

SUPREME COURT OF WYOMING

Vernier v. Vernier

92 P.3d 825 (Wyo. 2004) · Decided June 29, 2004

SUMMARY

The Wyoming Supreme Court affirmed a divorce decree dividing the parties’ marital property and debts. It held that the appellant failed to provide an adequate appellate record to challenge the property division and that the default was entered after the applicable response period, with no procedural violation shown.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Wyoming                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Voigt, Justice; Golden; Hill; Kite; Lehman; Voigt                                                                                                                                                                                                                                                                       |
| JURISDICTION          | Wyoming                                                                                                                                                                                                                                                                                                                 |
| DECIDED               | June 29, 2004                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Appeal from a divorce decree in which the district court divided the parties' marital property and debts and entered default after the incarcerated appellant failed to plead or otherwise defend within the applicable period.                                                                                         |
| STANDARD OF REVIEW    | The division of marital property is reviewed for abuse of discretion. When the appellant does not provide a sufficient record, the appellate court accepts the trial court's findings as the basis for deciding evidentiary issues and may limit review to issues that do not require inspection of the missing record. |
| PRECEDENTIAL VALUE    | published opinion                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Gilbert Paul Vernier v. Agnes Marie Vernier                                                                                                                                                                                                                                                                             |

TOPICS

- divorce
- default
- equitable distribution
- appellate procedure
- attorney fees

PRACTICE AREAS

- family law
- civil procedure
- appellate procedure

## QUESTIONS PRESENTED

1. Whether the district court's division of the marital property was equitable.
2. Whether the Wyoming Rules of Civil Procedure were violated by entering default before the appellant had the required time to respond.
3. Whether the appellee was entitled to attorney's fees for defending the appeal.

## HOLDINGS

1. The property distribution is affirmed because the appellant failed to provide a transcript or an approved statement of the evidence sufficient to demonstrate that the district court abused its discretion.
2. The district court did not violate the Wyoming Rules of Civil Procedure because the appellant was allowed more than thirty days after service to respond before default was entered.
3. The request for appellate attorney's fees is denied because the appellant generally presented cogent argument and pertinent legal authority, notwithstanding his failure to provide a sufficient record.

## KEY QUOTATIONS

*“Without either a transcript or an approved statement of the hearing we cannot assume that the court's findings were unsupported. We cannot find an abuse of discretion.”* (92 P.3d at 827)

*“The record clearly demonstrates that the appellant was allowed more than the required thirty days to respond, which he did not do.”* (92 P.3d at 828)

## FACTUAL BACKGROUND

Agnes Marie Vernier filed for divorce while Gilbert Paul Vernier was incarcerated at Crowley Correctional Facility in Colorado. He was personally served with the complaint and summons on March 31, 2003, but did not plead or otherwise defend before the clerk entered default. The district court held a hearing at which Gilbert participated pro se by telephone, granted the divorce, and divided the parties' property and debts.

## PROCEDURAL HISTORY

The appellee filed a verified complaint for divorce and personally served the appellant while he was incarcerated in Colorado. After the appellant failed to plead or otherwise defend, the clerk entered default; the district court then held a hearing at which the appellant participated by telephone, granted the divorce, and divided the marital property and debts. The appellant appealed, challenging the property division and the timing and procedure of the default.

## DISPOSITION

affirmed

## CASES CITED

- Erhart v. Evans, 2001 WY 79, ¶ 18, 30 P.3d 542, 547 (Wyo. 2001)

- Wood v. Wood, 865 P.2d 616, 617 (Wyo. 1993)
- Smith v. Smith, 2003 WY 87, ¶ 11, 72 P.3d 1158, 1161 (Wyo. 2003)
- Williams v. Dietz, 999 P.2d 642, 645 (Wyo. 2000)
- Weiss v. Pedersen, 933 P.2d 495, 498 (Wyo. 1997)
- White v. Allen, 2003 WY 39, 65 P.3d 395 (Wyo. 2003)
- Willowbrook Ranch, Inc. v. Nugget Exploration, Inc., 896 P.2d 769, ¶¶ 71-72 (Wyo. 1995)
- Stadtfeld v. Stadtfeld, 920 P.2d 662, 664 (Wyo. 1996)
- Sweat v. Sweat, 2003 WY 82, ¶ 6, 72 P.3d 276, 278 (Wyo. 2003)
- Feaster v. Feaster, 721 P.2d 1095, 1097 (Wyo. 1986)
- Dorsett v. Moore, 2003 WY 7, ¶ 14, 61 P.3d 1221, 1225 (Wyo. 2003)
- Barnes v. Barnes, 998 P.2d 942, 946 (Wyo. 2000)
- Meyer v. Rodabaugh, 982 P.2d 1242, 1245 (Wyo. 1999)
- Stonham v. Widiastuti, 2003 WY 157, ¶ 31, 79 P.3d 1188, 1198 (Wyo. 2003)
- Amen, Inc. v. Barnard, 938 P.2d 855, 858 (Wyo. 1997)
- Phifer v. Phifer, 845 P.2d 384, 387 (Wyo. 1993)