

SUPREME COURT OF MONTANA

In re the Marriage of Celest Marie Kessler and William Charles Kessler

359 Mont. 419 (Mont. 2011) · No. DA 10-0395 · Decided March 23, 2011

SUMMARY

The Supreme Court of Montana affirmed a marital dissolution decree addressing self-representation after appointment of a guardian ad litem, distribution of Civil Service Retirement System benefits, and appreciation on inherited property. The court held that the district court did not err in permitting William Kessler to proceed pro se, valuing and distributing the retirement benefits without a reduced-life-expectancy adjustment, or equally dividing investment-account balances after setting aside traceable inheritance amounts.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Brian Morris; Chief Justice Mike McGrath; Justice Patricia Cotter; Justice Beth Baker; Justice Jim Rice
JURISDICTION	Montana
DECIDED	March 23, 2011
DOCKET	DA 10-0395
DISPOSITION	affirmed
PROCEDURAL POSTURE	William Kessler appealed from a decree of the Thirteenth Judicial District Court, Yellowstone County, dissolving the parties' marriage and distributing their marital estate.
STANDARD OF REVIEW	Findings regarding division of marital property are reviewed for clear error, with deference to the district court's credibility determinations. A finding is clearly erroneous if unsupported by substantial evidence, if the court misapprehended the effect of the evidence, or if the reviewing court is left with a definite and firm conviction that a mistake was made. The property distribution is reviewed for abuse of discretion absent clearly erroneous findings, and conclusions of law are reviewed for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.

TOPICS

dissolution of marriage

equitable distribution

guardian ad litem

appellate procedure

preservation of error

PRACTICE AREAS

Family law

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the district court improperly allowed William to represent himself pro se after appointing a guardian ad litem because of mental health concerns.
2. Whether the district court improperly distributed William's Civil Service Retirement System disability benefits without reducing their valuation based on his allegedly shortened life expectancy.
3. Whether the district court improperly distributed appreciation on investment accounts containing William's inherited property.

HOLDINGS

1. Montana Rule of Civil Procedure 17(c) does not require the appointment of an attorney in addition to a guardian ad litem, and the district court did not err by allowing William to represent himself after appointing his sister as guardian ad litem.
2. The district court did not abuse its discretion by using the submitted valuation of William's CSRS disability benefit without reducing it for an allegedly shortened life expectancy that William did not raise or support with evidence in the district court.
3. Although appreciation traceable to one spouse's inheritance may be allocated solely to that spouse, the district court properly divided the remaining investment-account balances equally because William failed to prove that traceable appreciation existed or to provide reliable account-balance evidence.

KEY QUOTATIONS

"M.R. Civ. P. 17(c) requires the appointment of a guardian ad litem for an incompetent person or "such other order as it deems proper for the protection" of the incompetent person." (§ 19)

"M.R. Civ. P. 17(c) does not require that an attorney be appointed in addition to a guardian ad litem." (§ 20)

"This Court generally will not address an issue raised for the first time on appeal or a party's change in legal theory." (§ 27)

FACTUAL BACKGROUND

Celest and William Kessler married in 1980 and accumulated a marital estate valued at approximately \$1.5 million. William's largest asset was a Civil Service Retirement System disability benefit valued at \$860,201, and William also had inherited \$253,744 from his mother, some of which he invested in accounts that also contained

marital funds. After William's counsel withdrew, William represented himself at trial while accompanied by his court-appointed guardian ad litem and the guardian's attorney husband. William did not provide evidence challenging the retirement-benefit valuation or verifying post-trial account balances and appreciation attributable to the inheritance.

PROCEDURAL HISTORY

Celest Kessler petitioned for dissolution in April 2009. The district court appointed William's sister as guardian ad litem after concerns about William's mental health; William's counsel later withdrew, and William proceeded pro se at trial. The district court distributed the marital estate, including William's federal disability retirement benefit and investment accounts containing traceable inheritance funds. William appealed, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Marriage of Williams, 2009 MT 282, ¶ 14, 352 Mont. 198, 217 P.3d 67
- In re Marriage of Williams, 2009 MT 282, ¶ 16, 352 Mont. 198, 217 P.3d 67
- In re Marriage of Rolfe, 216 Mont. 39, 699 P.2d 79 (1985)
- In re Marriage of Bowman, 226 Mont. 99, 734 P.2d 197 (1987)
- In re T.C., 2008 MT 335, ¶ 20, 346 Mont. 200, 194 P.3d 653
- In re Bower, 2010 MT 19, ¶ 20, 355 Mont. 108, 225 P.3d 784
- In re Marriage of Steinbeisser, 2002 MT 309, 313 Mont. 74, 60 P.3d 441
- In re Marriage of Grende, 2004 MT 36, 320 Mont. 38, 85 P.3d 788