

KARPIEN V. KARPIEN

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DAVID KARPIEN,
Petitioner-Appellant,
v.
DAWN KARPIEN,
a/k/a DAWN JOHNSON,
Respondent-Appellee.

NO. 30,933

COURT OF APPEALS OF NEW MEXICO

April 1, 2011

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, John F. Davis,
District Judge

COUNSEL

Chappell Law Firm, P.A., Sidney Childress, Albuquerque, NM, for Appellant

Trujillo Dodd, Torres, O'Brien, Sanchez, LLC, Donna Trujillo Dodd, Albuquerque, NM,
for Appellee

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A.
FRY, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Husband appeals an order dividing community property after remand from this Court. We proposed to reverse the property division. Wife has timely responded. We have considered her arguments and not being persuaded, we reverse.

In our notice, we proposed to reverse the determination regarding the valuation of the residence and the debt attached thereto. In so doing, we proposed to conclude that determining the equity in the community residences by using asset and debt values from different years was error. Wife responds that the district court was invoking its equitable powers in its determination of the value of the community residence. Thus, she argues, the district court considered Husband's use of the residence over the years since the parties' separation. She contends that Husband did not sell the house in 2007 when originally ordered to do so and, as a result, she lost money. [MIO 3] She also contends that she should have been entitled to rent from Husband for his use of the residence. [MIO 3] All these circumstances, she contends, the district court could have taken into consideration in determining the value of the community residence.

While we agree that the district court could take such things into consideration in determining how to divide community property, there is no suggestion in the record that the district court did take those things into consideration. The district court's order does not contain factual findings to explain his use of valuation from different years. Without such explanation, we must conclude that the district court erred.

Further, Wife argues that equity factored into the district court's determination that the insurance proceeds were community property. If property is separate as the life insurance policy proceeds were here, it remains separate, and the district court cannot award it as community property. Thus, the district court's division of community assets, which included the insurance proceeds in Husband's assets, is in error. Further, there is nothing in the record supporting Wife's claim that Husband was allowed to pocket reimbursements for Wife's medical bills that should have been calculated as community. This does not cure any error in awarding as community property that which is separate.

Wife's argument that the district court's equitable powers support the property division here are unsupported by record. While she poses a number of considerations that the district court *could* have made. There is nothing in the record suggesting that is what the district court did do.

For the reasons stated herein and in the calendar notice, we reverse and remand for recalculation and division of the community property.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge