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VII. CONCLUSION

The Vineyards have asserted other assignments of error, mostly involving evidentiary issues that we have not discussed because we need not do so. An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the case and controversy before it. *Spanish Oaks v. Hy-Vee, Inc.*, 265 Neb. 133, 655 N.W.2d 390 (2003). Accordingly, we reverse the decision of the district court for Lincoln County. We hold that the boundary between sections 9 and 16, "Township 14 North, Range 34 West of the 6th P.M.," is the thread of the stream of the North Platte River, which thread is located in the river's north channel as it runs between those two sections.

REVERSED.

CASSEL, Judge, participating on briefs.

MATTHEW JOHN BOCK, APPELLEE, V.
JENNIFER LYNN DALBEY, APPELLANT.
809 N.W.2d 785

Filed September 27, 2011. No. A-10-973.

1. **Divorce: Property Division: Appeal and Error.** In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determination of property division; this determination, however, is initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion.
2. **Judgments: Words and Phrases.** An abuse of discretion occurs when a trial court bases its decision upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.
3. **Divorce: Property Division.** If premarital property can be identified, it is typically set off to the spouse who brought the property into the marriage.
4. **Constitutional Law: Statutes.** Under the Supremacy Clause of the U.S. Constitution, state law that conflicts with federal law is invalid.
5. **Divorce: States.** The whole subject of domestic relations is generally considered a state law matter outside federal jurisdiction.
6. **Divorce: Taxation.** It is within the discretion of the trial court in a dissolution of marriage proceeding to order the parties to file a joint income tax return.

Appeal from the District Court for Douglas County: JOHN D. HARTIGAN, JR., Judge. Affirmed.

Amy Sherman Geren for appellant.

Brent M. Kuhn, of Harris Kuhn Law Firm, L.L.P., for appellee.

IRWIN, CASSEL, and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

The district court dissolved the marriage of Matthew John Bock to Jennifer Lynn Dalbey, divided the marital estate, and ordered the parties to file joint income tax returns for 2008 and 2009. We find no abuse of discretion in the court's determination and division of the marital estate. We further conclude that federal tax law does not preclude a trial court from exercising its discretion to order parties to file a joint income tax return. Accordingly, we affirm.

BACKGROUND

Prior to the parties' marriage in June 2006, each party owned a home. After marriage, Dalbey moved into Bock's home and began renting out her house after unsuccessfully trying to sell it. The parties subsequently purchased a house in 2009. Shortly thereafter, on July 6, Bock filed a complaint to dissolve the marriage.

In January 2009, the parties signed a contract for the purchase of a house on South 185th Circle in Omaha, Nebraska, and they closed on the house in late April. The $289,000 purchase price was "a hundred percent financed" by a first mortgage of approximately $235,000 and a second mortgage of approximately $55,000. As of November 2009, the balance of the first mortgage was $230,227.41.

Bock also acquired a $130,000 line of credit to help pay for renovations on the parties' house. Soon after moving in, he used the line of credit to pay off the second mortgage. The line of credit was also used to make $40,000 to $45,000 in repairs and to pay other debts of Bock: approximately $2,300 was used to make a payment on Bock's furniture store account, $8,466 was applied to Bock's credit card, and $28,447.72 was applied

to the line of credit Bock had secured with his premarital home and used to pay for living expenses. To Dalbey's knowledge, Bock did not use the line of credit to pay any of her debt. The balance on the line of credit was $118,778.06 on July 7, 2009; $128,790.96 as of November 27; and nearly $129,000 at the time of trial.

Bock requested to be awarded the house on South 185th Circle and its corresponding debt. He believed that the house was worth $335,000 at the time of trial. By that time, he had spent $333,076.83 on the purchase price, closing costs, and repairs. He believed that the debt exceeded the value of the house by $30,000. Bock testified that when he moved into the house, it had an assessed value of approximately $487,000; that he protested the valuation; and that it was reduced to $385,000. Bock protested the $385,000 assessment and asked that it be valued at $335,000. But in a personal financial statement signed by Bock on May 6, 2009, he valued the home at $525,000. A bank's May 28 loan memorandum for Bock's equity line of credit request contained a collateral analysis on the property in which the bank determined that the net value of the property for purposes of lending money against it was $487,000. The memorandum lists the valuation source as "Tax Assessed." A licensed real estate appraiser valued the property at $335,000 on August 6, using a comparable sales approach. The appraiser noted that the renovation was incomplete and testified that he was unable to find any houses in the neighborhood that had sold which were in worse condition than the subject property.

On August 6, 2010, the district court entered a decree dissolving the marriage. The court valued the house on South 185th Circle at $370,000 and determined that the equity in the house was $19,447.63. With regard to the parties' premarital homes, the court stated that it was "unable to find that either of these properties have equity that experienced a gain during the term of the parties' marriage." In order to equalize the marital estate, the court assigned all the marital debts to Bock. The court ordered the parties to file joint tax returns for 2008 and 2009.

Dalbey timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

Dalbey alleges that the district court erred in (1) entering judgment contrary to the evidence and the law, (2) determining the marital estate, (3) valuing and dividing the marital estate, and (4) ordering the parties to file joint tax returns for 2008 and 2009.

STANDARD OF REVIEW

[1] In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determination of property division; this determination, however, is initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion. See *Reed v. Reed*, 277 Neb. 391, 763 N.W.2d 686 (2009).

[2] An abuse of discretion occurs when a trial court bases its decision upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Davis v. Davis*, 275 Neb. 944, 750 N.W.2d 696 (2008).

ANALYSIS

Premarital Homes.

Dalbey argues that the court erred in determining that the homes the parties owned prior to the marriage were nonmarital assets. Specifically, she claims that Bock failed to provide proof of his home's value at the time of marriage or at the time the parties separated.

Bock testified that he purchased his premarital home for $182,000, using a first and second mortgage totaling $160,000 to $165,000. He also took out a line of credit secured with the home, and the balance at the time of trial was around $20,000 to $25,000. As of July 8, 2009, the balance of the first mortgage on this house was $134,451.44 and the balance of the second mortgage was $20,889.51. During the marriage, Bock made minor improvements costing $4,000 to $5,000 to the home.

The improvements included new carpeting in the basement and two rooms, drywall work in the basement, and a kitchen countertop replacement. The money for the improvements came out of Bock's individual checking account. In a personal financial statement signed by Bock on May 6, 2009, he valued the home at $195,000. Dalbey subtracted from that figure the approximately $155,340 of mortgage debt and asserted that there was $39,660 in marital equity in the home.

Dalbey believed that the value of her premarital home at the time of marriage was $117,700. She had two mortgages on the home which exceeded its value by $14,634.48. She tried to sell her house prior to the marriage without success, so she began renting it after the marriage. The rental price was about $50 less than the mortgage payment. Bock testified that during the marriage, he paid some of the expenses of Dalbey's premarital home, which amounted to $9,732.31. At the time of trial, Dalbey believed that the value of her home was $132,500 and that she had $10,000 in equity in the property.

[3] The law is that if premarital property can be identified, it is typically set off to the spouse who brought the property into the marriage. *Charron v. Charron*, 16 Neb. App. 724, 751 N.W.2d 645 (2008). Each party's premarital house still exists, can easily be identified, and should be set off to the party who owned it prior to marriage. Although marital funds were used to make mortgage payments and repairs on each house during the parties' 3-year marriage, we cannot say that the district court abused its discretion in finding that neither property had equity that experienced a gain during the marriage.

Marital House.

Dalbey next argues that the court erred in valuing and determining the equity in the house the parties purchased during the marriage. She points out that the home was in disrepair at the time of the appraisal and otherwise would likely have been appraised higher.

The court found that the house's fair market value was $370,000 and that it had secured debt of $359,018.37—which appears to be the combination of the debts owed in November 2009 on the first mortgage and the line of credit, which were

$230,227.41 and $128,790.96, respectively. The court reduced that amount by $8,466—the amount of the line of credit that Bock used to make a payment on his credit card. Thus, the court determined that the house's equity was $19,447.63. Dalbey asserts that the court should have valued the house at $487,000 with debt of $319,130. Dalbey also quarrels about Bock's use of the $130,000 line of credit. Bock applied $28,447.72 of that line of credit to the line of credit secured with his premarital home, but Bock testified that that money was typically used for living expenses.

Here, the court valued the property at an amount higher than that requested by Bock but lower than that sought by Dalbey. The figure urged by Bock was based on a licensed appraiser's comparative sales approach. In contrast, Dalbey relied on the bank's loan memorandum in which the bank valued the house at $487,000, because that was its tax-assessed value. However, Bock protested the tax-assessed valuation, resulting in a reduced assessment of $385,000. We cannot say that the court abused its discretion in valuing the house at $370,000 or in determining its equity to be $19,447.63.

Dividing Marital Estate.

Dalbey also argues that the court erred in dividing the marital estate. According to her proposed division, the court should have ordered Bock to pay her $109,343.70 to equalize the division.

The court awarded the parties half of their three retirement accounts and Bock's equity in his law firm's partnership, which amounted to an award of $24,600.51 to each. In contrast, Dalbey's proposed division of those items would result in an award to her of $24,102.49 and an award to Bock of $25,111.97. The court ordered Bock to pay all the marital debt, which amounted to approximately $14,100, in addition to the debt on the house and his vehicle. Further, the court ordered that each party be responsible for any debts he or she incurred since July 6, 2009. Dalbey's proposed division of debt would have her paying $7,344.82 and Bock's paying $3,809.05, plus the $5,020.08 owed on his vehicle. The chief difference between Dalbey's proposed division and the court's division

is the asserted equity in the three homes: Dalbey contends that her premarital property had $10,554.37 in marital equity, that the house purchased during the marriage had $167,870 in equity, and that Bock's premarital home had $39,660 in marital equity. But above, we rejected these same contentions. And it appears that the court's division of the marital estate without these amounts would not be significantly different from Dalbey's proposal and would certainly fall within the general award of one-third to one-half to the spouse. See *Thiltges v. Thiltges*, 247 Neb. 371, 527 N.W.2d 853 (1995) (division of property is not subject to precise mathematical formula, but general rule is to award spouse one-third to one-half of marital estate). We find no abuse of discretion by the court in its division of the marital estate.

Joint Tax Return.

Finally, Dalbey argues that the court erred in ordering her to file a joint tax return with Bock because "the decision as to whether or not to do that is a matter of federal law and the a [sic] judge of a state court cannot order a citizen to file only jointly when federal law allows her to choose how she wishes to file." Brief for appellant at 19. She contends that the court's order violates the Supremacy Clause.

[4] Under the Supremacy Clause of the U.S. Constitution, state law that conflicts with federal law is invalid. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010). Federal law preempts state law when it conflicts with a federal statute or when the U.S. Congress, or an agency acting within the scope of its powers conferred by Congress, explicitly declares an intent to preempt state law. *Id.*

[5] While federal law prevails over state law in the event of a conflict, there is no conflict present here. Further, the whole subject of domestic relations is generally considered a state law matter outside federal jurisdiction. See *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009).

We first summarize the parties' history of filing tax returns and what the record discloses concerning the tax years for which returns have not yet been filed. The last tax return that

the parties filed was a joint return for the 2007 tax year in which they opted to have their $4,060 federal refund applied to the next year's taxes and to have $2,000 of their state refund applied to the next year's taxes. The parties had not filed a tax return for 2008 because Bock had not received Dalbey's tax information. Bock testified that he had made "four quarterly tax deposits" to the Internal Revenue Service and the State of Nebraska for the 2008 tax year. He requested that the court order the parties to file a joint income tax return for 2008 and 2009 and that the parties be responsible for the tax, penalties, and interest in proportion to the amount of income attributed to each on that return. Bock testified that the parties could have a mutually agreed-upon third party prepare the return and that they could each pay half of the cost of preparation. Dalbey testified that she simply would prefer not to file a joint tax return.

We have found no controlling precedent in Nebraska on a court's ordering divorcing parties to file a joint tax return, but this court has rejected an identical argument in an unpublished opinion. In *Hilmer v. Hilmer*, No. A-96-1146, 1997 WL 527671 (Neb. App. Aug. 19, 1997) (not designated for permanent publication), this court analogized the determination of filing status to the allocation of dependency exemptions for income tax purposes—noting that both have economic consequences—and concluded that "the determination of filing status for income tax purposes is also within the ambit of a state court's conduct of a legal separation or dissolution proceeding." *Id.* at *8.

This is consistent with the Nebraska Supreme Court's precedent regarding dependency tax exemptions. In *Hall v. Hall*, 238 Neb. 686, 472 N.W.2d 217 (1991), the court noted that the exemptions were governed by 26 U.S.C. § 152 (1988) and that under that section, as amended in 1984, the custodial parent was automatically granted the tax exemptions, except in three circumstances. Despite the federal law on the issue, Nebraska joined the majority of jurisdictions and determined that a state court may exercise its equity power to allocate the tax exemptions to a noncustodial parent. See *Hall v. Hall, supra*. Thus, the court held that any Nebraska state court having jurisdiction

in a divorce action shall have the power to allocate tax dependency exemptions as part of the divorce decree. *Id.*

[6] We now expressly hold that it is within the discretion of the trial court in a dissolution of marriage proceeding to order the parties to file a joint income tax return.

Although other jurisdictions are split on the issue, we conclude that the weight of authority and the better reasoning support the rationale of the *Hilmer* decision. See, e.g., *Bursztyn v. Bursztyn*, 379 N.J. Super. 385, 879 A.2d 129 (2005) (concluding trial courts should have discretion to compel filing of joint tax returns); *Oldham v. Oldham*, 677 N.W.2d 196 (N.D. 2004) (finding no abuse of discretion in court's order directing parties to file joint income tax returns and noting that courts are to consider tax consequences of divorce proceedings); *In re Marriage of LaFaye*, 89 P.3d 455 (Colo. App. 2003) (court acted within its discretion in ordering parties to file joint tax returns); *Bowen v. Bowen*, 132 Ohio App. 3d 616, 725 N.E.2d 1165 (1999) (court has discretion to order parties to file joint tax return); *Teich v. Teich*, 240 A.D.2d 258, 658 N.Y.S.2d 599 (1997) (it is outside court's equitable powers to order parties to file joint tax returns because federal tax law gives each spouse unqualified freedom to decide whether to file joint return); *Kane v. Parry*, 24 Conn. App. 307, 588 A.2d 227 (1991) (court has authority to order party to file joint tax return only if there was prior agreement between parties to do so); *Matlock v. Matlock*, 750 P.2d 1145 (Okla. App. 1988) (permitting trial court to order spouse to file joint return would be tantamount to removing right of election conferred upon married couples under Internal Revenue Code); *Theroux v. Boehmler*, 410 N.W.2d 354 (Minn. App. 1987) (concluding it was within trial court's discretion and authority to require joint tax return be filed in order to avoid unnecessary tax burden which would deplete funds available for support of family); *Cox v. Cox*, 17 Ark. App. 93, 704 S.W.2d 171 (1986) (as part of court's equitable powers, court may compel parties to execute joint federal income tax returns); *Lewis and Lewis*, 81 Or. App. 22, 723 P.2d 1079 (1986) (courts do not have authority to order spouses to file joint tax returns); *In re Marriage of Butler*, 346 N.W.2d 45 (Iowa App. 1984) (vacating part of ruling ordering parties to

file joint income tax return because taxation laws give parties option of filing joint or separate return), *overruled on other grounds, In re Marriage of Wertz*, 492 N.W.2d 711 (Iowa App. 1992); *Leftwich v. Leftwich*, 442 A.2d 139 (D.C. 1982) (finding portion of order making wife's receipt of her share of marital property conditioned on her signing two joint tax returns to be erroneous because it exceeds mandate of Internal Revenue Code provisions governing joint returns and bounds of trial court's equitable powers).

One such court articulated a number of factors to be considered in determining whether the trial court's order was an abuse of discretion. In *Bursztyn v. Bursztyn, supra*, the New Jersey appellate court determined that the trial court did not abuse its discretion in ordering the parties to file joint returns for six reasons: (1) There was a significant financial benefit to doing so, (2) there was no evidence that the husband had filed fraudulent returns in the past or that he intended to do so, (3) the husband was the source of all income to be reported, (4) the wife provided no principled reason why she should file a separate return under the circumstances, (5) the court had little alternative means to alter the equitable distribution to compensate the husband for the adverse tax consequences of filing separate returns because most of the marital assets were needed to pay marital debts, and (6) there was no basis to disapprove the trial court's ruling that the wife's alimony payments be held in escrow until she complied with the court's order regarding tax returns.

Similarly, when we view the evidence in the instant case in light of these factors, we find no abuse of the trial court's discretion. The parties filed a joint return in 2007 and elected to have their federal tax refund applied to their 2008 tax return. Bock had made four quarterly tax "deposits" for 2008. And the parties will incur penalties and interest for their failure to timely file a return. There was no evidence that Bock had filed fraudulent tax returns in the past or that he intended to do so. Further, federal tax law provides relief from joint and several liability on a joint return for an "innocent spouse." See I.R.C. § 6015(b) (2006). Moreover, Dalbey simply stated without elaboration that she would prefer not to file a joint return.

Under the circumstances of this case, we find no abuse of discretion by the district court in ordering the parties to file joint income tax returns for 2008 and 2009.

CONCLUSION

We conclude that the district court did not abuse its discretion in treating the parties' premarital homes as nonmarital assets, in valuing the house bought during the marriage, in dividing the marital estate, or in ordering the parties to file joint income tax returns. Accordingly, we affirm.

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V. RANDY L. MORTENSEN, APPELLANT.

809 N.W.2d 793

Filed September 27, 2011. No. A-10-1208.

1. **Judgments: Speedy Trial: Appeal and Error.** As a general rule, a trial court's determination as to whether charges should be dismissed on speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous.
2. **Judgments: Appeal and Error.** To the extent issues of law are presented, an appellate court has an obligation to reach independent conclusions irrespective of the determinations made by the court below.
3. **Speedy Trial: Indictments and Informations: Time.** Neb. Rev. Stat. § 29-1207(1) (Reissue 2008) requires that every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial.
4. **Speedy Trial.** Under Neb. Rev. Stat. § 29-1208 (Reissue 2008), if a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, he or she shall be entitled to his or her absolute discharge.
5. **Speedy Trial: Motions for Continuance.** The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel shall be excluded from the calculation of the time for trial.
6. **Speedy Trial.** The last date to try a defendant, before consideration of excludable timeframes, is calculated by excluding the date of the filing of the information, moving forward 6 months, and then backing up 1 day.
7. **Speedy Trial: Pretrial Procedure: Appeal and Error.** The motion to discharge is a tolling motion, and the speedy trial clock remains tolled until the motion to discharge is finally resolved, including during the appeal until action is taken on the appellate court's mandate.