

19CA0148 Marriage of Guevara 03-19-2020

COLORADO COURT OF APPEALS

DATE FILED: March 19, 2020  
CASE NUMBER: 2019CA148

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Court of Appeals No. 19CA0148  
City and County of Denver District Court No. 18DR30463  
Honorable Jay S. Grant, Judge

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In re the Marriage of

Maria Del Refugio Ruiz,

Appellee,

and

Eliseo Nava Guevara,

Appellant.

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JUDGMENT REVERSED AND CASE  
REMANDED WITH DIRECTIONS

Division II  
Opinion by JUDGE TERRY  
Tow and Yun, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**  
Announced March 19, 2020

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R. Antonio Lucero, Denver, Colorado, for Appellee

Novo Legal Group LLC, Ari S. Malman, Aaron Elinoff, Denver, Colorado, for  
Appellant

¶ 1 Eliseo Nava Guevara (husband) appeals from the property distribution entered in connection with the dissolution of his marriage to Maria Del Refugio Ruiz (wife). We reverse the judgment and remand for the court to reconsider the property division and maintenance awards. We also remand for the court to address the parties' requests for appellate attorney fees.

### I. Background

¶ 2 The parties were married in 1977. In 1997, husband was severely injured in an accident at work. In full and final compromise of his workers' compensation claim, husband received a check for \$35,326 and a \$294,122 annuity purchased for his benefit. The annuity was structured so that husband would receive \$1450 per month starting July 15, 2000, increasing at three percent per year, guaranteed payable monthly for twenty-five years, and payable monthly for his lifetime thereafter.

¶ 3 Wife petitioned for a dissolution of marriage in 2018. At the time of the permanent orders hearing, the parties' marital property included the marital home, a home in Mexico, vehicles, and some credit card debts. Wife requested that she be awarded the marital home and she asked for a lifetime award of maintenance. Husband,

too, wanted to receive the marital home, and he argued that wife did not require spousal maintenance.

¶ 4 Also at the time of the permanent orders hearing, husband was receiving \$2976.62 per month from the annuity. The parties disputed how to treat this income. Wife argued that the annuity was marital property subject to division, while husband argued that the court should only consider the monthly payment as income for maintenance purposes.

¶ 5 The court agreed with wife, and entered the following order:

I looked at the \$2976.62 per month and was looking at maintenance of \$800 per month which brings, after paying that out, brings Mr. Nava's income to \$2176.62 at present rate, which comes down to \$26,119.44 per year income. I multiplied that by 20 years and came to \$522,388.80. I included, again this is just in my draft, I included the \$10,000 value of the house in Mexico which I think the value of that is all over the place, and I don't know if that's fair or not. But, just for the purposes of this analysis, I did include that, which added to basically, for his, his income stream for those 20 years to be \$532,388, including that \$10,000. The [wife]'s income per year would be, with the \$800 a month, is \$9600. If, if that maintenance was paid for 20 years, that's \$192,000. Plus, the equity in the home which is presently \$365,000, equals \$557,000. Subtract the approximately \$11,000 that's, of the lien on the home, and it comes down to

\$546,000. So, what we have in that calculation is \$546,000 for [wife] over that 20 years, \$532,388 for the [husband].

¶ 6 Husband's motion for post-trial relief from this order was summarily denied.

## II. Analysis

¶ 7 Husband contends that the district court erred in dividing the annuity as marital property because it was unliquidated and intended to compensate him for post-dissolution earnings and expenses. Wife counters that the court only considered husband's annuity for maintenance purposes. Because we conclude that the district court's order impermissibly commingled the property division and maintenance awards, we reverse the judgment and remand for reconsideration.

¶ 8 The supreme court has explained that the Uniform Dissolution of Marriage Act (UDMA), sections 14-10-101 to -133, C.R.S. 2019, and case law contemplate a specific sequence in which the division of property, maintenance, and attorney fees computations should occur. *In re Marriage of de Koning*, 2016 CO 2, ¶ 21. First, the court divides the marital property as specified by section 14-10-113, C.R.S. 2019. *See de Koning*, ¶ 21. Second, the court

determines whether maintenance is necessary, by engaging in the analysis set forth in section 14-10-114, C.R.S. 2019. *See de Koning*, ¶ 22. Third, the court determines child support obligations as provided by section 14-10-115, C.R.S. 2019. *See de Koning*, ¶ 22. Finally, the court may, under section 14-10-119, C.R.S. 2019, order one party to pay the other's reasonable attorney fees. *See de Koning*, ¶ 23. The UDMA "requires a district court to make separate property, maintenance, and attorney fees orders based on separate considerations." *In re Marriage of Huff*, 834 P.2d 244, 248 (Colo. 1992).

¶ 9 Here, the court found it equitable for husband to receive \$533,288 and wife \$546,000. Though the court did not expressly say that this was its property division, that appears to be the case. Yet this division does not accurately reflect the value of the parties' marital property. For example, wife's \$546,000 is made up of a hybrid of property (the net value of the marital home) and maintenance (\$192,000 over twenty years). Similarly, the court indicated that husband's \$533,288 award is made up of the total amount of income he would realize from his annuity over twenty years plus the \$10,000 Mexico home. However, to reach that

figure, the court reduced husband's actual monthly annuity payment by \$800 to account for his maintenance obligation to wife.

¶ 10 Because the UDMA requires that property division and maintenance be considered separately, *see id.*, the court erred by improperly mixing them together.

¶ 11 Moreover, the order is largely devoid of factual findings that support either the property division or the maintenance award. *See In re Marriage of Rozzi*, 190 P.3d 815, 822 (Colo. App. 2008) (“A trial court’s order must contain findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which it rendered its decision.”); *see also In re Marriage of Wright*, 2020 COA 11, ¶¶ 3, 12-16 (detailing the specific processes that a court must follow when dividing marital property and considering a maintenance request).

¶ 12 Even though husband has not appealed the maintenance award, since the property distribution has been set aside, the maintenance order must also be reversed and reconsidered on remand. *See In re Marriage of Smith*, 817 P.2d 641, 644 (Colo. App. 1991).

¶ 13 Accordingly, we reverse the judgment and remand for the court to reconsider both the property division and maintenance awards. The court must base its new orders on the parties' financial circumstances at the time of the hearing, which means the court will need to take additional evidence. *See In re Marriage of Wells*, 850 P.2d 694, 696 (Colo. 1993) (section 14-10-113 requires the district court to consider the economic circumstances of the parties at the time any hearing relating to the division of marital property is held, including a hearing following a remand for the purpose of dividing the property); *In re Marriage of Morton*, 2016 COA 1, ¶¶ 14, 34 (district court must consider the parties' financial circumstances at the time of the remand hearing). The orders entered after remand must be supported by sufficient factual findings and conclusions. *See Rozzi*, 190 P.3d at 822.

### III. Issues that May Arise on Remand

¶ 14 Because it will likely arise on remand, we address husband's argument that his annuity is not marital property subject to division.

¶ 15 Workers' compensation benefits indemnify an employee for loss of earnings, future diminished earning capacity, and medical

expenses arising out of an occupational injury or disease. *Smith*, 817 P.2d at 643. Workers' compensation benefits which provide compensation for post-dissolution loss of earning capacity are not marital property. *In re Marriage of Holmes*, 841 P.2d 388, 389 (Colo. App. 1992). Thus,

the dispositive question in determining whether workers' compensation benefits are marital property is the extent to which the award compensates for loss of earning capacity and medical expenses incurred during marriage. To the extent that an award compensates the spouse for post-dissolution loss of earning capacity, it is not marital property even if the compensable injury occurred during the marriage.

*Smith*, 817 P.2d at 644.

¶ 16 On remand, the court must determine the extent to which husband's annuity was intended to compensate him for loss of earning capacity and medical expenses incurred during the marriage. Only after making this determination can the court determine whether all or part of the annuity is marital property subject to division. *See id.*; *see also* § 14-10-113(1) (district court shall set aside to each spouse his or her property and shall divide the marital property in such proportions as it deems just).



¶ 17 To the extent husband wants us to conclude as a matter of law that his annuity is his separate property, we decline to do so. See *In re Marriage of Breckenridge*, 973 P.2d 1290, 1291 (Colo. App. 1999) (declining to determine as a matter of law that spouse’s entire settlement was for post-dissolution losses and remanding for district court to make that determination).

¶ 18 Because it is presented without analysis, we do not consider husband’s statement that the “court committed a clear error in awarding [wife] the marital home.” *Holley v. Huang*, 284 P.3d 81, 87 (Colo. App. 2011) (declining to consider bald assertion of error that lacks any meaningful explanation).

#### IV. Appellate Attorney Fees

¶ 19 Both parties seek an award of their appellate attorney fees. Because we are remanding the case, we reject that request under title 13, but defer to the trial court to decide whether the parties are entitled to attorney fees under title 14. See *In re Marriage of Thorstad*, 2019 COA 13, ¶ 53 (district court is better equipped to resolve the factual issues regarding the parties’ current financial circumstances).

## V. Conclusion

¶ 20 The judgment is reversed, and the case is remanded for the court to reconsider the property division and maintenance award, and to consider the parties' requests for appellate attorney fees.

JUDGE TOW and JUDGE YUN 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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