

SUPREME COURT OF MONTANA

In re Marriage of Howard

346 Mont. 312, 2008 MT 351 (2008) · No. DA 07-0665 · Decided October 21, 2008

SUMMARY

The Montana Supreme Court affirmed a district court's property distribution in the dissolution of Lester and Sharon Howard's marriage. The court upheld the treatment of Lester's inheritance, exclusion of Sharon's condominium and business assets from the marital estate, and denial of Lester's motion to reopen the hearing for additional testimony. Justice Jim Rice dissented regarding the treatment of the inherited cabin and Sharon's business account.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Brian Morris; Karla M. Gray; John Warner; James C. Nelson
JURISDICTION	Montana
DECIDED	October 21, 2008
DOCKET	DA 07-0665
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lester Howard appealed from a final decree of dissolution entered by the First Judicial District Court, Lewis and Clark County, challenging the distribution of the marital estate and the denial of his motion to reopen the hearing for additional testimony.
STANDARD OF REVIEW	The Court reviews property-distribution findings for clear error and, if the findings are not clearly erroneous, reviews the distribution for abuse of discretion. The admissibility of proposed rebuttal testimony and the denial of a motion to reopen a hearing are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Lester T. Howard v. Sharon K. Howard

TOPICS

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

PRACTICE AREAS

family law

marital property

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by including portions of Lester's inheritance in the marital estate.
2. Whether the District Court abused its discretion by excluding Sharon's condominium from the marital estate.
3. Whether the District Court abused its discretion by excluding Sharon's business as an asset of the marriage.
4. Whether the District Court abused its discretion by denying Lester's motion for further testimony, redirect examination, and rebuttal testimony.

HOLDINGS

1. The District Court did not abuse its discretion by including portions of Lester's inheritance in the marital estate and awarding Sharon 20 percent of the value of the Neihart cabin. Under Montana law, the court may consider the other spouse's contributions to property acquired by inheritance, including contributions facilitating its maintenance.
2. The District Court did not abuse its discretion by excluding Sharon's condominium from the marital estate.
3. The District Court did not abuse its discretion by awarding each spouse the business property in that spouse's possession or titled in that spouse's name, including Sharon's business checking account.
4. The District Court did not abuse its discretion by denying Lester's motion to reopen the hearing for redirect examination and rebuttal testimony because the proposed testimony did not concern new matters raised by the opposing party.

KEY QUOTATIONS

“We review a district court’s distribution of property in a marriage dissolution case to determine whether the findings of fact are clearly erroneous; if the findings are not clearly erroneous, we affirm unless the district court abused its discretion.” (¶ 17)

“Rebuttal witnesses may offer testimony only about “that which tends to counteract new matter offered by the adverse party.”” (¶ 32)

FACTUAL BACKGROUND

Lester and Sharon Howard married in 1972 and separated intermittently between 2005 and 2006. During the marriage, Lester received a cabin and cash inheritance, contributed part of the inheritance to marital assets, and used \$37,988 of inherited funds as a down payment on the Huckleberry property. Sharon contributed to the maintenance and furnishings of the cabin, operated a health consulting business with her sister, and purchased a condominium that the District Court found was acquired without marital funds. The District Court distributed

the marital estate, awarded Lester 80 percent of the cabin and furnishings, awarded Sharon 20 percent, and ordered Lester to pay Sharon \$25,000 to equalize the distribution.

PROCEDURAL HISTORY

Sharon Howard petitioned for dissolution of marriage in the First Judicial District Court. After a trial, the District Court entered findings, conclusions, and a final decree distributing the marital estate, later clarified the decree, and denied Lester's motion to reopen testimony. Lester appealed, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Marriage of Markegard, 2006 MT 111, ¶ 11, 332 Mont. 187, 136 P.3d 532
- In re Marriage of Herron, 186 Mont. 396, 405, 608 P.2d 97, 102 (1980)
- In re Marriage of Grende, 2004 MT 36, ¶ 27, 320 Mont. 38, 85 P.3d 788
- In re Marriage of Crilly, 2005 MT 311, ¶ 10, 329 Mont. 479, 124 P.3d 1151
- Massman v. City of Helena, 237 Mont. 234, 243, 773 P.2d 1206, 1211 (1989)
- In re Marriage of Larson, 200 Mont. 134, 139, 649 P.2d 1351, 1354 (1982)
- In re Marriage of Scott, 246 Mont. 10, 20-21, 803 P.2d 620, 626 (1990)
- Stoneman v. Drollinger, 2000 MT 274, ¶ 18, 302 Mont. 107, 14 P.3d 12
- In re Marriage of Harper, 1999 MT 321, 297 Mont. 290, 994 P.2d 1
- In re Marriage of Engen, 1998 MT 153, ¶ 29, 289 Mont. 299, 961 P.2d 738