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ANA M. PILARTE TERCERO, APPELLEE, V. ADALBERTO MEJIA GALLARDO, APPELLANT.

___ N.W.3d ___

Filed March 26, 2024. No. A-23-386.

1. **Appeal and Error.** Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process.
2. **Rules of the Supreme Court: Appeal and Error.** Depending on the particulars of each case, failure to comply with the mandates of Neb. Ct. R. App. P. § 2-109(D) (rev. 2023) may result in an appellate court waiving the error, proceeding on a plain error review only, or declining to conduct any review at all.
3. **Divorce: Property Division: Equity.** Neb. Rev. Stat. § 42-365 (Reissue 2016) authorizes a trial court to equitably distribute the marital estate according to what is fair and reasonable under the circumstances.
4. **Divorce: Property Division.** In a marital dissolution action, the purpose of a property division is to distribute the marital assets equitably between the parties.
5. ____: ____. In a marital dissolution action, there is no mathematical formula by which property awards can be precisely determined, but as a general rule, a spouse should be awarded one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case.

Appeal from the District Court for Dawson County: JAMES E. DOYLE IV, Judge. Affirmed in part, and in part vacated and remanded with directions.

Adalberto Mejia Gallardo, pro se.

Brian W. Copley, of Heldt, McKeone & Copley, for appellee.

Pirtle, Chief Judge, and Riedmann and Welch, Judges.

Riedmann, Judge.

INTRODUCTION

Adalberto Mejia Gallardo appeals from the order of the district court for Dawson County dissolving his marriage to Ana M. Pilarte Tercero and dividing the marital estate. Proceeding under a plain error review, we vacate that portion of the decree valuing and dividing the marital estate and remand the matter to the district court with directions for recalculation.

BACKGROUND

Mejia Gallardo and Pilarte Tercero were married in October 2002. The parties separated in February 2022. The parties prepared a joint property statement, which was received into evidence. We note that Mejia Gallardo did not list the value for numerous items and that the parties did not agree on the value of any item at issue. As relevant to this appeal, the property statement reflected three debts totaling $80,000.

Following a trial, where Mejia Gallardo represented himself, the district court issued an order dissolving the marriage and dividing the marital estate. The dissolution order assigned all property listed on the joint property statement to either Mejia Gallardo or Pilarte Tercero, which was consistent with the allocation requested by Pilarte Tercero at trial. The court calculated the value of the assets assigned to Pilarte Tercero at $167,018 and corresponding debt at $129,166.60. It calculated the value of the assets assigned to Mejia Gallardo at $45,550, with no debt assigned to him. Overall, the district court determined Pilarte Tercero would receive approximately 45 percent of the marital estate, and Mejia Gallardo would receive approximately 55 percent of the marital estate. Pilarte Tercero filed a motion to alter or amend the judgment because a car that belonged to her daughter was included in the marital estate and awarded to Mejia Gallardo. After a hearing, the district court amended the order to award the car to Pilarte Tercero, but because the court had assigned no

value to the car, its calculations remained unchanged. Mejia Gallardo appeals.

ASSIGNMENT OF ERROR

Mejia Gallardo assigned no errors in his brief on appeal.

STANDARD OF REVIEW

[1] Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process. *County of Lancaster v. County of Custer*, 313 Neb. 622, 985 N.W.2d 612 (2023).

ANALYSIS

[2] Mejia Gallardo failed to assign errors or to comply with numerous other rules required of appellants when filing a brief before this court. See Neb. Ct. R. App. P. § 2-109(D) (rev. 2023). Depending on the particulars of each case, failure to comply with the mandates of § 2-109(D) may result in an appellate court waiving the error, proceeding on a plain error review only, or declining to conduct any review at all. *County of Lancaster v. County of Custer, supra*. Here, we elect to proceed under a plain error review.

[3-5] Neb. Rev. Stat. § 42-365 (Reissue 2016) authorizes a trial court to equitably distribute the marital estate according to what is fair and reasonable under the circumstances. *Parde v. Parde*, 313 Neb. 779, 986 N.W.2d 504 (2023). In a marital dissolution action, the purpose of a property division is to distribute the marital assets equitably between the parties. *Id*. There is no mathematical formula by which property awards can be precisely determined, but as a general rule, a spouse should be awarded one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case. *Id*.

Proceeding under a plain error review, we find plain error in the district court's valuation of the marital estate, specifically in its determination of the debt held by the parties.

The total value of the marital assets, as determined by the district court, was $212,568. As previously noted, the joint property statement reflected three debts totaling $80,000; there was no other evidence presented that showed the parties held any debt not included in the joint property statement. However, the district court's order awarded $0 in debt to Mejia Gallardo and $129,166.60 in debt to Pilarte Tercero. The difference between the debt utilized by the district court in its order and the debt reflected in the joint property statement is $49,166.60.

The district court distributed 54.6 percent of the marital estate to Mejia Gallardo and 45.4 percent of the marital estate to Pilarte Tercero. However, utilizing the amount of debt that was supported by the evidence in the record significantly changes the distribution of the marital estate: Mejia Gallardo would receive approximately 35 percent, while Pilarte Tercero would receive approximately 65 percent. This is a substantial departure from the district court's distribution in the dissolution order.

Pilarte Tercero concedes that the amount of debt the district court included in its calculation of the marital estate exceeded the evidence of debt presented at trial. However, she argues that the distribution, when using the amount of debt supported by the evidence, is technically still within the general rule that a spouse should receive between one-third and one-half of the marital estate; thus, she argues there is no plain error. Although Pilarte Tercero is correct that substituting the $80,000 amount of debt would result in a distribution of the marital estate within the general rule, it is also a substantial departure from the distribution percentage the district court determined to be fair and reasonable in its order. As discussed above, we find this to be plain error.

The debt assigned to Pilarte Tercero is composed of a house mortgage, a loan on her retirement account, and a loan associated with a vehicle awarded to her. Because each of these assets was awarded to her, it was appropriate to assign

the corresponding debts to her as well. However, as stated above, the district court miscalculated the total of these debts. It assigned specific marital assets of $167,018 to Pilarte Tercero but erroneously calculated the amount of debt as $129,166.60, which resulted in a net marital estate to her of $37,851.40. Correcting the court's mathematical error results in a net marital estate to Pilarte Tercero of $87,018 and a net marital estate to Mejia Gallardo of $45,550. To reach the distribution percentage of the estate utilized by the district court, Pilarte Tercero would be required to make an equalization payment of $26,832.13 to Mejia Gallardo.

We are unable to determine from the record whether the court intended a specific distribution percentage or simply intended a distribution of assets and corresponding debt. We therefore vacate that portion of the decree valuing and dividing the marital estate and remand the matter to the district court for recalculation.

CONCLUSION

We find the district court committed plain error in its valuation of the marital estate. We vacate that portion of the decree valuing and dividing the marital estate. We remand the matter to the district court with directions to value the marital estate in accordance with this opinion and to equitably divide the marital estate between the parties. We otherwise affirm the district court's decree.

Affirmed in part, and in part vacated and remanded with directions.