordered the Trego property sold, divided the equity equally after

mortgage deductions, and ordered Daryl to make a cash equalization payment exceeding \$125,000. It also granted Daryl's second motion to modify temporary support and terminated his support obligation retroactive to March 1, 2015. Daryl appealed, and the Montana Supreme Court affirmed the temporary-support rulings but reversed the decree insofar as it valued the Trego property at trial rather than at distribution and remanded for reassessment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The District Court must reassess its consideration and valuation of the Trego property and determine the resulting effect on distribution of the marital estate and the cash equalization payment. The remand is for that sole purpose.

CASES CITED

- In re Marriage of Funk, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39
- In re Marriage of Funk, 2012 MT 14, ¶ 19, 363 Mont. 352, 270 P.3d 39
- In re Marriage of Crowley, 2014 MT 42, ¶ 31, 374 Mont. 48, 318 P.3d 1031
- In re Marriage of Krause, 200 Mont. 368, 378-80, 654 P.2d 963, 968-69 (1982)
- In re Marriage of Bartsch, 2004 MT 99, ¶¶ 24-27, 321 Mont. 28, 88 P.3d 1263
- In re Marriage of Pospisil, 2000 MT 132, ¶¶ 43-52, 299 Mont. 527, 1 P.3d 364

INSTRUCTIONS FOR AN AI ASSISTANT

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