COLORADO COURT OF APPEALS

DATE FILED: March 26, 2020
CASE NUMBER: 2019CA230

Court of Appeals No. 19CA0230
Park County District Court No. 18DR30006
Honorable Stephen A. Groome, Judge

In re the Marriage of

Tom F. Crawford,

Appellee,

and

Connie Sue Crawford,

Appellant.

JUDGMENT AFFIRMED IN PART, REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE DUNN
Román and Johnson, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced March 26, 2020

One Accord Legal, LLC, Katelyn B. Ridenour, Greenwood Village, Colorado, for Appellee

The Harris Law Firm, P.C., Katherine O. Ellis, Denver, Colorado, for Appellant

¶ 1 Connie Sue Crawford (wife) appeals the property division, maintenance, and attorney fees portions of the permanent orders entered on the dissolution of her marriage to Tom F. Crawford (husband). We affirm the judgment in part, reverse it in part, and remand the case for further proceedings.

I. Property Division

¶ 2 Wife first challenges the district court's division of the marital estate, arguing that the court erred by (1) determining that husband's trust accounts were separate property; (2) inequitably dividing the marital assets; and (3) not accounting for husband's depletion of the marital estate. We perceive no error.

A. Husband's Trust Accounts

¶ 3 During the marriage, husband received interests in his family business as his inheritance. Husband later sold his business interests and placed the proceeds into trust accounts, managed by a financial advisor. After the permanent orders hearing, the district court found that the trust accounts "remain [husband's] separate property." Wife disputes this finding, contending the trust accounts were marital property.

¶ 4 When distributing a marital estate, a district court must determine whether an asset is marital property, which is subject to division, or separate property, which is not. *In re Marriage of Corak*, 2014 COA 147, ¶ 9; *see* § 14-10-113(1), C.R.S. 2019 (requiring the court to set apart each spouse's separate property and then divide the marital property).

¶ 5 Property acquired during the marriage generally is presumed marital property. *See* § 14-10-113(3); *In re Marriage of Vittetoe*, 2016 COA 71, ¶ 18. But property a spouse acquired by gift, bequest, devise, or descent is separate property. § 14-10-113(2). Separate property placed in joint tenancy or title, however, is presumed to be marital, absent clear and convincing evidence to the contrary. *In re Marriage of Balanson*, 25 P.3d 28, 37 (Colo. 2001).

¶ 6 The classification of property as marital or separate is a legal issue that is based on the district court's factual findings. *Corak*, ¶ 9. We defer to the court's factual findings but review de novo the legal standard it applied. *In re Marriage of Cardona*, 2014 CO 3, ¶ 9.

¶ 7 It's undisputed that husband funded the trust accounts with his inheritance and that an inheritance is separate property. *See*

§ 14-10-113(2). Still, pointing to a "non-trade confirmation" and some correspondence addressed to husband and wife, wife contends the trust accounts were "jointly" titled and thus marital property. But the investment firm's annual account statements (detailing account assets, activity, and performance) are addressed solely to husband or to husband as trustee of the trust accounts. Wife is not listed on these financial statements nor identified as an owner of the trust accounts. And neither the "non-trade confirmation" nor the correspondence altered the account ownership.

¶ 8 What's more, husband's financial manager testified that when husband's business interests were sold, the funds "went into a trust" in husband's name and he followed that procedure "to keep inherited assets in the [recipient's] name." The financial manager also clarified that husband was his client, none of the trust accounts were ever jointly titled, wife never authorized an account withdrawal, and "that as far as ownership of an account, [wife] has never been on an account other than as a beneficiary to" husband's individual retirement account (IRA). With respect to the correspondence, the financial manager explained that he sent a

letter addressed to husband and wife, "[p]robably as common courtesy." But he stated it was a letter introducing his son into the business and did not testify the letter altered the trust accounts or account ownership. Thus, nothing in the record supports wife's contention that the trust accounts were "jointly" titled.

¶ 9 We are also unpersuaded by wife's contention that husband and wife treated the trust accounts as marital accounts because husband withdrew trust funds to pay marital expenses. While we agree that the withdrawn funds became marital property, that fact doesn't establish that the separate trust accounts themselves became marital property or that the spouses treated them as marital property. *See Corak*, ¶ 11 ("Separate property that is so commingled with marital property that it cannot be traced back to its original separate form becomes marital property."). Indeed, husband's financial advisor confirmed that wife never authorized a transfer or withdrawal from the trust accounts.

¶ 10 Given all this, we see no error in the district court's classification of the trust accounts as husband's separate property.

B. Overall Distribution

¶ 11 Wife next contends that the property division was inequitable because it left her with no reserve resources. We perceive no error.

¶ 12 A division of marital property must be equitable but not necessarily equal. *In re Marriage of Burford*, 26 P.3d 550, 556 (Colo. App. 2001). To achieve an equitable division, the court must consider all relevant factors, including each spouse's contribution to the acquisition of marital property, the value of each spouse's separate property, the spouses' economic circumstances, and any change in a spouse's separate property during the marriage or the depletion of separate property for marital purposes. *See In re Marriage of Powell*, 220 P.3d 952, 959 (Colo. App. 2009); *see also* § 14-10-113(1).

¶ 13 The district court has great latitude to equitably divide the marital property based on the facts and circumstances of each case. *Balanson*, 25 P.3d at 35. We therefore will not disturb the district court's distribution of marital property absent a clear abuse of discretion. *Id.*

¶ 14 The marital estate was valued at approximately $1,150,000. The court awarded wife $568,649 of the marital estate, including

the marital home and some vehicles. And the court awarded husband $581,696 of the estate, including some vehicles, a trailer, and, in exchange for paying off the $316,282 mortgage, his entire IRA. Thus, wife received nearly half of the marital property but no marital debt. *See In re Marriage of Jorgenson*, 143 P.3d 1169, 1172 (Colo. App. 2006) (recognizing that debts acquired during the marriage are marital debts subject to property division).

¶ 15 Still, wife contends the property division was inequitable. More specifically, she argues that because she can't work and is not entitled to social security, the court should have awarded her a portion of husband's IRA. But the court considered wife's employability and economic circumstances, including her admission that "she will receive 35 percent" of husband's social security benefit when they reach age sixty-two (they were both fifty-eight at the permanent orders hearing). Given the court's nearly equal division of marital property, allocation of no debt to wife, and consideration of the relevant factors, we do not agree that the court abused its discretion in awarding the IRA to husband.

¶ 16 Wife also argues it was unfair to deprive her of a portion of the IRA when the funds obtained from the mortgage were used to

purchase two vehicles awarded to husband. The entire mortgage, however, was a marital debt that the court ordered husband to pay. And wife doesn't explain how the parties' use of the mortgage funds rendered the district court's overall property division manifestly arbitrary, unreasonable, or unfair, or otherwise constituted an abuse of discretion. *See In re Marriage of Hunt*, 909 P.2d 525, 538 (Colo. 1995) (recognizing that "an appellate court must not disturb the delicate balance achieved by the trial court in division of property" absent a clear abuse of discretion); *see also In re Marriage of Gromicko*, 2017 CO 1, ¶ 18.

¶ 17 We thus do not agree that the court abused its discretion in dividing the marital property.

C. Husband's Spending

¶ 18 Pointing to significant withdrawals husband made from his trust accounts, cash withdrawals from bank accounts, and cash advances from credit cards during the last few years of the marriage, wife argues that the district court erred in not accounting for husband's depletion of the marital assets when it distributed the marital estate. We again see no error.

¶ 19 In dividing the marital estate, the court is to disregard marital misconduct. § 14-10-113(1); *Jorgenson*, 143 P.3d at 1173. But the court may consider economic fault or a spouse's dissipation of marital assets. *Hunt*, 909 P.2d at 542; *Jorgenson*, 143 P.3d at 1173. That is, when one spouse depletes the marital estate for an improper or illegitimate purpose in contemplation of dissolution, the court may take such conduct into account when distributing marital property. *See Jorgenson*, 143 P.3d at 1173; *In re Marriage of Riley-Cunningham*, 7 P.3d 992, 995 (Colo. App. 1999). This exception, however, "must be strictly confined." *Jorgenson*, 143 P.3d at 1173; *see also Hunt*, 909 P.2d at 542 ("'Economic fault' is a limited concept which comes into play only in extreme cases . . . .").

¶ 20 As discussed, husband withdrew money from his trust accounts to pay marital expenses. To the extent wife argues this supports her dissipation claim, we disagree. Because economic fault applies to marital property and not separate property, husband's withdrawals from his separate trust accounts are irrelevant. *See Jorgenson*, 143 P.3d at 1173.

¶ 21 But the evidence also showed that husband withdrew up to a few thousand dollars a month from the parties' bank accounts or

credit cards. These withdrawals occurred regularly in the three years before the dissolution, and nothing in the record suggested they were made in anticipation of dissolution. *See id.*

¶ 22 Nor did wife present any evidence that husband withdrew the funds for an improper or illegitimate purpose. *See Riley-Cunningham*, 7 P.3d at 995. At most, wife presented evidence that, two years before the dissolution proceeding, husband gave money to a friend and, more than ten years before the proceeding, he gave money to a purported girlfriend. But giving money to someone alone is not improper. After all, a spouse has the right to use marital property during the marriage. *See In re Marriage of Lockwood*, 971 P.2d 264, 267 (Colo. App. 1998). And although the district court did not make express economic fault findings, implicit in the court's property division order is the finding that husband did not dissipate marital property.

¶ 23 Given all this, we perceive no abuse of discretion in the district court's division of the marital estate.

II. Maintenance

¶ 24 Wife next contends that the district court's maintenance award should be reversed. Because we agree with wife that the

court failed to make the necessary findings, we reverse this portion of the permanent orders and remand for further proceedings.

¶ 25 When considering a maintenance request, the district court first must make initial written or oral findings concerning

- the amount of each spouse's gross income;
- the marital property distributed to each spouse;
- the financial resources of each spouse, including the actual or potential income from separate or marital property;
- reasonable financial need established during the marriage; and
- whether the maintenance awarded would be deductible for federal income tax purposes.

§ 14-10-114(3)(a)(I), C.R.S. 2019; *see also In re Marriage of Wright*, 2020 COA 11, ¶ 14.

¶ 26 After making these initial findings, the court must determine a fair and equitable amount and term of maintenance, considering the guidelines and factors in the maintenance statute. § 14-10-114(3)(a)(II); *Wright*, ¶ 15. And last, the court must consider

whether the spouse has met the requirement for a maintenance award. § 14-10-114(3)(a)(II)(C), (3)(d); *Wright*, ¶ 16.

¶ 27 In making its maintenance determination, the "court shall make specific written or oral findings in support of the amount and term of maintenance awarded." § 14-10-114(3)(e); *accord Wright*, ¶ 17.

¶ 28 After stating that it had "reviewed the statutory criteria and applied the criteria to the facts of this case," the district court ordered husband to pay wife $2500 per month for four years and, when wife becomes eligible for social security benefits, it lowered maintenance to $2000 per month, which would terminate ten years later.

¶ 29 But before it could determine a fair and equitable amount and term of maintenance, the court needed to make initial findings (written or oral) under section 14-10-114(3). *See Wright*, ¶ 17. The court, however, didn't make all the necessary findings. Specifically, the court did not (1) determine husband's gross income (which includes consideration of whether husband's trust income and distributions are includable gross income, § 14-10-114(8)(c)(I)(L), as well as whether husband is voluntarily unemployed and should be

imputed income, as wife argued, § 14-10-114(8)(c)(IV)); (2) make findings about the parties' reasonable needs established during the marriage; or (3) find whether the maintenance award would be deductible for federal tax purposes. § 14-10-114(3)(a)(I). And with respect to the second step of the maintenance determination — determining the fair and equitable amount and term of maintenance — the court made no findings on the amount and term of maintenance under the guidelines. Nor did the court identify what, if any, factors it considered in determining the amount and term of maintenance. *See* § 14-10-114(3)(a)(II)(A)-(B), (3)(b), (3)(c).

¶ 30 Because the court did not (1) make the requisite findings under section 14-10-114(3) and (2) "make sufficiently explicit findings of fact to give the appellate court a clear understanding of the basis of its order," *In re Marriage of Gibbs*, 2019 COA 104, ¶ 9, we reverse the maintenance award and remand for additional findings, *see Wright*, ¶ 24. On remand, the court must follow the procedure in section 14-10-114(3), making findings where required, *see* § 14-10-114(3)(a), (b), (d), (e), and address the other factors it deemed relevant, *see* § 14-10-114(3)(c). The findings entered on

remand must be sufficient for us to determine the basis for the maintenance award. *See Gibbs*, ¶ 9; *see also Wright*, ¶ 20.

¶ 31 Since maintenance is based on the parties' financial situations when the order enters, the district court should consider the parties' current financial situations on remand and may take additional evidence if warranted. *In re Marriage of Kann*, 2017 COA 94, ¶ 79.

III. Attorney Fees

¶ 32 Wife contends that the district court erred in denying her attorney fees request under section 14-10-119, C.R.S. 2019.

¶ 33 A request for attorney fees, however, "must be reviewed in light of the parties' financial resources after . . . any maintenance award." *In re Marriage of Huff*, 834 P.2d 244, 248 (Colo. 1992). Because we reverse and remand the maintenance award, the district court must also reconsider wife's attorney fees request under section 14-10-119 on remand. *See In re Marriage of Morton*, 2016 COA 1, ¶ 33.

IV. Appellate Attorney Fees and Costs

¶ 34 Wife requests her appellate attorney fees under section 14-10-119. The district court, however, is better situated to resolve the

factual issues associated with wife's fee request, and we remand it to the district court. *See Kann*, ¶ 84.

¶ 35 And given that we affirm the district court's judgment in part and reverse in part, we also remand husband's request for appellate costs. *See* C.A.R. 39(a)(4) ("[I]f a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as ordered by the trial court.").

V. Conclusion

¶ 36 We reverse the maintenance portion of the judgment and remand the case to the district court to reconsider maintenance based on the parties' current financial circumstances, and to consider wife's request for attorney fees and appellate attorney fees and husband's request for appellate costs. The judgment is otherwise affirmed.

JUDGE ROMÁN and JUDGE JOHNSON concur.

Court of Appeals

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PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Steven L. Bernard
Chief Judge

DATED: March 5, 2020

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