

SUPREME COURT OF THE STATE OF MONTANA

In re the Marriage of Funk

2013 MT 180N · No. DA 13-0023 · Decided July 9, 2013

SUMMARY

The Montana Supreme Court affirmed the District Court’s post-remand distribution of inherited and other marital property in the dissolution of Kevin and Bernita Funk’s marriage. The court held that the District Court complied with prior remand instructions by considering the statutory property-division factors and awarding Bernita portions of the inherited property in lieu of maintenance. The court also upheld the award of attorney’s fees and costs and issued the decision as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Laurie McKinnon; Justice Mike McGrath; Justice Brian Morris; Justice Patricia Cotter; Justice Jim Rice
JURISDICTION	Montana
DECIDED	July 9, 2013
DOCKET	DA 13-0023
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kevin Funk appealed the District Court's post-remand amendment to the findings of fact, conclusions of law, and decree of dissolution, including the distribution of inherited property and the award of attorney's fees and costs.
STANDARD OF REVIEW	Abuse of discretion for the District Court's distribution and award decisions; the appellant bore the burden of demonstrating error or abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential; noncitable memorandum opinion
PARTIES	Kevin Funk v. Bernita Funk

TOPICS

- dissolution of marriage
- equitable distribution
- family law procedure
- appellate procedure
- remedies

PRACTICE AREAS

family law

appellate procedure

real estate

remedies

QUESTIONS PRESENTED

1. Whether the District Court complied with the Supreme Court's remand instructions by reconsidering the distribution of Kevin's inherited real property under § 40-4-202(1), MCA.
2. Whether the District Court erred or abused its discretion in awarding Bernita portions of the inherited property and characterizing the award as property in lieu of maintenance.
3. Whether the District Court abused its discretion in awarding Bernita attorney's fees and costs.

HOLDINGS

1. The District Court complied with the Supreme Court's remand instructions by considering each factor in § 40-4-202(1), MCA, and by determining the legal basis for awarding Bernita portions of the inherited property.
2. Kevin failed to demonstrate any error or abuse of discretion in the District Court's post-remand property distribution, characterization of the award, or award of attorney's fees and costs.

KEY QUOTATIONS

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (¶ 1)

“Kevin has failed to demonstrate any error or abuse of discretion in the District Court’s Post Remand Amendment to Findings of Fact, Conclusions of Law and Order of Decree of Dissolution.” (¶ 7)

FACTUAL BACKGROUND

Kevin and Bernita Funk were married in December 1990. Kevin inherited 2.5 acres of lakefront property and 113 acres of nonlakefront property in 1996. In the dissolution, the District Court awarded Bernita one-half of the lakefront property's value and one-third of the increased value of the nonlakefront property, later reaffirming that distribution after considering the parties' contributions and the statutory factors. The court also awarded Bernita attorney's fees and costs.

PROCEDURAL HISTORY

The District Court distributed portions of Kevin's inherited real property to Bernita in the original dissolution decree. The Montana Supreme Court previously affirmed in part and remanded for further evaluation of the statutory factors governing distribution of preacquired and inherited property. On remand, the District Court reconsidered the evidence, applied the statutory factors, characterized part of the property award as property in lieu of maintenance, and awarded Bernita attorney's fees and costs. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Marriage of Funk, 2012 MT 14, 363 Mont. 352, 270 P.3d 39
- McCormick v. Brevig, 2007 MT 195, ¶ 38, 338 Mont. 370, 169 P.3d 352

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