IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN RE THE MARRIAGE OF:	)	
JAMES A. STARKE,	)	
	)	
Respondent,	)	
	)	
v.	)	WD87819
	)	
DEBORAH S. STARKE,	)	Opinion filed: December 9, 2025
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
THE HONORABLE KENNETH GARRETT, JUDGE

Before Division One: Janet Sutton, Presiding Judge,
Gary D. Witt , Judge and W. Douglas Thomson, Judge

Deborah S. Starke ("Wife") appeals from the trial court's judgment dissolving her marriage to James A. Starke ("Husband") (the "Judgment"). On appeal, Wife contends the trial court erred in ordering certain marital real estate to be conveyed to a third-party, in violation of Missouri law, because the third-party was not a party to the dissolution action. We reverse and remand.

Factual and Procedural Background[1]

The underlying facts are not in dispute. Wife and Husband were married on January 7, 2011, in Independence, Missouri (the "Marriage").[2] The two separated on May 27, 2022, and Husband filed his petition for dissolution of marriage on June 20, 2022. Wife timely filed her answer and counter-petition for dissolution of marriage. No other persons or entities became a party to the lawsuit. Trial was held on February 20, 2024, and the following evidence was adduced.

Husband and Wife had both been previously married. In 2007, Husband's first wife ("First Wife") established a trust (the "Trust") for the benefit of the children of First Wife and Husband (the "Children").[3] Upon First Wife's death in 2009, Husband became successor trustee of the Trust.

Throughout the Marriage, Husband often relied on the Trust for financial support. On six separate occasions, Husband borrowed substantial funds from the Trust, totaling $1,237,960.77.[4] Each loan was formalized by the execution of a

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[1] "We view the evidence and inferences drawn therefrom in the light most favorable to the trial court's judgment, disregarding all contrary evidence and inferences." *McLeod v. McLeod*, 681 S.W.3d 215, 218 n.1 (Mo. App. W.D. 2023) (citing *Kaderly v. Kaderly*, 656 S.W.3d 333, 336 n.1 (Mo. App. W.D. 2022)).

[2] In the trial court's judgment of dissolution, the trial court stated, "[Husband] and [Wife] were married on January 8, 2011, in Independence, Jackson County, Missouri." Husband's petition for dissolution also alleged the parties were married on January 8, 2011. However, the evidence adduced at trial established that the marriage records reflected a marriage commencement date of January 7, 2011.

[3] The ages of the Children at the time of trial are unknown. However, on June 1, 2024, Husband filed declarations of the Children as exhibits to a pleading. At that time, the Children each attested that they were over 18 years of age.

[4] The following promissory notes were made to the Trust for funds borrowed by Husband during the Marriage: (I) $129,641.45 on June 19, 2011; (II) $42,599.00 on

promissory note bearing 6% interest to the Trust (collectively, the "Notes"). All Notes appear to be unsecured as no evidence indicated any lien securing same. At the time of trial, $563,328.89 of unpaid interest had accrued and remained unpaid. No interest or principal payments were ever made. Thus, the trial court determined that at the time of trial Husband and Wife owed the Trust a total of $1,801,289.66 as marital debt, and interest continued to accrue.

In the early stages of the Marriage, Wife and Husband resided in a home owned by the Trust ("First Home"). The couple also considered themselves co-owners of a lake house. However, legal title to the lake house was split between the Trust and Wife's mother and step-father. When the lake house was sold in 2016, the proceeds were divided one-half to Wife's mother and step-father, and the remaining half—belonging to the Trust—was transferred to Husband and Wife. That sum, together with additional money borrowed from the Trust, was used to purchase and develop an unfinished property in Nayarit, Mexico (the "Mexico Home") which was held in the name of Husband and Wife. The trial court valued the Mexico Home at $1,200,000.00.

In 2018, Husband and Wife sold the First Home. The sale proceeds—belonging to the Trust—were divided one-half to the Trust and one-half to

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December 2, 2011; (III) $75,000.00 on January 28, 2012; (IV) $50,000.00 on January 28, 2013; (V) $206,561.09 on March 11, 2016; and (VI) $734,159.23 on July 10, 2018. The exact purpose of each note is not made clear in the record on appeal. Accordingly, that a note was drawn in the same year as a large purchase was made should not create a presumption that the two are tied together.

Husband and Wife. With their share, and with another loan from the Trust, Husband and Wife purchased land and built a new home in Grain Valley, Missouri ("Grain Valley Home"). The deed to the Grain Valley Home was held in the name of Husband and Wife. The trial court valued the Grain Valley Home at $575,000.00.

Wife was not employed at any point throughout the Marriage. At the start of the Marriage, Husband worked and owned a business in the construction industry. In 2017, Husband retired and his interest in the business was acquired by others. Proceeds from the sale of that business were used to support Husband and Wife's lifestyle.

Post-Trial Procedural History

On March 18, 2024, 27 days after the trial in this matter and prior to a formal judgment being entered by the trial court, Husband filed a "motion to reconsider the [trial] court's ruling from the bench regarding property sale" ("Husband's Motion"). Husband's Motion alleged that the trial court "told the parties the [trial] court would appoint a receiver to sell" the Mexico Home and the Grain Valley Home (the "Properties").[5] Husband argued the trial court "should consider the

[5] Wife provided this Court with a transcript of the trial as required by Rule 81.12. However, this transcript did not contain any oral findings, conclusions, or recommendations of the trial court made at the conclusion of trial, as referred to in Husband's Motion. Rather, the trial transcript concluded with the trial court stating, "Off the record." Thus, any oral findings purportedly made by the trial court at trial are not considered by this Court. *See Shuttlewagon, Inc. v. Higgins*, 628 S.W.3d 185, 204 n.14 (Mo. App. W.D. 2021) ("Documents, depositions, etc., which are . . . not contained in the legal file[ ] are not part of the record and will not be considered on appeal." (alterations

option of the [P]roperties being transferred into the [T]rust to avoid a receiver's sale [which] would be costly and likely leave the [T]rust as a note holder" against Husband and Wife. Husband also claimed, "The [T]rust wishes to assume the two [P]roperties for the value of the [N]otes [executed by Husband on behalf of the Marriage]. This would make the [T]rust whole again[.]" Finally, Husband offered an alternative proposal on the Trust's behalf, stating, "the [T]rust, through its trustee and beneficiaries, . . . wishes to have a provision that would allow it to bid in its Notes at the sale to acquire the [Properties] into the [T]rust[.]"

The following day, Wife responded in opposition to Husband's Motion. Wife claimed Husband cited "no statutory authority or case law in support of his Motion, making this Motion unsupported by law." Further, Wife argued Husband's proposed transfer of the Properties to the Trust, "who is not a party to this action, ... is a convenient proposed remedy for [Husband], but unsupported by law or fact."

On June 1, 2024, Husband filed an "amended motion to reconsider the [trial] court's ruling from the bench regarding property sale" (Husband's "Amended Motion"). First, Husband alleged that he had resigned as trustee of the Trust. Next, Husband argued, "All beneficiaries of the [T]rust have agreed that the [T]rust would benefit from having the [P]roperties placed back into the [T]rust

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in original) (quoting *Porter v. Toys 'R' Us-Delaware, Inc.*, 152 S.W.3d 310, 322 (Mo. App. W.D. 2004))).

All Rule references are to the Missouri Supreme Court Rules (2025), unless otherwise indicated.

versus having them sold[.]" In support, Husband attached declarations of the Children. In those declarations, the Children each stated, "It is my belief that to preserve the [T]rust assets to the fullest extent possible, as the beneficiary of the [T]rust, that the [Properties] should be returned to the Trust and I make that request to the Court."

Wife filed suggestions in opposition to Husband's Amended Motion on June 18, 2024. Wife contended, "it appears that counsel for [Husband] is advocating for a third party, the . . . Trust, which is not a party to this action . . . . As such, these arguments forwarded by [Husband] are highly improper and should not be considered by this Court." Further, Wife argued, "As a non-party, this Court has no jurisdiction to entertain or consider any arguments which may benefit the . . . Trust." Wife also renewed her claim that Husband's failure to cite "statutory authority or case law in support of his [Amended] Motion" is fatal because his proposed remedy regarding the Properties was "unsupported by law or fact." On October 2, 2024, the trial court granted Husband's Amended Motion by a docket entry stating, "Motion Granted/Sustained."

On January 24, 2025, the trial court entered its Judgment. The trial court ordered the Grain Valley Home and the Mexico Home to be deeded to the Trust.[6]

[6] Regarding payment of marital debts, the trial court concluded that the values of the Mexico Home and the Grain Valley Home "are offset against the debts owed [to the Trust] and shall extinguish the oldest debt first and continue forward extinguishing debts against the [N]otes owed." The trial court further determined that any remaining deficiency shall be split with "[Husband] paying 40% and [Wife] paying 60% of the debt."

The trial court opined that it had "considered various alternatives to reverting the Properties to the trust and has determined that all other potential outcomes would further encumber and take additional monies away from the debt owed to the [T]rust under the various [N]otes[.]" This appeal follows.

Standard of Review

"On review of a court-tried case, [we will] affirm the [trial] court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Craig v. Craig*, 644 S.W.3d 857, 860 (Mo. App. W.D. 2022) (first alteration in original) (quoting *Aldrich v. Aldrich*, 637 S.W.3d 485, 489 (Mo. App. W.D. 2021)). "We defer to the trial court's assessment of the evidence, including its credibility determinations." *Kaderly v. Kaderly*, 656 S.W.3d 333, 338 (Mo. App. W.D. 2022) (citing *Reichard v. Reichard*, 637 S.W.3d 559, 569 (Mo. App. W.D. 2021)). "As such, we view the evidence and reasonable inferences drawn therefrom in the light most favorable to the judgment, disregarding all contrary evidence and inferences drawn therefrom." *Id.* (citing *Reichard*, 637 S.W.3d at 569).

"Concerning the specific issue of property division within a dissolution, such a division is presumed to be correct, and the party challenging the division bears the burden of overcoming the presumption." *Sporleder v. Sporleder*, 655 S.W.3d 1, 7 (Mo. App. W.D. 2022) (internal quotation marks omitted) (quoting *Steele v. Steele*, 423 S.W.3d 898, 905 (Mo. App. S.D. 2014)). This is because the "trial court

has broad discretion in its classification of property as either marital or separate, and in its division of marital property." *Kaderly*, 656 S.W.3d at 338 (citing *Schutter v. Seibold*, 540 S.W.3d 494, 499 (Mo. App. W.D. 2018); and *Rodieck v. Rodieck*, 265 S.W.3d 377, 380 (Mo. App. W.D. 2008)).

Analysis

In her sole point relied on, Wife argues the trial court erred in ordering the Grain Valley Home and the Mexico Home conveyed to the Trust "because the Trust was not a party" to the dissolution action.[7] Specifically, Wife contends, "Missouri law does not allow for the trial court to distribute marital property to third parties who are not [p]arties to the action." We agree.

Section 452.330.1[8] "describes the two-part process a trial court must undertake to divide property and debt during a dissolution proceeding." *Kaderly*, 656 S.W.3d at 340. First, the trial court must "set apart to each spouse such

[7] Husband argues Wife failed to preserve this issue for appeal because she failed to "object at trial or file a post-trial motion[.]" We disagree. Rule 78.07 provides that in cases tried without a jury, "neither a motion for a new trial nor a motion to amend the judgment or opinion is necessary to preserve any matter for appellate review if the matter was previously presented to the trial court." In the present case, Wife contended the transfer of marital property was unsupported by Missouri law in her response to Husband's Motion and in her suggestions in opposition to Husband's Amended Motion. At that time, the trial court had the opportunity to decide the issue presently before this Court. *See L.S.H. v. C.H.*, 652 S.W.3d 408, 412 n.6 (Mo. App. W.D. 2022) (opining that in a bench-tried case, an issue can be preserved for appellate review without the filing of a motion for new trial so long as that issue had previously been presented to the trial court). Thus, Wife did preserve this issue for appeal. We proceed accordingly.

[8] All statutory references are to RSMo (2016), as updated by supplement through the date of Husband's dissolution petition unless otherwise noted.

spouse's nonmarital property." Section 452.330.1. Second, the trial court must "divide the marital property and marital debts in such proportions as the court deems just." *Id.* Here, Wife does not challenge the trial court's classification of property as marital or non-marital. Rather, Wife argues that after classifying certain property as marital, the trial court misapplied the law in dividing certain marital property between the spouses and a third-party who was not a party to the dissolution action.

"[T]he trial court must divide all marital property and debt between the spouses." *Kaderly*, 656 S.W.3d at 340 (citing *Reichard*, 637 S.W.3d at 580). In *Randolph v. Randolph*, 8 S.W.3d 160 (Mo. App. W.D. 1999), we addressed a situation similar to the matter at hand. There, the trial court awarded one-third of all antique furniture owned by husband and wife to each of the parties' three children. *Id.* at 168. The children were not parties to the underlying dissolution action. *Id.* There, "a thorough review of the case law" revealed,

> Although there is authority for a trial court to order a property set off to a nonspouse third party who is made a party to the action, such is not the case here. . . . [W]e find no authority, either in Section 452.330 or in the case law, for the court to distribute marital property to a third party in this case. . . . The [marital property] should have been divided in a just and fair manner between the husband and wife.

Id. at 168-69; *see also Dreyer v. Dreyer*, 657 S.W.2d 363, 364 (Mo. App. E.D. 1983) ("Clearly[,] divestiture of a third party's interest requires joinder of that party" to the dissolution action when a third party has an interest in marital property). This is what has occurred in the instant case. Here, the trial court identified the Mexico

Home and the Grain Valley Home as marital property, then awarded it to the Trust, a non-party to the case. To do so misapplies the law.[9]

As suggested in the cases referenced above, as an alternative to awarding property solely to one of the spouses, "joinder or intervention of third parties is permissible and necessary where such third parties hold or claim some interest in property involved in the proceedings." *Ravenscroft v. Ravenscroft*, 585 S.W.2d 270, 274 (Mo. App. W.D. 1979), *disapproved on other grounds by Hoffmann v. Hoffmann*, 676 S.W.2d 817, 824-25 (Mo. banc 1984).[10] In *Bond v. Bond*, 161 S.W.3d 859 (Mo. App. W.D. 2005), we described how and why third parties are properly joined in a dissolution lawsuit.

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[9] Moreover, Husband argued that the Trust should be awarded the Properties "to avoid a receiver's sale [which] would be costly and likely leave the [T]rust as a note holder," and also claimed "[t]he [T]rust wishes to assume the two [P]roperties for the value of the [N]otes [executed by Husband on behalf of the marriage]. This would make the [T]rust whole again[.]" Setting aside the inherent conflict of interest in Husband's actions throughout his administration of the Trust, actions which the trial court found "defrauded the [T]rust" by using Trust assets "for his personal gain," it is improper for a spouse in a dissolution proceeding to assert the rights of third persons who are not parties to the proceeding. *In re Marriage of Julian*, 868 S.W.2d 182, 187 (Mo. App. E.D. 1994). In *Julian*, husband argued that escrowed funds divided between the parties were actually owned by his father. *Id.* There, the court stated, "Husband is precluded from raising the rights of third persons who are not parties to this proceeding." *Id.*; *see Binkley v. Binkley*, 725 S.W.2d 910, 912 (Mo. App. E.D. 1987) ("Husband cannot raise the rights of third persons that are not parties to this proceeding."). In part, this is because after the division of marital property between the parties to the dissolution action, third parties are "still free to pursue any claims that they have against husband and wife." *Binkley*, 725 S.W.2d at 912.

[10] We do not suggest that it is necessary for a third party to be joined or to intervene in order to resolve the case at hand. And, conversely, on remand, nothing in this opinion would preclude the joinder or intervention of the Trust as a party to the action. However, understanding why third-party joinder or intervention must be utilized *if* an interest in property is to be awarded to a third party is appropriate for a proper understanding of why awarding property to a non-party, such as the Trust, misapplies the law.

> The rationale [for joinder or intervention] rests on the inability of the divorce court to make an equitable division of the property if all claims of interest[ed] owners are not simultaneously adjudicated and the consequent multiplicity of suits or circuity of actions if third parties are left subsequently to litigate their claims with the divorced spouses.

Id. at 860 (quoting *Ravenscroft*, 585 S.W.2d at 274). The *Bond* court explained that "[j]oinder of all the interested parties allows for finality of the judgment and alleviates any due process concerns when the judgment affects property subject to a claim of ownership by an outsider." *Id.*

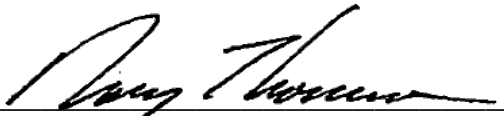
Here, Husband was indebted to the Trust via the Notes, and the trial court classified the Notes as marital debt. The Grain Valley Home and the Mexico Home were held in the names of Husband and Wife. As such, the trial court rightfully characterized the Grain Valley Home and the Mexico Home as marital property. However, the trial court distributed this marital property to the Trust, which was not a party to the dissolution action. In doing so, the trial court stated, "all other potential outcomes would further encumber and take additional monies away from the debt owed to the [T]rust[.]" While this may be true, the trial court determined these issues without input from the Trust as a party to the case. This rightly sets forth due process concerns, as the Trust had no opportunity to be heard on the valuation process of the Properties, or whether the Trust even desired to be the owner of homes in Mexico and Grain Valley. Further, the Grain Valley Home is encumbered by a line of credit in excess of $40,000 executed by Husband and Wife. Thus, the unsecured Notes were ordered to be offset by transferring property

which itself had a lien against it for a loan upon which the Trust was not the payor. The foregoing issues illustrate why—before a trial court renders a decision affecting the rights of a third party—such third party must be a party to the lawsuit and have the opportunity to be heard.

In a dissolution of marriage action, the trial court may only distribute the marital property to the spouses unless a third party has been properly joined or has intervened in the dissolution action, which thereby renders such third party an opportunity to be heard on the issues at hand. Because the Trust was not a party to the dissolution action, the trial court misapplied the law in distributing marital property to the Trust. Point I is granted.

Conclusion

For the foregoing reasons, we reverse and remand for proceedings consistent with this opinion.



W. DOUGLAS THOMSON, JUDGE

All concur.