

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL  
(Memorandum Web Opinion)**

FURMAN V. FURMAN

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STEPHANIE A. FURMAN, APPELLANT,

v.

THOMAS J. FURMAN, APPELLEE.

Filed March 26, 2024. No. A-23-284.

Appeal from the District Court for Box Butte County: TRAVIS P. O’GORMAN, Judge.  
Affirmed as modified.

Adam R. Little, of Nebraska Legal Group, for appellant.

James L. Zimmerman, of Zimmerman Law Firm, P.C., L.L.O., for appellee.

PIRTLE, Chief Judge, and RIEDMANN and WELCH, Judges.

WELCH, Judge.

I. INTRODUCTION

Stephanie A. Furman appeals from the Box Butte County District Court’s order dissolving her marriage to Thomas J. Furman. Stephanie contends that the district court abused its discretion by improperly classifying, valuing, and dividing the marital estate. For the reasons stated herein, we affirm as modified.

II. STATEMENT OF FACTS

1. BACKGROUND

Stephanie and Thomas were married in 2007 and had two children during the course of their marriage: Frances, born in 2012, and Logan, born in 2014.

During the parties’ marriage, Thomas worked at a veterinary clinic originally owned and operated by his father. Stephanie was employed as a research manager until 2012, when she left

that job to work as a part-time receptionist at the veterinary clinic. In October 2020, Stephanie started an eyelash company.

In March 2021, the parties separated. Despite the separation, Stephanie continued to work part-time at the clinic and reside in the marital home. This ended on April 18, when Thomas asked Stephanie to leave the marital home, terminated her employment at the veterinary clinic, and removed her from the business bank accounts. By agreement, the children remained with Thomas in the marital home.

In May 2022, Stephanie filed a complaint for dissolution of the parties' marriage. The trial was held in January 2023. We summarize only the facts that relate to Stephanie's assignments of error.

## 2. REAL PROPERTY

Prior to their marriage, Thomas and Stephanie resided together in Thomas' home, which they refer to as "the farm." The parties sold the farm in 2009 after purchasing the marital home. During the parties' marriage, they purchased several properties including: (a) "The Ranch"; (b) a rental property; and (c) the "Additional Ranch."

### (a) "The Ranch"

In 2009, the parties purchased 14.59 acres of land on which the marital home and various outbuildings are located, that they refer to as "the Ranch." One of those outbuildings was a machine shed. The machine shed was valued at \$108,000 with one-half of the shed owned by Thomas' father.

Thomas testified that "we didn't have enough money to purchase the entire ranch because we also still had the farm, [so] we purchased the 14 acres and then mom and dad purchased all the ground around it. So they had all the ranch ground and we had the 14-acre homeplace." The surrounding ranch purchased by Thomas' parents was approximately 448.47 acres. Throughout this opinion we will refer to the 14.59 acres which includes the marital home as the "Ranch," and we will refer to the additional 448.47 acres which was subsequently purchased from Thomas' parents as the "Additional Ranch."

Brian Mischnick, a general contractor, testified that he had completed an estimate of the cost to repair the settling of the marital home's foundation. According to Mischnick, there was a large crack in the foundation of the marital home and "[i]t's tough to tell exactly what's happening, but something is definitely moving with that big of a gap and it's tough to tell with the Sheetrock in the way and the foam. . . . you can't see exactly what's happening, but something is moving." Mischnick also testified that there was some settling with the front step. Mischnick estimated that repairs would cost a total of \$121,745. This estimate contained two parts: (1) an estimate of \$33,615 to repair the marital home's foundation, and (2) \$88,130 to remove and replace the front porch.

### (b) Rental property

During the parties' marriage, they also purchased a rental property. Stephanie valued the rental property at \$72,877, whereas Thomas testified that the parties had previously agreed that the value of the rental property was \$82,000, but added "earlier last week I checked with a couple

different realtors and [the value of the rental property] was closer to 90,000, but Stephanie and I at one point agreed on 82,000, so we'll just leave it at that if she's okay with it."

(c) "Additional Ranch"

In 2021, Thomas and Stephanie decided to remodel the veterinary clinic. To finance the remodel, they attempted to secure a construction loan using the Ranch's 14.59 acres as collateral; however, they were informed that they needed additional collateral to be approved for the loan. In order to facilitate the loan, Thomas' parents agreed to sell them the Additional Ranch for \$275 per acre. The funds to purchase the Additional Ranch came from a trust account that Thomas' parents had set up for him prior to the parties' marriage. Thomas' parents transferred the Additional Ranch to Thomas and Stephanie via a joint tenancy quitclaim deed in November 2021. Thereafter, Thomas and Stephanie used the Ranch and the Additional Ranch as collateral to obtain a loan to remodel the veterinary clinic.

For the sake of clarity, we note that for the purposes of dividing the parties' assets, the appraiser valued a total of 809.39 acres that included the Ranch and the Additional Ranch. The Ranch and the Additional Ranch comprised 463.06 acres. The valuation report indicates that the remaining 346.33 acres consisted primarily of pastureland. It is unclear from the record when the parties acquired the additional 346.33 acres of pastureland.

3. VETERINARY CLINIC

During the parties' marriage, Thomas worked at a veterinary clinic originally owned and operated by his father. They refer to the clinic as the "Animal Center." However, the Animal Center did not own the real estate, the improvements including the veterinary building, and the equipment for the veterinary clinic; instead, these assets were separately held in Furman Holdings, LLC, (Furman Holdings) of which Thomas' father and mother were the sole members. To summarize, the "Animal Center" was the veterinary clinic's operating business and Furman Holdings owned the veterinary clinic's land, building, and equipment.

Sometime around 2006, Thomas entered into a series of contracts with his father which provided that, for every year worked at the veterinary clinic, Thomas would gain a 5 percent equity interest in the Animal Center. Pursuant to the contracts, after acquiring a 50 percent interest in the Animal Center, Thomas could exercise an option to purchase the remaining 50 percent ownership in the Animal Center from his father for \$500,000. If Thomas chose not to exercise the option, Thomas was to inherit the remaining interest in the Animal Center upon his father's death. Although Thomas acknowledged that by 2015, he had acquired a 50 percent ownership interest in the Animal Center, he declined to exercise his option to purchase his father's 50 percent ownership in the Animal Center, so Thomas began leasing the real estate, the improvements including the veterinary building, and the equipment, from Furman Holdings for \$5,000 per month. Thomas paid his father another \$1,000 per month for consulting services. At some point thereafter, Thomas and Stephanie opened a joint business checking account for the Animal Center.

In 2021, Thomas and Stephanie began discussing remodeling the veterinary clinic's building. Although it is unclear from the record why Thomas and Stephanie would take out a loan to remodel the veterinary clinic building, which was owned by Furman Holdings, not them, they used the Ranch and the Additional Ranch as collateral to obtain a \$500,000 business line of credit

to be used to remodel the veterinary clinic building and to purchase certain business assets. The remodel began in January 2022. During that same month, Thomas transferred his interest in the Animal Center to Furman Veterinary, LLC, (Furman Veterinary) of which he was the sole member. The record is unclear as to what, if any, interest Thomas' father retained in the Animal Center prior to this transfer. The record contains Thomas' 2020 and 2021 tax returns, which report income from the Animal Center on "Schedule C." But because tax returns for Thomas' father for those years are not in evidence, it is unclear whether Thomas' father continued to own an interest in the Animal Center prior to Thomas transferring his interest in the Animal Center to Furman Veterinary in January 2022.

In summary, in January 2022, Thomas transferred the assets of the Animal Center to Furman Veterinary of which Thomas was the sole member. In order to maintain consistency throughout this opinion, we will continue to refer to the assets of Furman Veterinary as the assets of the Animal Center. The veterinary clinic's land, building, and most of its equipment was still owned by Furman Holdings, of which Thomas' parents were the sole members.

The evidence established that at the time of Thomas and Stephanie's separation in April 2021, the business checking account balance was \$102,916.29. However, after the parties' separation, Thomas learned that Stephanie had withdrawn \$20,838.13 out of the business checking account and \$18,800.06 out of the clinic construction loan account. This led to Thomas terminating Stephanie's employment at the veterinary clinic and removing Stephanie's name from the business accounts.

#### 4. COURT ORDER

In March 2023, the district court entered a decree dissolving the parties' marriage. The court awarded Thomas sole legal and physical custody of the parties' children, divided the parties' marital estate, and ordered Thomas to pay an equalization payment to Stephanie in the amount of \$3,500. We set forth in detail the court's findings regarding: (a) the division of real property; (b) the division of the Animal Clinic and business debt; and (c) Stephanie's misappropriation of Animal Clinic funds.

##### (a) Division of Real Property

In its order, the court determined the classification and valuation of (i) the Ranch, (ii) the Additional Acres, (iii) the rental property, (iv) the remaining 346.33 acres, and (v) the debt associated with the marital real property. We note that, because the court determined that the Ranch consisted of 14 acres, instead of the 14.59 acres supported by the evidence, the court's determination of the number of acres contained in the Ranch and Remaining Acres differs slightly from our determinations. The court identified the Ranch as having 14 acres; the record indicates that the Ranch has 14.59 acres. The court identified that the Remaining Acres had 346.92 acres, whereas the evidence indicated that the Remaining Acres had 346.33 acres. Although the briefs use the numbers provided in the district court's opinion, for consistency and for the ease of the reader, throughout this opinion we use the correct number of acres as supported by the record.

*(i) The Ranch*

The court found that the Ranch was a marital asset, which it awarded to Thomas. In valuing the Ranch, the district court stated:

The Appraisal shows a value of \$465,000.00. Half of the machine shed is owned by [Thomas' father] so \$54,000.00 must be deducted. In addition, Mischnick testified that repairs are necessary to the home in the amount of \$121,745.00. That should also be deducted. The Court values the [Ranch consisting of] 14[.59] acres, home and outbuildings at \$289,255.00.

*(ii) Additional Ranch*

The court determined that the 448.47 acres of the Additional Ranch was premarital property and awarded it to Thomas. The court found that the Additional Ranch was purchased with money from a trust set up for Thomas by his parents prior to the parties' marriage. The court further found that the Additional Ranch was titled in Thomas and Stephanie's names "only because the construction loan was to be in both names" and there was no testimony that titling the Additional Ranch in both Thomas and Stephanie's names was ever intended to be a gift to Stephanie.

*(iii) Rental Property*

The court found that the rental property was marital property, valued at \$80,000, and awarded it to Thomas. The court noted that "Stephanie testified she does not want this property."

*(iv) Remaining 346.33 Acres*

The court awarded Thomas the remaining 346.33 acres, which the court valued at \$500 per acre.

*(v) Debt Associated With Real Property*

Having awarded all of the marital real property to Thomas, the court also assigned him the \$242,279 in debt associated therewith.

*(b) Animal Clinic and Business Debt*

The court found that the value of the Animal Clinic was \$10,120 which consisted of the following assets: a dental x-ray machine valued at \$3,000; an anesthesia machine valued at \$2,495; four computers valued at \$1,200; three desks valued at \$1,500; a microwave valued at \$25; a centrifuge valued at \$400; and a video odoscope valued at \$1,500. The district court awarded no value for goodwill because "[t]here was no testimony regarding any 'goodwill' in the [Animal Clinic]." The court assigned the Animal Clinic construction debt of \$438,891 to Thomas.

*(c) Findings Regarding Stephanie's Misappropriation of Animal Clinic Funds*

Regarding Stephanie's misappropriation of Animal Clinic funds, the district court noted that:

Although the division of property in this case may seem as though Thomas received the bulk of the property, the evidence showed in this case that Stephanie took a substantial sum from the marriage. She was entrusted with the books and accounts of the [Animal

Center] and diverted money to her own personal use. She was offered, and would have been awarded, the rental [property,] but testified she does not want it.

Specifically, the court found that Stephanie “paid over \$108,000.00 on her personal credit cards from mainly veterinary clinic accounts.”

The court also noted that Stephanie paid \$1,500 to her boyfriend from the construction loan account for work that was never performed, and that after her exit from the Animal Clinic, Stephanie appropriated for her personal use 344,109 credit card points that had been earned from purchases on an Animal Clinic credit card. The court further observed that “[t]he evidence shows that Stephanie took money intended for her children” and that Stephanie’s “extravagant spending has continued as she has run up over \$116,000.00 in credit card debt” since the parties’ separation.

### III. ASSIGNMENTS OF ERROR

On appeal, Stephanie contends that the district court abused its discretion in improperly classifying, valuing, and dividing the marital estate. Specifically, she claims, restated, that the court abused its discretion in: (1) improperly valuing the Ranch by deducting \$121,745 from the value of the marital home for prospective repairs; (2) improperly valuing the rental property at \$80,000 when testimony placed the value at “closer to” \$90,000; (3) awarding the veterinary clinic to Thomas at no value and including the business loans in the marital estate; (4) classifying the Additional Ranch as nonmarital property and failing to classify the appreciation in value of the Additional Ranch as marital property; (5) improperly valuing the 346.33 Remaining Acres at \$500 per acre instead of \$615 per acre; and (6) dividing the marital estate inequitably such that Thomas received significantly greater than two-thirds of the marital estate.

### IV. STANDARD OF REVIEW

In a marital dissolution action, an appellate court reviews the case de novo on the record to determine whether there has been an abuse of discretion by the trial judge. *Radmanesh v. Radmanesh*, 315 Neb. 393, 996 N.W.2d 592 (2023). This standard of review applies to the trial court’s determinations of alimony and property division. *Id.* In a review de novo on the record, an appellate court is required to make independent factual determinations based upon the record, and the court reaches its own independent conclusions with respect to the matters at issue. *Id.* When evidence is in conflict, the appellate court considers and may give weight to the fact that the trial court heard and observed the witnesses and accepted one version of the facts rather than another. *Id.*

A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. *Id.*

### V. ANALYSIS

Before reaching the merits of Stephanie’s assigned errors regarding the division of the marital estate, we briefly summarize the relevant law regarding the division of marital property.

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.*

Under § 42-365, the equitable division of property is a three-step process. *Karas v. Karas*, 314 Neb. 857, 993 N.W.2d 473 (2023). The first step is to classify the parties' property as either marital or nonmarital, setting aside the nonmarital property or nonmarital portion of the property to the party who brought the property to the marriage. *Id.* The second step is to value the marital assets and marital liabilities of the parties. *Id.* And the third step is to calculate and divide the net marital estate equitably between the parties. *Id.*

Generally, all property accumulated and acquired by either spouse during a marriage is part of the marital estate. *Id.* Marital debt includes only those obligations incurred during the marriage for the joint benefit of the parties. *Id.* The burden of proof rests with the party claiming that property is nonmarital. *Id.*

Here, Stephanie generally challenges the district court's division of the parties' marital estate. More specifically she argues that the district court erred in: (1) valuing the Ranch; (2) valuing the parties' rental property; (3) valuing the assets and debts of the veterinary clinic; (4) classifying the Additional Ranch's 448.47 acres and appreciation in value as nonmarital property; and (5) valuing the remaining 346.33 acres of pastureland at \$500 per acre. We will address each assignment independently.

#### 1. VALUE OF RANCH

Stephanie first argues that the district court erred in valuing the Ranch by improperly reducing its overall value, dollar for dollar, due to repair issues with the marital home's foundation.

In its order, the district court observed that the appraised value of the Ranch was \$465,000. The value of the Ranch was obtained from an appraisal report offered and received into evidence. Within that report, the appraiser examined the cost approach, the market value approach, and the income approach, in valuing the parties' entire 809.39 acres of land with improvements. The appraiser indicated that the cost and valuation approaches were more determinative of value and noted that all improvements were located on the 14.59 acres of the Ranch. The valuation ultimately valued the Ranch at \$465,000, and Stephanie does not take issue with that valuation. However, the appraiser noted that "[t]he appraisal is based on the extraordinary assumption that the dwelling does not have any structural concerns beyond normal settling . . . If any information is found to be false it could alter the appraiser[']s opinions and conclusions." And, during the trial, Mischnick testified that he estimated repair costs for the marital home of \$121,745. The district court utilized the \$121,745 repair cost as a dollar-for-dollar reduction to the value of the Ranch which included the marital home.

The appraiser who authored the valuation report was not a witness at trial. Accordingly, we are left only with the valuation report which indicated that the marital home was valued subject to the assumption that it did not have structural defects beyond normal settling and that information to the contrary "could alter the appraiser[']s opinions." As such, there was no evidence adduced linking the condition described by Mischnick to the appraiser's opinion contained with the

appraisal report. The district court, as fact finder, was left to speculate whether the condition described by Mischnick would be considered more than ordinary settling and, if so, how much value that structural defect would impact the value of the marital home.

As it relates to the former, Mischnick's testimony included the following colloquy:

Q Do you feel the property is safe to continue to reside in currently?

A. I do.

Q. Do you feel this is a project that is needing to be done in more or less than 10 years?

A. Kind of depends. If it continues to get worse, I would say it would definitely need to be done. If it stays exactly where it's at, then it probably wouldn't need to be done.

Q. When would be a good time to re-evaluate whether it's staying or growing?

A. You . . . just keep watching it, start checking it once a month and see what it's doing and go from there.

As it relates to the latter, there is no evidence of how much, if any, the condition would reduce the value of the Ranch. Nevertheless, the district court reduced the value of the Ranch, which contained the marital home dollar for dollar for Mischnick's estimated costs of repair. Because there was no evidence in the record which limited the potential cost of repair to the overall value of the marital home, we find that the dollar-for-dollar reduction for the estimated cost to repair the home was an abuse of discretion and we will discuss the impact of this error later in this opinion.

## 2. RENTAL PROPERTY

Stephanie next argues that the district court erred in valuing the rental property at \$80,000 when Thomas testified that the property was worth "closer to \$90,000." She asserts that the \$10,000 difference in value is significant in the context of the parties' \$21,672 net marital estate.

Here, the parties agreed that they purchased the rental property for \$72,877. Stephanie's proposed division of assets and debts, which was offered and received into evidence, valued the rental property at \$72,877. In discussing the current value of the rental property, Thomas stated that "earlier last week I checked with a couple different realtors and it was closer to 90,000, but Stephanie and I at one point agreed on 82,000, so we'll just leave it at that if she's okay with it." Although there may be a dispute as to the value of property, so long as there is evidence to support the court's valuations, a court's valuation of the property will not be considered an abuse of discretion. *Staman v. Staman*, 225 Neb. 864, 408 N.W.2d 320 (1987). Because the district court valued the rental property between Stephanie's value of \$72,877 and Thomas' proposed value of \$82,000, we find no abuse of discretion in the court's valuation of the rental property notwithstanding Thomas' additional remarks related to the rental property's value.

## 3. ALLEGED ERRORS INVOLVING VALUATION OF ANIMAL CENTER

Stephanie's assignments of error related to the Animal Center are that the district court erred in (a) assigning no value to the Animal Center when the record established that its business checking account had a value of at least \$102,916.29 at the time of the parties' separation, and (b)



classifying \$438,891 of business loan as marital debt without assigning a more realistic value to the Animal Center.

(a) Valuation of Animal Center

We first address Stephanie's claim that the district court erred in assigning no value to the Animal Center. In connection therewith, she contends that the district court erred in failing to include a value for goodwill and failed to consider evidence that the Animal Clinic's business checking account had a value of at least \$102,916.29 at the time of the parties' separation.

The valuation of a business is a question of fact. *Becher v. Becher*, 299 Neb. 206, 908 N.W.2d 12 (2018). To determine the value of a closely held corporation, the trial court may consider the nature of the business, the corporation's fixed and liquid assets at the actual or book value, the corporation's net worth, marketability of the shares, past earnings or losses, and future earning capacity. *Shuck v. Shuck*, 18 Neb. App. 867, 806 N.W.2d 580 (2011), *abrogated on other grounds*, *Stephens v. Stephens*, 297 Neb. 188, 899 N.W.2d 582 (2017). The method of valuation used for a closely held corporation must have an acceptable basis in fact and principle. *Id.*

During the trial, Stephanie testified that the Animal Center was worth \$981,000. Thomas disagreed with this valuation because he did not own the clinic building, the land it sits on, or a majority of the veterinary clinic's equipment. Thomas testified that he pays his father \$6,000 per month in rent for the building, equipment, and for consulting services. According to Thomas, their rental contract is effective through December 2027.

The evidence at trial indicated that although Thomas owned 50 percent of the Animal Center as of 2015, the evidence was unclear whether he ever acquired the remaining 50 percent of the business from his father. Although Thomas' 2020 and 2021 tax returns reflected business income, we are unable to determine from this record whether Thomas' father separately reported income from the Animal Center during those years. And although these tax returns and certain financial records indicate revenue and expenses associated with this operating business at different times, the parties failed to provide any evidence of how those financials translated into a value for the Animal Center.

In its order, the district court noted that, in August 2021, the Animal Clinic "went from a sole proprietorship to an LLC, with [Thomas] as the only member." The district court found that the only value of the clinic comprised of the physical assets testified to by Thomas, which included the following items and court-assigned values: \$3,000 for a dental x-ray machine; \$2,495 for an anesthesia machine; \$1,200 for four computers; \$1,500 for three desks; \$25 for a microwave; \$400 for a centrifuge; and \$1,500 for a video odoscope. The court noted that other assets including the "the clinic building, corrals, outbuildings, and land are owned by Furman Holdings . . . of which Thomas' parents are the only members." The value of the Animal Clinic, which was awarded to Thomas, totaled \$10,120, with no value assigned to goodwill. Thus, contrary to Stephanie's argument, the court did not assign zero value to the Animal Center; the court valued the Animal Center at \$10,120 based upon the Animal Center's assets excluding assets owned by Furman Holdings.

Due to the lack of evidence adduced at trial regarding the value of the Animal Center, the district court was placed in the unenviable position of ascribing value to the Animal Clinic, a veterinary operating company, without any expert analysis of how the entity should be valued and

what considerations would support its value. Under these circumstances, the district court utilized the asset value ascribed to the newly acquired equipment owned by the Animal Center which was purchased by, and for, that business. Without any testimony to assist the trier of fact related to the valuation utilized, we find no abuse of discretion associated with the court's determination.

Regarding Stephanie's claim that the district court erred in not assigning any value to the goodwill of the Animal Center, in its order, the district court found that there was no evidence provided to support a value of goodwill in the Animal Center. We agree. Although Stephanie, who represented herself during the proceedings, attempted to offer a business valuation report to support her proposed value of the Animal Center, the district court sustained Thomas' foundation and hearsay objections to that document. There was no expert testimony adduced at trial regarding the valuation of the Animal Center. Accordingly, the district court did not err in assigning no value to goodwill for the Animal Center.

We likewise reject Stephanie's claim that the district court erred in not including the cash balance in Animal Center's business checking account on the date of the parties' separation. The balance of the business checking account at the time of the parties' separation simply represents a snapshot of the money in that account at that moment in time. Assuming that the Animal Center was to be valued at its book value or net worth, the fact finder would need to know the business' corresponding liabilities or payables at that same moment in time or other evidence which would support a claim that balance of the Animal Center's business checking account balances on that particular day are representative of the business' overall value. Accordingly, we find that the district court did not abuse its discretion in not using the balance contained in the Animal Center's business bank account on the date of parties' separation as representative of the business' value on the date of the parties' separation.

And although Stephanie argues that the business checking account contained at least \$102,916.29 at the time of the parties' separation, Thomas testified that, following the parties' separation, Stephanie removed a total of \$21,838.13 from the Animal Center's business checking account and removed \$18,800.06 out of Animal Center's construction loan account for her personal use. Altogether, the district court found that Stephanie removed over \$108,000 from "veterinary clinic accounts" and we find no abuse of discretion by the court in failing to include the amounts contained in the Animal Center's business accounts as indicative of its business value. This assignment fails.

(b) Classification of Animal Center  
Remodel Loan as Marital Asset

Stephanie next argues that the district court placed no value on the Animal Center veterinary business yet classified the \$438,891 business remodel loan as marital property, which essentially wiped out the entire equity of the marital estate. Stephanie argues that, because the Additional Ranch, which was classified as nonmarital, was used as collateral to secure the loan, and no value was assigned to the Animal Center, the business loan should not have been classified as a marital debt. She specifically argues

if Thomas gets the benefit of setting aside the 448.[4]7 acres of [the Additional Ranch] as non-marital, inclusion of the debt against that property should convert the same to a marital asset. In other words, the property was owned outright and jointly held by the parties prior

to incurring any loan. This loan was then acquired by using that property as collateral to improve an asset that only Thomas will receive the benefit of.

Brief for appellant at 14.

It is well settled in Nebraska that marital debt includes only those obligations incurred during the marriage for the joint benefit of the parties. *Radmanesh v. Radmanesh*, 315 Neb. 393, 996 N.W.2d 592 (2023). This is a flexible, fact-specific standard. *Id.* Where there was no evidence, or competing evidence, as to whether the parties agreed to incur a debt during the marriage for their joint benefit, we have given weight to trial courts' credibility assessments and generally found no abuse of discretion in their factual findings. *Id.*

Here, the parties do not dispute that, during their marriage, they obtained a loan for the purpose of remodeling the veterinary clinic building, that the Ranch and Additional Ranch were used as collateral for that loan, and that both parties signed the loan documents. Stephanie testified that the Animal Center's building was 30 to 40 years old, that it had not been remodeled, and that the remodel would provide additional office space, exam rooms, and treatment space. We are somewhat perplexed as to why the parties would fund improvements to the building which they did not own. That said, the improvements were also designed to improve the Animal Center operating business which was undisputably marital property.

Stephanie also claims that the court inequitably divided the marital estate by awarding Thomas the Animal Center, valued at \$10,120, and the associated debt of \$438,891. Under these circumstances, although the Animal Center loan was clearly a marital debt, the court assigned the entire amount of that debt to Thomas, which reduced the parties' net marital estate that Stephanie claims resulted in an inequitable division of the parties' marital property. Although we recognize that the property division might appear more equitable if more value had been assigned to the Animal Center's operating business, the fact that Stephanie failed to present evidence during the trial which supported a larger value for the Animal Center does not change the character of the business loan which was clearly a marital obligation.

Having failed to produce evidence supporting a greater valuation of the Animal Center, we find no abuse of discretion with the court's classification of the \$438,891 Animal Center debt as marital and, as we previously concluded, find no abuse of discretion associated with the value the court assigned to the business.

#### 4. ASSIGNED ERRORS REGARDING ADDITIONAL RANCH

Stephanie's assignments of error related to the Additional Ranch are that the court erred in (a) classifying the Additional Ranch as nonmarital property and (b) failing to classify the appreciation in the value of the Additional Ranch as marital property.

##### (a) Classification of Additional Ranch

Stephanie contends that the district court erred in classifying the 448.47 acres of the Additional Ranch as nonmarital on the basis that: (i) there was insufficient evidence to support Thomas' claim that the land was purchased with his nonmarital trust funds; (ii) the Additional Ranch lost its nonmarital status because it was titled to her and Thomas jointly; and (iii) the

Additional Ranch lost its nonmarital status by being pledged to support a marital debt. We will address these arguments independently.

*(i) Purchased With Trust Funds*

Stephanie contends that there was insufficient evidence to support Thomas' claim that the land was purchased with his nonmarital trust funds.

Gifts and inheritances, even when received during the marriage, are presumed to be nonmarital. *Burgardt v. Burgardt*, 304 Neb. 356, 934 N.W.2d 488 (2019). Further, the Nebraska Supreme Court has stated that documentation is not always required and that testimony is a kind of evidence that can still satisfy the burden of proof. See *Burgardt v. Burgardt, supra* (finding that party seeking classification of property in dissolution proceeding may find it easier to meet burden of persuasion with documentary support, but its absence does not automatically defeat claim).

Here, Thomas, and his parents, testified at trial that Thomas' parents started a trust fund for him when he was a child, that Thomas had not used any trust funds prior to the purchase of the Additional Ranch, and that the trust fund monies were directly utilized to purchase the Additional Ranch from his parents at a price below market value. Stephanie did not dispute this claim.

Although there was no documentary evidence offered at trial which supported the actual transaction, we find the corroborating testimony of Thomas and both of his parents sufficient for the court to conclude that the purchase of the Additional Ranch with Thomas' nonmarital trust fund, together with the below market sales price provided by Thomas' parents, supported the court's classification of the Additional Ranch as nonmarital property following its purchase.

*(ii) Additional Ranch Titled in Joint Tenancy*

Next, Stephanie argues that even if we determine the Additional Ranch was nonmarital property because it was purchased with funds from Thomas' nonmarital trust, the Additional Ranch lost its character as nonmarital property because Thomas' parents deeded the property to Thomas and Stephanie as joint tenants.

But titling the Additional Ranch as a joint tenancy does not end our inquiry. As the Nebraska Supreme Court noted in *Schuman v. Schuman*, 265 Neb. 459, 469-70, 658 N.W.2d 30, 39 (2003):

The manner in which property is titled or transferred by the parties during the marriage does not restrict the trial court's determination of how the property will be divided in an action for dissolution of marriage. As a general rule, all property accumulated and acquired by either spouse during the marriage is part of the marital estate, unless it falls within an exception to the general rule. *Heald v. Heald*, 259 Neb. 604, 611 N.W.2d 598 (2000). To the extent that the Court of Appeals' opinion in *Gerard-Ley* can be interpreted to mean that nonmarital property which during a marriage is titled in joint tenancy cannot be considered as a nonmarital asset in an action for dissolution of marriage, such interpretation is expressly disapproved.

How property inherited by a party before or during the marriage will be considered in determining the division of property or an award of alimony must depend upon the facts of the particular case and the equities involved. *Tyma v. Tyma*, 263 Neb. 873, 644 N.W.2d

139 (2002). If the inheritance can be identified, it is to be set off to the inheriting spouse and eliminated from the marital estate. *Id.*

Applying the foregoing principles of law, as we already mentioned, the Additional Ranch was purchased with Thomas' nonmarital trust funds and he received a below market gift from his parents towards the purchase price. Thomas' parents testified that the purpose of this gift was to provide Thomas with collateral to secure a business loan. They further testified that Stephanie's name was placed on the title solely to support the loan arrangement and not to suggest that a gift was made to her. Here, the gifted proceeds can be directly traced to the purchase of the Additional Ranch and we find no abuse of discretion in the district court's determination that the Additional Ranch remained nonmarital despite the fact that Stephanie was listed as joint tenant on the title. This argument fails.

*(iii) Collateral For Loan*

Finally, Stephanie argues that because the Additional Ranch was pledged as collateral to secure a marital debt, that action should result in the Additional Ranch being classified as marital property. Stephanie cites no authority in support of this position.

We note that in *Becher v. Becher*, 299 Neb. 206, 908 N.W.2d 12 (2018), the Nebraska Supreme Court found that a monetary gift given to the wife by her father during the parties' marriage did not lose its nonmarital status when used to purchase a building. Further, the portion of another monetary gift to the wife by her father did not lose its nonmarital status when used to pay off the mortgage on the marital home. *Id.* Other jurisdictions have ruled similarly. See, *Rennert v. Rennert*, 307 So. 3d 1021 (Fla. App. 2020) (borrowing against husband's nonmarital real property to obtain new marital property did not cause property to lose its nonmarital status); *Higgins v. Higgins*, 226 So. 3d 901 (Fla. App. 2017) (nonmarital property did not become marital property because it was used as security for marital line of credit); *Bullock v. Bullock*, 218 So. 3d 265 (Miss. App. 2017) (use of nonmarital real property as collateral for loan to purchase marital home did not convert nonmarital property into marital property); *In re Marriage of Corak*, 412 P.3d 642 (Colo. App. 2014) (use of husband's separate real estate as collateral for line of credit did not turn it into marital property); *Layman v. Layman*, 62 Va. App. 134, 742 S.E.2d 890 (2013) (use of inherited real property to secure a loan did not transmute into marital property); *Fashingbauer v. Fashingbauer*, 19 So. 3d 401 (Fla. App. 2009) (finding that husband's use of nonmarital property to obtain line of credit used to purchase marital property did not transform nonmarital property into marital property); *Jones v. Jones*, 904 So. 2d 1143 (Miss. App. 2004) (affirming chancellor's classification of wife's property as separate when land had been used to secure loan to build marital home). See, also, *Giannuzzi v. Kearney*, 74 N.Y.S.3d 123, 160 A.D.3d 1079, (2018) (pledge of premarital stock as collateral for loan used to acquire several parcels of real property "did not transmute all or any portion of the stock").

Similar to listing the title in both names, we find that the gifted property, which can be identified, requires the property to be set off to the inheriting spouse and eliminated from the marital estate. As such, we reject Stephanie's arguments that the district court abused its discretion in classifying the Additional Ranch as nonmarital property. This claim fails.

(b) Classification of Appreciation of Additional Acres

Stephanie's second claim regarding 448.47 acres comprising the Additional Ranch is that, even if the district court did not err in finding that the Additional Ranch was nonmarital property, the court still erred in failing to classify the appreciation in value of the Additional Acres as marital property.

In *Bornhorst v. Bornhorst*, 28 Neb. App. 182, 196, 941 N.W.2d 769, 780 (2020), this court stated:

The appreciation or income of a nonmarital asset during the marriage is marital insofar as it was caused by the efforts of either spouse or both spouses. *White v. White*, 304 Neb. 945, 937 N.W.2d 838 (2020); *Stephens v. Stephens*, 297 Neb. 188, 899 N.W.2d 582 (2017). The active appreciation rule sets forth the relevant test to determine to what extent marital efforts caused any part of the appreciation or income. *Id.* Appreciation caused by marital contributions is known as active appreciation, and it constitutes marital property in the first instance. *Id.* In contrast, passive appreciation is appreciation caused by separate contributions and nonmarital forces. *Id.*

Accrued investment earnings or appreciation of nonmarital assets during the marriage are presumed marital unless the party seeking the classification of the growth as nonmarital proves: (1) The growth is readily identifiable and traceable to the nonmarital portion of the account and (2) the growth is not due to the active efforts of either spouse. *Id.*

In *Parde v. Parde*, 313 Neb. 779, 792, 986 N.W.2d 504, 515 (2023), the Nebraska Supreme Court recently held:

The burden is on the owning spouse to prove the extent to which marital contributions did not cause the appreciation or income. With respect to the evidentiary burden, the treatise explained why placing the burden of proof on the owning spouse was the better policy. To start, it is consistent with the general rule that the burden of proof rests with the party claiming that property is nonmarital. Further, it places the burden of proof upon the spouse who, as the owner of the property, has the best access to the relevant evidence. Doing so helps to curtail abuses of the discovery process by owning spouses, who are sometimes reluctant or unwilling to comply with discovery.

But the active and passive appreciation rules would only apply in the event there is appreciation associated with the nonmarital property. Here, it is unclear whether there has been any appreciation of the Additional Ranch. The parties testified that the Additional Ranch was initially purchased by Thomas' parents and was transferred to Thomas at a below market price of approximately \$123,000, without discussion of what the actual market price was at the time of the purchase of the Additional Ranch from Thomas' parents. Because there was no evidence of whether the current market price of the Additional Ranch as depicted in the valuation includes any appreciation in value from when it was first purchased, we find no abuse of discretion in allocating the current market value of the Additional Ranch to Thomas.

## 5. VALUATION OF REMAINING 346.33 ACRES

Stephanie contends that the district court abused its discretion in valuing the remaining acres at \$500 per acre instead of \$615 per acre. We note that although Stephanie contends that there were 346.92 remaining acres, by our calculation, there were 346.39 remaining acres. Stephanie argues

that same appraisal indicates that the unimproved real estate had a net value of \$615.00 per acre. . . . The District Court appears to have cherry picked the \$500.00 per acre value from the cost approach analysis, disregarding the fact that the remainder of the appraisal harmonized the valuation across three different approaches. . . . The evidence clearly demonstrates that this land was worth at least \$615.00/acre, with 346.92 [sic] acres having a total value of \$213,355.80. This \$39,895.80 difference by itself is more than twice the net marital estate found by the District Court.

Brief for appellant at 16-17.

The district court's order provided that "[a]fter deducting the 14[.57] acres [of the Ranch] as well as the premarital 448.47 [Additional Acres,] there remains 346.[33] acres of marital land. The appraiser placed a value of \$500.00 per acre on this land." Using the \$500 per acre value multiplied by 346.92 acres results in a value of \$173,165 for the Additional Acres.

Based on our review of the record, the appraisal provided that the property consisted of 809.39 total acres including pastureland and two building sites. The pastureland made up 784.91 acres and the two building sites totaled 22.69 acres (including the 14.59 acre Ranch). After subtracting 14.59 acres of the Ranch (which included the marital home) and the 448.47 Additional Acres, which the district court determined to be nonmarital, 346.33 acres of pastureland remained in the marital estate to be divided. We find that Stephanie's claim that the remaining 346.33 acres of pastureland should be valued at \$615 per acre constitutes an incorrect reading of the valuation report.

Although the valuation report used \$615 as a blended rate for all the real property included in the report, the report clearly differentiated the rate for pastureland and the building site acres. For instance, the appraiser noted that the 8.1 acres of building site land not located on the Ranch appraised for around \$6,500 per acre. As such, once the building sites are removed from the analysis; the pastureland rate is significantly less than \$615 per acre. And because the 364.33 acres consists of pastureland, the court was required to adopt a price for that property classification. Notably, the district court utilized a value of \$500 per acre, pulled directly from the cost basis analysis provided in the report, which the appraiser indicated provided a good indication of value. As such, we find no error associated with the district court's valuation of the remaining 346.33 acres of pastureland at \$500 per acre for a total value of \$173,165 for the Remaining Acres.

## 6. INEQUITABLE DIVISION OF MARITAL ESTATE

Stephanie's final assignment of error is that the district court inequitably divided the parties' marital estate. She contends that the court allocated less than one-half of the value of the parties' marital estate to her.

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.*

Here, after awarding Thomas \$15,872 of marital property and awarding Stephanie \$5,800 of marital property, the court ordered Thomas to pay Stephanie an equalization payment of \$3,500. Although we adjust the equalization payment based upon our determination of the increased valuation of the Ranch, we find that, on this record, the court's allocation of the parties' marital estate was within the polestar range of fairness and did not constitute an abuse of discretion.

## VI. CONCLUSION

We reject Stephanie's arguments that the district court erred in valuing the Additional Ranch, the Animal Center, the rental property, and the Remaining Acres, or in inequitably dividing the parties' marital estate. However, we find that the district court erred in reducing the value of the Ranch by \$121,475. Accordingly, after increasing the value of the Ranch by that amount, we find that the marital assets assigned to Thomas totaled \$818,517 with liabilities of \$681,170, with a net marital estate awarded to Thomas of \$137,347. The net marital estate awarded to Stephanie was \$5,800. Applying the same percentage allocated by the district court in determining an equalization payment, Thomas' equalization payment to Stephanie is increased to \$55,573.

AFFIRMED AS MODIFIED.