IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROSE ANN DELA CRUZ,
Petitioner-Appellee,

v.

ELDEN C. DELA CRUZ,
Respondent-Appellant.

Supreme Court No. 2016-SCC-0011-FAM
Superior Court No. FCD-DI 13-0517

OPINION

Cite as: 2017 MP 11

Decided November 30, 2017

Stephen J. Nutting, Saipan, MP, for Petitioner-Appellee.

Janet H. King, Saipan, MP, for Respondent-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

CASTRO, C.J.:

¶ 1 Respondent-Appellant Elden C. Dela Cruz ("Husband") appeals the trial court's Judgment on Division of Marital Assets following his divorce from Petitioner-Appellee Rose Ann Dela Cruz ("Wife"). He argues the court erred by (1) awarding title of the marital home and lot to Wife while awarding him a credit in the amount of half the appraised value of the home and lot; (2) incorrectly calculating parties' contributions to the marital debt; (3) failing to distribute a Toyota T100 pickup truck as a marital asset; and (4) assessing an incorrect value of firearms considered marital property. Husband asks that this Court vacate the Judgment and remand this matter for re-distribution. For the following reasons, we AFFIRM the trial court's order.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 After nearly thirteen years of marriage, Husband and Wife separated. While both parties brought children into the marriage, they had no children together. Before the marriage, Wife had acquired a homestead permit from the Department of Public Lands, to which Husband added his name in 1999, and the couple held jointly before marrying. The couple jointly obtained a loan and built a home on the property, where they cohabited during the marriage. The couple maintained a joint savings account and five credit cards.

¶ 3 The court granted the divorce on April 3, 2014, but distributed the marital estate following a bench trial. Each party had the home and land independently appraised.[1] Each party submitted independent findings of fact and conclusions of law. The court then issued its Judgment on Division of Marital Assets, which, after dividing the parties' assets and debts,[2] obligated Husband to pay $51,412.91 and Wife to pay $29,215.51 in marital debt. *Rose Ann Dela Cruz v. Elden C. Dela Cruz*, No. 13–0517 (NMI Super. Ct. Mar. 1, 2016) (Judgment on Division of Marital Assets) (hereinafter "Judgment").

¶ 4 Husband now appeals the Judgment.

II. JURISDICTION

¶ 5 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

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[1] The two appraisals placed the value of the home at $61,600 and $74,340, and the value of the land at $20,400 and $22,000. The two appraisals differed by $14,340.00 ($82,000 to $96,340). Judgment at 4.

[2] After considering the parties' assets and debts, the trial court concluded there was a sum total of $80,628.42 of marital debt. Judgment at 7.

III. STANDARDS OF REVIEW

¶ 6 Husband argues the trial court erred in four instances: (1) by awarding the marital home and property to Wife and a credit of one-half the appraised value of the home and land to Husband; (2) in its assessment of the parties' contributions to and responsibilities for marital debt; (3) in omitting a 1995 Toyota T100 pickup truck from the dissolution order; and (4) by basing its valuation of five firearms on the testimony of Wife. We review orders made pursuant to the Commonwealth Marital Property Act of 1990 ("MPA"),[3] 8 CMC §§ 1811–1834, for abuse of discretion. *Reyes v. Reyes*, 2004 MP 1 ¶ 3. However, "[w]hether the trial court correctly classified and distributed the parties' real property is a mixed question of law and fact." *Id*. In these circumstances, we review the trial court's findings of fact under the clearly erroneous standard, and will reverse only if "we are left with a firm and definite conviction that clear error has been made." *Id*.. Therefore, we review the decision to award the marital home and property to Wife and assessment of the marital debt for abuse of discretion. We review the disputed omission of the T100 pickup truck, as a mixed question of law and fact, for clear error. Similarly, we review the determination of the firearms as marital property for clear error, but the valuation of those firearms under MPA for abuse of discretion.

IV. DISCUSSION

A. Marital Home

¶ 7 "In granting or denying an annulment or a divorce, the Court may make such orders . . . for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require." *Ada v. Sablan*, 1 NMI 415, 420 n.4 (1990) (quoting 8 CMC § 1311). "A clear aim of the MPA is ensuring that each spouse has an undivided one-half interest in marital property." *Reyes*, 2004 MP 1 ¶ 27 (citing 8 CMC § 1820(c)). Generally, "[m]arital property should be divided equally unless there are strong circumstances that warrant an unequal division, such as fraud or waste." *Hee v. Oh*, 2011 MP 18 ¶ 9 (citing *Reyes*, 2004 MP 1 ¶¶ 27–33). "The division of marital property is subject to the broad discretion of the trial court, whose determinations will be upheld on appeal unless there is a clear showing of an abuse of discretion." *Reyes*, 2004 MP 1 ¶ 3.

¶ 8 Husband takes issue with the decision to grant title to Wife while granting Husband a property credit to offset against his marital debt obligations. He argues the only reasonable result would be to order the sale of the property due to the potential for increased home value given the rapid economic development in the area where the home is located. Husband argues that the failure to do so violates the equal ownership principle of the MPA. He makes these arguments without offering any authorities that support this interpretation of the MPA. Nor do any of our previous decisions support such an interpretation. In fact, a court

[3] The MPA is in large part adopted from the Uniform Marital Property Act, which was approved by the National Conference of Commissioners on Uniform State Laws in 1983. 8 CMC § 1811 (commission comment).

may use its discretion to determine the appropriate division of marital property, *Reyes*, 2004 MP 1 ¶ 3, including cash awards. *See, e.g., Hofschneider v. Hofschneider*, Civil Action No. 91-994 (Order at 5) (reversed on other grounds) (awarding one party the cash equivalent of a fifty-five year lease and the other fee simple title to the home). Moreover, the drafter of the MPA, the Uniform Law Commission, recognized the inherent power of the courts in determining equitable distribution. *See* UNIF. MARITAL PROP. ACT, Prefatory Note (UNIF. LAW COMM'N 1983) ("A given state's equitable distribution or other property division procedures could mean that the ownership . . . could be substantially altered, but that will depend on other applicable state law and judicial determinations.").

¶ 9 Here, both parties submitted independent valuations of the home and property. The trial court considered both valuations, and settled on a middle ground. Husband argues that this may have undervalued the property due to the property's potential appreciation given the ongoing development in the CNMI. However, "property is to be valued as close as practicable to the date of trial," *Hee*, 2011 MP 18 ¶ 10 (quoting *Reyes*, 2004 MP 1 ¶ 73), and there is no evidence the submitted valuations did not take into consideration the rising property values in the region. We see no valid reason to limit the trial court's ability to, within reason, use the valuations submitted to it by the parties in front of it.

¶ 10 We also note Husband emphasized his desire to get his half of the property value and had no concern with the possibility of Wife staying in the home, so long as he received his share of the home's value immediately.[4] And while Husband objects to the decision to offset the home's value against his marital debt, marital property is considered as a whole. *See Ada v. Sablan*, 1 NMI 415, 429 (1990). Thus, the trial court did not abuse its discretion in granting Husband a credit in the amount of one-half the value of the home and property to offset other marital property or debt he may owe a share of, rather than forcing a sale of the home.

B. Marital Debt

1. Additional Exhibits on Appeal

¶ 11 Husband argues the trial court relied on erroneous evidence to determine the division of marital debt. To prove this point, he submits seven exhibits on appeal. There is no indication these exhibits were presented at trial, and they are

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4 [HUSBAND]: I want the home to be sold and then divide by two, I get 50%, [Wife] get 50%.

MS. KING: Now, you're aware that [Wife] may want to live in the home because she lives here in Saipan and what is your opinion of just giving her the home and then she would pay you instead of having the home sold?

[HUSBAND]: *[ ] I just want to make sure that I get my 50% straight off. I'm not asking for more, it's only 50%.*

Tr. 160–61 (emphasis added).

not otherwise a part of the record on appeal. New exhibits are rarely permitted on appeal. *See Office of the Attorney Gen. v. Senido*, 2004 MP 6 ¶ 12 ("The Supreme Court may not take new or additional evidence." (quoting 1 CMC § 3103)). While we do permit a party to correct the record in the case of omission or error in the record, NMI SUP. CT. R. 10(e)(2), there is no indication such situation exists here. Nor do our rules on briefs, NMI SUP. CT. R. 28, or appendices, NMI SUP. CT. R. 30, allow for a party to submit new exhibits for review by this Court. There is no indication in Husband's briefs that these exhibits were submitted to the trial court, and Wife contends these exhibits are new and were not presented at trial. Simply, Husband did not submit a relevant evidentiary record. Instead, he submitted alternate evidence that he either did not submit at trial, or at the very least is not included in the record before this Court as having been submitted at trial.

¶ 12 "Our role is not to re-weigh the evidence", *Ishimatu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 18, and parties are generally not permitted to introduce contrary evidence on appeal they failed to introduce at trial. *See Stearns v. Hertz Corp.*, 326 F.2d 405, 408 (8th Cir. 1964) (declining to consider affidavit presented for first time on appeal); *Kirshner v. Uniden Corp. of America*, 842 F.2d 1074, 1077 (9th Cir. 1988) (declining to consider materials not considered by the trial court). These exhibits are not a part of the record on appeal, and we do not consider them. We will, however, consider Husband's arguments in light of the evidence actually included in the record before us.

2. The Record on Appeal

¶ 13 Turning to the contents of the record on appeal, Husband argues Exhibit 13 as introduced at trial and in the record before us, documenting the parties' contributions to the marital debt, contains significant errors. Husband failed to raise these arguments at trial, and may not present new evidence on appeal. Moreover, the record before us does not support Husband's assertions. At one point in the transcript, there was a discussion about the accuracy of parties' exhibits–the trial court asked "[Exhibit 13] is only $0.32 off?" and attorneys for both parties agreed that this was the case. Tr. 134. In *In re Estate of Deleon Castro*, we held "where an appellant argues on appeal that a finding or conclusion is either unsupported by, or contrary to, the evidence, without submitting before this Court the relevant evidentiary record, dismissal or a presumption of sufficient evidence may be warranted." 4 NMI 102, 106 (1994). Husband failed to present any relevant portion of the evidentiary record, such as competing accounting figures presented at trial or the entirety of the evidentiary record as relied on by the trial court. Therefore, we presume there was sufficient evidence to support the findings regarding the marital debt and can only conclude the trial court did not abuse its discretion.

3. Toyota T100 Pickup Truck

¶ 14 When parties do not present enough evidence to prove the existence of a disputed item, a court in its discretion may choose to not include those items as marital property. *See Hofschneider*, Civil Action No. 91-0994 (Order at 9)

(reversed on other grounds) ("The Sony TV alleged to be in the possession of the Plaintiff will not be included in the Court's calculation because of a lack of evidence as to its existence.").

¶ 15 Here, at trial, both parties testified as to the existence of two vehicles. In Wife's testimony, she referred to a 2004 Mitsubishi Montero and a "much older" pickup truck. Tr. 51–52. In Husband's testimony, he referred to a 1993 Mazda pickup truck and a 2004 Mitsubishi Montero. Tr. 150–51. Neither party testified to the existence of a third vehicle, nor presented evidence of one's existence. The only mention of a T100 pickup truck came in Husband's proposed finding of fact and conclusion of law, submitted to the court after trial. *Rose Ann Dela Cruz v. Elden C. Dela Cruz*, No. 13-0157 (NMI Super. Ct. Jan. 26, 2016) (Findings of Fact & Conclusions of Law at 3, 12).

¶ 16 Husband cites to *In re Marriage of Andresen*, a California court of appeals case, to argue that "[e]xcept under limited circumstances which are irrelevant here, the trial court, in its judgment of dissolution or at a later time if it expressly reserves jurisdiction to do so, must value and divide the community estate of the parties equally." 34 Cal. Rptr. 2d 147, 151 (Cal. Ct. App. 1994). The *Andresen* court concluded, however, that such determination "must be based upon substantial evidence." *Id*. No substantial evidence was offered at trial a T100 pickup even existed as marital property, let alone what its value might be. As such, the trial court did not clearly err when it declined to include the T100 in its division of marital assets.

4. Firearms

i. Assessed as Marital Property

¶ 17 As a portion of the Judgment, Husband was credited with possession of five firearms, and their value was divided equally between Wife and Husband as marital property. At trial, Husband testified that the guns had been stolen. Tr. 154. But regardless of whether the guns were in fact stolen, the trial court determined at the time the guns were allegedly stolen, Husband had already transferred ownership to his father.[5] "[W]e will not reverse those findings unless we are left with a firm and definite conviction that clear error has been made." *Reyes*, 2004 MP 1 ¶ 3 (citing *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323, 325 (1996)).

¶ 18 Pursuant to 8 CMC § 1822(b):

> If a gift of marital property by a spouse does not comply with subsection (a)[6] of this section, the other spouse may bring an

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[5] Evidence included Wife's Declaration in Support of Motion to Re-Open Evidence to Include Records of Transfer of Firearms and copies of the applications Husband and his father completed in order to transfer the firearms from Husband to father.

[6] In relevant part, 8 CMC § 1822(a) limits the value of marital property that can be given as a gift when one spouse acts alone at $500 or a larger amount if the gift is reasonable

> action to recover the property or a compensatory judgment in place of the property, to the extent of noncompliance. The other spouse may bring the action against the donating spouse, the recipient of the gift, or both. *The action must be commenced within the earlier of one year after the other spouse has notice of the gift or three years after the gift.* If the recovery occurs during marriage, it is marital property. If the recovery occurs after a dissolution or the death of either spouse, it is limited to one-half of the value of the gift and is individual property.

(emphasis added). Here, Husband, acting alone, transferred ownership of the guns, which had an undisputed value of more than $500, to his father. Wife commenced her action both within the one-year limitation of her notification of the gift and three-year limitation after Husband made the gift. Therefore, pursuant to 8 CMC 1822(b), the appropriate response by the trial court would be to include one-half the value of the firearms as Wife's marital property, and doing so was not clearly erroneous. However, we must still consider whether the valuation of the firearms on the basis of Wife's testimony was an abuse of discretion.

ii. Valuation

¶ 19 Before distribution, the court must determine the value of all marital property. *Hee*, 2011 MP 18 ¶ 10. The trial court's only explanation of its valuation of the firearms was that they had "an estimated fair market value of $10,000." Judgment at 6. The sole source for this valuation in the record was Wife's testimony and subsequent declaration in support of her motion to re-open evidence to include records of transfer of firearms. Wife confirmed the guns were purchased during the marriage and she had knowledge of the purchases and the source of the funds used.

¶ 20 "This Court reviews the trial court's orders made under the MPA for abuse of discretion and will not reverse an order unless the record is devoid of any reasonable evidence to support it." *Reyes*, 2004 MP 1 ¶ 35. In *Reyes*, a separate audit of the value of a business was unable to be conducted due to the lack of cooperation by one party. *Id.* ¶¶ 34–35. The trial court instead relied on a balance sheet to determine the value of a business. *Id.* We found the trial court did not abuse its discretion by relying on the balance sheet "because the parties certified the balance sheet as accurate, the court appointed auditor was prevented from conducting a separate audit, and no other evidence of the value . . . was offered." *Id.* ¶ 35.

¶ 21 Thus, the question is whether Wife's testimony, coupled with Husband's contention that because the firearms were allegedly stolen "there's no firearms

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considering the economic position of the spouses. There is nothing in the record indicating that a gift larger than $500 would be reasonable considering the economic position of Husband and Wife. Further, Husband has not contended the firearms were worth less than $500.

to talk about," tr. 154, constituted reasonable or competent evidence as to the value of the firearms. Wife testified:

> MR. NUTTING: Okay. Were there firearms that you acquired or he may have acquired while the two of you were together?
> [WIFE]: Yes.
> MR. NUTTING: Alright. And I think you—have you—do you know what these firearms are worth?
> [WIFE]: Yes.
> MR. NUTTING: Okay. How much do you think they're worth?
> [WIFE]: Closely roughly up to 10,000.
> MR. NUTTING: Okay. And all of these were acquired while you were together?
> [WIFE]: Yes.

Tr. 55. On cross-examination, she confirmed:

> MS. KING: [ ] the firearms that you talked about a desire to sell it and the proceeds to be split. When were those guns bought?
> [WIFE]: We bought that gun in the year 2002, 2004, '05, '06 and '07, all five guns. How we got the money is with some of our tax refund which is my children are the dependents that—it makes that child—how do you call that in a tax refund, you get that certain amount with all my four kids that were included in his tax, that's how we come up in buying all these guns.

Tr. 138.

¶ 22 In *Robinson v. Robinson*, we reasoned that "[t]o determine that there has been an abuse of discretion, . . . the record must be devoid of competent evidence to support the decision of the trial court." 1 NMI 83, 89 (1990) (quoting *Reardon v. Reardon*, 415 P.2d 571, 575 (Ariz. 1966)). Here, Wife's testimony indicated she had personal knowledge about the value of the guns, how much was spent on them, and where the funds for the purchases came from. Therefore, it was not an abuse of discretion for the trial court to rely on her testimony in determining the value of the firearms was $10,000.

V. CONCLUSION

¶ 23 For the foregoing reasons, we AFFIRM the Judgment.

SO ORDERED this 30th day of November, 2017.

_/s/________________________________
ALEXANDRO C. CASTRO
Chief Justice

_/s/________________________________
JOHN A. MANGLONA
Associate Justice

_/s/________________________________
PERRY B. INOS
Associate Justice