

21CA0380 Marriage of Portell 03-03-2022

COLORADO COURT OF APPEALS

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Court of Appeals No. 21CA0380  
Mesa County District Court No. 19DR469  
Honorable William T. McNulty, Judge

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In re the Marriage of

Tammy Portell,

Appellant,

and

Chris Portell,

Appellee.

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JUDGMENT REVERSED AND CASE  
REMANDED WITH DIRECTIONS

Division VII  
Opinion by JUDGE BERGER  
Brown and Johnson, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**  
Announced March 3, 2022

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Chris Portell, Pro Se

¶ 1 Tammy Portell (wife) appeals from the permanent orders entered in connection with the dissolution of her marriage to Chris Portell (husband). We reverse the judgment and remand for further proceedings.

## I. Facts

¶ 2 The parties met in 2009. At the time, husband owned two companies, Kokopelli Foods and Portell Computers, and wife co-owned a home with her parents. The parties were married in 2011 and they moved into wife's home.

¶ 3 Both parties worked for Portell Computers during the marriage. Wife performed the administrative tasks, while husband performed the "gig" work installing and servicing computers for businesses. Portell Computers also had retail shops, which were closed in 2017.

¶ 4 After the retail side of the business closed, the parties' financial situation deteriorated. Husband stopped giving wife a paycheck for work she conducted at Portell Computers. The parties sold wife's home for \$35,000 and moved into the basement of a church. Husband used the proceeds from the sale of the house to pay off a loan, renovate the church basement, purchase an RV and

a boat, and reinvest in Portell Computers. Because of various medical conditions, wife has not worked since 2017.

¶ 5 In April 2019, wife withdrew \$15,000 from the Portell Computers account and used the money to pay various living expenses. Wife petitioned for a dissolution of marriage in June 2019. In August 2019, wife purchased a home with money gifted to her by her parents.

¶ 6 During the proceedings, each party obtained an order compelling the other to provide required disclosures. Alleging that husband failed to comply with the order to compel, wife filed a contempt motion against husband. She requested an award of her reasonable attorney fees in connection with the contempt proceeding.

¶ 7 The district court magistrate held a single hearing to resolve the contempt motion and the contested permanent orders. The magistrate dismissed the request for contempt after finding that husband complied with the order to compel. The magistrate entered an order dividing the parties' \$21,832 marital estate, which included their personal bank accounts, vehicles, cryptocurrency, the boat, a commodity share, and husband's businesses. The

magistrate granted wife's request for spousal maintenance and ordered husband to pay \$563 per month for three years and eleven months. The magistrate denied wife's request for attorney fees.

## II. Property Division

¶ 8 Wife contends that the magistrate failed to allocate a \$2,400 stimulus check that husband received from the Internal Revenue Service during the proceedings. Wife also argues that the property division was disproportionate and inequitable. Because we agree with both contentions, we reverse the property division and remand for reconsideration.

### A. Standard of Review

¶ 9 The district court shall divide the marital property in such proportions as it deems just. § 14-10-113(1), C.R.S. 2021. A property division must be equitable, but not necessarily equal. *In re Marriage of Wright*, 2020 COA 11, ¶ 3. An equitable division depends on the facts and circumstances of each case, *In re Marriage of Balanson*, 25 P.3d 28, 35 (Colo. 2001), and “[t]he key to an equitable distribution is fairness, not mathematical precision,” *In re Marriage of Gallo*, 752 P.2d 47, 55 (Colo. 1988).

¶ 10 The district court has great latitude to effect an equitable distribution of marital property, and we may not disturb the court's decision absent a clear abuse of discretion. *In re Marriage of Salby*, 126 P.3d 291, 296 (Colo. App. 2005). However, where the division is manifestly unfair, inequitable, and unconscionable, it must be set aside. *In re Marriage of Weiss*, 695 P.2d 778, 781 (Colo. App. 1984).

#### B. Stimulus Check

¶ 11 Husband received a \$2,400 stimulus check during the proceedings that he had not cashed as of the hearing date.

Husband testified that the amount should be divided between the parties. The magistrate did not allocate the stimulus check in the permanent orders.

¶ 12 "If property is omitted from permanent orders without explanation, the property division cannot stand." *In re Marriage of Rodrick*, 176 P.3d 806, 815 (Colo. App. 2007). We therefore remand the case for the magistrate to allocate the stimulus check equitably between the parties.

#### C. Inequity of Property Division

¶ 13 Under the circumstances of this case, however, we conclude that a limited remand for the magistrate to allocate the stimulus

check without considering the remaining property division is not enough. This is because the property division is manifestly unfair and inequitable.

¶ 14 Without accounting for the stimulus check, the parties' estate totaled \$21,832. Before the equalization payment, the magistrate awarded husband \$21,500, or ninety-eight percent of the marital estate. As this led to a "substantial imbalance" in husband's favor, the magistrate ordered him to make a \$2,500 equalization payment. However, the \$2,500 equalization payment did little to equalize the distribution of marital property since it still left husband with eighty-seven percent of the marital estate.

¶ 15 A facially disproportionate property division is not necessarily inequitable. For example, in *In re Marriage of Stumpf*, 932 P.2d 845, 849 (Colo. App. 1996), another division of this court upheld a property award giving husband \$49,471 to wife's \$3,406. The division reasoned that the husband's contribution of a \$100,000 marital home "during a relatively short marriage" supported this facially disproportionate award. *Id.*

¶ 16 In another case, a division of this court affirmed a property division giving \$138,000 to the wife and \$19,000 to the husband.

*See In re Marriage of Sorensen*, 679 P.2d 612, 613 (Colo. App. 1984). The division explained that the wife operated the principal asset, a business, and it was her sole source of income. *Id.* The division noted that husband did not rely on the business for his income, was not required to pay wife any maintenance, and would be released from the business’s “substantial obligations.” *Id.* And the division pointed out that husband’s net income exceeded that of the wife. *Id.*

¶ 17 No such circumstances exist here to make the facially disproportionate division equitable.

¶ 18 It is possible that the magistrate awarded husband more marital property to offset against the value of wife’s separate property — primarily her interest in the residence she purchased during the proceedings. *See In re Marriage of Powell*, 220 P.3d 952, 959 (Colo. App. 2009) (an equitable property division requires the court to consider all relevant factors including, among others, the value of the parties’ separate property); *see also* § 14-10-113(1)(b) (the court shall consider the value of the property set aside to each spouse). Yet we cannot determine whether the value of wife’s separate property balanced out the facially disproportionate

distribution of the marital property because there are no findings concerning the percentage of wife's "interest" in the residence or the residence's value. See § 14-10-113(1)(b).

¶ 19 Specific findings as to the value of each asset are not required if the basis for the court's decision is apparent from its findings. *In re Marriage of Page*, 70 P.3d 579, 582 (Colo. App. 2003). However, a court's findings must be sufficient to permit meaningful appellate review. See *Kwik Way Stores, Inc. v. Caldwell*, 745 P.2d 672, 678 (Colo. 1987).

¶ 20 The magistrate's findings are insufficient to allow us to determine why husband received the lion's share of the marital estate. Therefore, we reverse the property division and remand for the court to reallocate the parties' marital estate, including the stimulus check. The court has discretion to take additional evidence concerning the property issues, but must value the assets as of the date of the permanent orders hearing. See § 14-10-113(5) (property shall be valued as of the date of the decree or as of the date of the property disposition hearing if such hearing precedes the date of the decree).



#### D. Other Property Considerations

¶ 21 Because it will arise on remand, we address and disagree with wife's contention that the magistrate undervalued an outstanding invoice owed to Portell Computers.

¶ 22 Valuing property is within the district court's discretion, and the court's determination will not be disturbed on appeal if it is reasonable in light of the evidence as a whole. *In re Marriage of Krejci*, 2013 COA 6, ¶ 23. The court may select the valuation of one party over that of the other party, or make its own valuation, and its decision will be upheld on appeal unless clearly erroneous. *Id.*

¶ 23 Wife testified that Portell Computers billed one of its customers, Dean Fire Safety (DFS), \$40,000 for work completed in 2014. On the other hand, husband's evidence showed that the company billed DFS \$12,000 and received \$800, leaving a \$11,200 account receivable. The magistrate found husband more credible on this issue given the history of similar invoices and work done by Portell Computers, and therefore valued the business at \$16,200, based on its \$5,000 bank account balance and the outstanding account receivable.

¶ 24 The magistrate had the prerogative to find that husband's evidence more credibly showed the value of the outstanding account receivable. *See People In Interest of A.M. v. T.M.*, 2021 CO 14, ¶ 15 ("The credibility of the witnesses; the sufficiency, probative value, and weight of the evidence; and the inferences and conclusions to be drawn from the evidence are within the discretion of the trial court."); *see also In re Marriage of Kann*, 2017 COA 94, ¶ 36 ("[O]ur supreme court has . . . expressed unbridled confidence in trial courts to weigh conflicting evidence."). Hence, the finding regarding the invoice is not clearly erroneous and we will not disturb it. *See Krejci*, ¶ 23.

¶ 25 Although we acknowledge the logic of wife's argument given the amount of the equalization payment the magistrate ordered husband to pay, we need not resolve wife's argument that the magistrate held the \$15,000 withdrawal from Portell Computers against her when dividing the marital estate. We also need not resolve her argument that the magistrate should have charged husband \$20,000 for allegedly using the proceeds from the sale of her separate residence for his sole benefit. The court will make new findings on remand to support the new property division.

### III. Maintenance and Attorney Fees

¶ 26 We also decline to consider wife's arguments concerning the maintenance award or the denial of her request for attorney fees under section 14-10-119, C.R.S. 2021. Maintenance and attorney fees are inextricably intertwined with the property division and must be reconsidered on remand. *See In re Marriage of Morton*, 2016 COA 1, ¶¶ 31, 33; *Powell*, 220 P.3d at 960.

¶ 27 In reconsidering these issues, the court must base its decision not only on the new property division, but also on the parties' financial circumstances at the time of remand. *Morton*, ¶ 34. Accordingly, the court must take additional evidence on these issues. *Id.*

¶ 28 We do not consider wife's statement, unaccompanied by supporting argument or relevant authority, that she is entitled to attorney fees to compensate her for the contempt proceedings. *See In re Marriage of Vittetoe*, 2016 COA 71, ¶ 39 (reviewing court will not consider a contention that is both perfunctorily asserted and unsupported by any legal argument).

#### IV. Conclusion

¶ 29 The judgment is reversed, and the case is remanded for the court to enter a new property division and reconsider wife's maintenance and section 14-10-119 attorney fees requests.

JUDGE BROWN and JUDGE JOHNSON concur.