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COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

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See Okla.Sup.Ct.R. 1.200 before citing.

JOHN D. HADDEN
CLERK

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

THOMAS SHAWN DOLLAR,

Petitioner/Appellant,

vs.

DUSTY RAE SMITH,

Respondent/Appellee.

Case No. 121,768

APPEAL FROM THE DISTRICT COURT OF
COAL COUNTY, OKLAHOMA

HONORABLE D. CLAY MOWDY, TRIAL JUDGE

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
FOR FURTHER PROCEEDINGS**

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OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Thomas Shawn Dollar (Father) appeals a trial court order granting custody of the parties' minor children to Dusty Rae Smith (Mother) and dividing the marital estate.¹ Father additionally appeals the trial court's decision declining to recuse or disqualify from the case, a request he did not make until after the trial ended. The essential issues on appeal are whether the trial court abused its discretion in (1) awarding Mother primary custody of the children, (2) dividing the marital property, and (3) denying Father's request to recuse or disqualify. After review of the record and applicable law, we conclude the decisions challenged by Father awarding custody and denying his request to recuse do not show an abuse of discretion, but the trial court's property division must be reversed. We affirm the trial court's decree in part, reverse in part, and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

On June 30, 2020, Father filed a petition for determination of paternity of EJD, born in September 2013, and KGD, born in August 2016. Father stated in his petition, "Both parties are fit and proper parents and it is in the best interest of the minor children, that the parties be granted joint custody." On July 29, 2020, Father filed an amended petition for determination of paternity seeking primary custody

¹ The decree also addresses other issues such as child support, but only custody and property division are at issue on appeal.

of the children with Mother receiving supervised visitation. Mother responded to Father's amended petition and stated a counterclaim for divorce, alleging the parties had entered into a common law marriage. In his response to Mother's counterclaim, Father also filed a "counterclaim" alleging a common law marriage.

The trial court announced in a "court minute" its findings on the temporary order issues giving the parties "possession of the children on an alternating week schedule." The trial court later, on Father's application, entered a journal entry memorializing the temporary order findings, including the finding that the parties stipulated Father is the natural father of EJD and KGD and "the parties considered themselves and held themselves out as husband and wife and established a common-law marriage beginning in 2006."

The trial court appointed a guardian ad litem (GAL) after Father filed an emergency motion asking it to do so.

The trial began on December 5, 2022. Father testified he was arrested when he went to enroll his children in school "for not following Sex Offender Registry rules." He said he "was ordered to register as a sex offender in 2004" after he "was charged with lewd acts and proposals to a 16 year old" in a case in Michigan. He pled no contest to the charge but denies he committed the crime. Father testified he was told he would have to register for 17 years but was later informed he would have to register for life.

Father testified he made several reports or referrals to the Department of Human Services because he has “seen sexual acts from the kids.” He also testified he saw Mother slap KGD and EJD.

Mother’s attorney asked Father the following: “If I understand correctly, by my count since this case has been pending, we filed—you filed in the summer of 2020, you have made more than seven DHS referrals against [Mother]; is that right?” Father answered, “I would have to go back and count them all, but yeah, I’ve made a few.” He agreed that all the referrals have been “marked” unsubstantiated.

He also called Paul Barnes as a witness who testified he was in a dating relationship with Mother beginning in August 2020. The relationship was solely conducted virtually through phone calls or Skype. Barnes said he and Mother usually had the cameras on for Skype “24/7.” In October 2022, Barnes sent Father a message on Facebook stating Mother is not stable and she is not safe to be around the children. Barnes asked Father to contact him.

Barnes testified that once in 2020 after KGD had taken a bath, she “jumped on to the chair where the camera was pointed and was dancing, like dancing around silly, not—I don’t know how to describe it, but she was naked and doing that.” Barnes said he covered his face and told KGD to get off the chair.

Barnes described hearing the children screaming and begging for their

Father and it sounded like they were getting spanked or hit. Barnes said Mother left the children in the car to go into Dollar General or a grocery store and “left the camera on facing” the children.

On cross-examination, Barnes stated that Father’s friend paid for his flight from Ontario, Canada, to Oklahoma for him to testify. Barnes admitted he was drunk when he sent the message to Father. He said that after he sent the first message, he woke up and realized the wording “was too strong.” He sent an email to Mother on October 16, 2022, which stated, ““I do want to tell you about Thursday. I was really drunk, and I guess I sent [Father] a message with my phone number. I woke up to my phone ringing. It was his lawyer. She wanted to do a three-way call.”” In what appeared to be an attempt to assuage Mother, he told her: “I hope you can understand it was not me, and I’m sorry I did that. I love you so much. I miss you so much. I think that’s why I started going crazy. I love [*sic*] this three or four months ago and you kept disappearing and barely talking to me. It’s really hard on me. I’m sorry I screwed up so bad and had the crazy drunken idea to play tit for tat, so I hurt you like you hurt me. Which if I was in the right state of mind, I would not have done. I am so sorry for being so stupid.” Barnes denied his comments to Mother were about his message to Father, but this statement was made in the same email in which he notified Mother he had contacted Father.

Mother denied Father's allegations that she had had a sexual relationship with her stepson. Mother admitted to interacting sexually with Barnes but denied doing anything inappropriate in front of the children. She admitted that when the children were six and nine years-old, a couple of times she parked in front of the door at the Circle N and ran in to grab something. She denied ever forcefully hitting either child. She denied the abuse of the children alleged by Barnes.

The second and final day of trial was held on May 17, 2023. Father chose not to attend the second day of trial because of a no contact order.² His attorney stated that it was her understanding "that due to the criminal charges pending against [him], he is invoking his Fifth Amendment right not to testify in this matter." The GAL also did not attend the second day of trial.

After both parties rested, the trial court announced its decision to grant Mother custody of KGD and EJD. Also relevant to this appeal, the trial court divided the marital estate.

After the conclusion of trial on May 17, 2023, at which the trial court announced its decision but before the decree was memorialized and entered, Father asked the trial judge to recuse. At a hearing on June 15, 2023 to settle the decree,

² State filed a charge on February 13, 2023, against Father for child sexual abuse of KGD. According to Father, State dismissed the charge without prejudice on September 21, 2023.

Father's counsel informed the court that Father had filed a judicial complaint. The court continued the hearing by agreement.

On August 9, 2023, Father filed a "Motion to Stay All Proceedings Pending Outcome of [Father's] Request for Recusal." Father alleged that he filed a complaint against the Honorable D. Clay Mowdy and his attorney placed Judge Mowdy on notice of the complaint at the June 15 hearing. Father stated, "Since that time, additional matters have been scheduled before the honorable Judge Mowdy, even though he has not made an official response regarding [Father's] request for his recusal." Father asked the court to stay all matters "until the recusal process has been completed."

On August 10, 2023, at the hearing on the motion to settle the decree, Judge Mowdy stated:

I will rule at this time on my recusal and say that the court refuses to recuse, there having been no judicial complaint filed and the court believes that there is no reason for this court to recuse other than the fact that I have ruled against your client, which apparently you and your client [think] that I have some bias against him.

I don't know your client. Never met him other than this courtroom proceeding. Don't know the other party. Never saw them before they were in this court. I have no reason to be biased for or against either one of them. The court is just trying to do what the court thinks is fair. Obviously you disagree. You can claim that's bias if you want to, but that doesn't mean that's what it is. Again, I believe that you are misusing the court system to buy your client additional time and disobey this court's order.

The trial court memorialized its decision in a “court minute” filed on August 14, 2023.

On August 21, 2023, Father filed a motion for disqualification which the trial court denied. Father filed a motion for rehearing on the motion for disqualification. The Honorable Mark R. Campbell, the Southeastern Administrative Judicial District’s Presiding Judge, also denied Father’s request to have Judge Mowdy disqualified.³

Father filed an “Application to Assume Original Jurisdiction and Petition for Writ of Mandamus” with the Oklahoma Supreme Court requesting the “Court assume jurisdiction and issue Writ of Mandamus compelling Respondent, the Honorable D. Clay Mowdy, to disqualify himself from this case, and that the matter is transferred to a disinterested judge, and if necessary, in a disinterested county.” The Supreme Court denied Father’s application on October 30, 2023.

The decree of divorce was filed on November 6, 2023. The decree states:

[The GAL] did not prepare a written factual report for trial on this matter because the issue of custody and visitation of the minor children were rendered moot by the pending criminal case against [Father], which contained a no-contact provision between [Father] and the minor children. Neither party objected to [the GAL’s] lack of attendance on May 17 or to the lack of a written report from her.

³ The Presiding Judge for the Southeast Administrative District ruled on the request for disqualification because Judge Mowdy is the Chief Judge of the 25th Judicial District.

The trial court awarded Mother sole custody of the children and awarded Father no visitation due to the criminal charges against him. The court directed Father “to file an appropriate motion to consider and establish visitation upon conclusion of those proceedings.” The court ordered Father to pay \$759.62 per month in child support. The court awarded Father his personal effects, clothes, jewelry, his separate property, the household furnishings and personal property in his possession that are not otherwise distributed by the decree, household furnishings acquired during the marriage, the 2006 Chevy Silverado, and the tools described in his testimony. The court awarded Mother all her personal effects, clothes, jewelry, her separate property, personal property in her possession not otherwise distributed by the decree, the Harley Davidson motorcycle, the toolbox described in Father’s testimony, and all right, title, and interest in the marital home. The court additionally ordered Father to pay Mother \$500 as property division alimony.

Father appeals.

STANDARD OF REVIEW

“Custody contests are of equitable cognizance.” *Carpenter v. Carpenter*, 1982 OK 38, ¶ 10, 645 P.2d 476. “We will not disturb the trial court’s judgment regarding custody absent an abuse of discretion.” *Arulkumar v. Arulkumar*, 2022 OK 90, ¶ 7, 521 P.3d 131. The “[Supreme] Court has said that ‘an abuse of

discretion occurs when a court bases its decision on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling.” *Id.* (quoting *Fent v. Oklahoma Nat. Gas Co.*, 2001 OK 35, ¶ 12, 27 P.3d 477).

We will not reverse a trial court’s decision regarding property division unless we find the trial court abused its discretion or that its findings are against the clear weight of the evidence. *See Fitzpatrick v. Fitzpatrick*, 2023 OK 81, ¶ 9, 533 P.3d 757.

“When an order of a judge in a civil proceeding denies a disqualification application that order will not be reversed on appeal unless a clear abuse of discretion is shown.” *Pierce v. Pierce*, 2001 OK 97, ¶ 21, 39 P.3d 791.

ANALYSIS

Father claims trial court abuse of discretion in (1) awarding Mother primary custody of KGD and EJD, (2) failing to divide the marital estate in an equitable manner, and (3) failing to recuse. We address each of Father’s propositions of error in turn.

I. Child Custody

“The best interest of the child is a paramount consideration when the trial court determines custody issues” *Scocos v. Scocos*, 2016 OK 36, ¶ 5, 369 P.3d 1068. Father asserts the trial court abused its discretion when it granted Mother “sole custody of the minor children notwithstanding the plethora of

evidence proving it to be contrary to the [children's] best interests.” We first note Father failed to provide any legal authority for his first six of eight subheadings under his argument that the trial court abused its discretion in awarding Mother custody of the children. Instead, he submits more than ten pages of argument regarding the evidence without any cite to a statute or case law.

We are not required to consider argument without supporting legal authority. Supreme Court Rule 1.11(k)(1), 12 O.S. Supp. 2024, ch. 15, app. 1 (“Argument without supporting authority will not be considered.”). An appellate court does not generally ““consider assignments of error unsupported by convincing argument or authority, unless it is apparent without further research that they are well taken.”” *Tulsa Ambulatory Proc. Ctr., LLC v. Olmstead*, 2024 OK 57, ¶ 30, 558 P.3d 374 (quoting *S.W. v. Duncan*, 2001 OK 39, ¶ 31, 24 P.3d 846).

Despite Father’s failure to support his argument with legal authority, we will address Father’s first six sub-issues in light of the applicable law but will consolidate them into a discussion regarding Barnes’ testimony and evidentiary issues. We will also address in this subsection Father’s criminal charges, the requirement that he register as a sex offender, and the GAL’s failure to file a report.

A. Barnes’ Testimony

Father points to the testimony of Paul Barnes who testified he witnessed

incidents involving Mother and the children while Barnes and Mother were communicating by video via Skype. Barnes testified Mother would leave the children in the car while she went into stores to shop. Barnes said he remained on the video call while Mother went into the stores. Mother testified that there were a few instances when she would park her car in front of a store and “run in and grab something.”

Father points to Barnes’ testimony that in 2020, their daughter KGD entered the room where the computer screen was on and danced naked in front of the screen. Father also points to Barnes’ testimony that Mother made threats to the children and heard the children screaming in the background, begging for their Father, and possibly being hit. Mother denied hitting the children.

Father asserts that he testified he received a video of a sexual nature involving Mother. Barnes provided the video to Father. According to Father’s brief in chief, “When [he] watched the video he could tell that his daughter . . . was in the room with Appellee Mother during the sexually explicit conduct.” Father states in his brief that Barnes “corroborated the event during his trial testimony,” in which he said “that he and Appellee Mother were on the computer screen while Appellee was actively gratifying herself through masturbation, and you could hear the children[’s] voices on the video.”

Father points out that when asked at trial about the incident “and whether her 6-year old daughter, [KGD], was present, Appellee Mother testified that ‘I may have been talking to [KGD].’” (Emphasis omitted.). At trial, Father admits KGD does not physically appear in the video but can be heard saying “something about a drink.”

“In child custody cases, the best interest of the child is the paramount consideration.” *Arulkumar v. Arulkumar*, 2022 OK 90, ¶ 7, 521 P.3d 131. The trial court must view the testimony and evidence before it, weigh it and determine how to serve the children’s best interests.

Father’s primary witness about Mother’s conduct was Paul Barnes who was in a relationship with Mother that occurred solely by video and phone. Barnes’ testimony is tempered by his admission that he reached out to Father while he was drunk and that he told Mother he was trying to hurt her. Mother denied many of Barnes’ allegations. “We give deference to the trial court in reviewing custody decisions because the trial judge had the opportunity to listen to evidence, observe the witnesses and parties, and ask questions.” *Id.* “Only when the ruling is contrary to the evidence or where there is no rational basis in evidence will we reverse.” *Id.*

In deciding custody issues, one of the most crucial duties of the trial court is to determine whose testimony to believe. Regardless of which parent receives

custody, we must give deference to the trial court in its observation of the testimony presented by Father and Mother and reverse only if the court abuses its discretion or decides against the clear weight of the evidence. We are hard-pressed to find that the trial court's decision on custody is against the clear weight of the evidence when it considered what weight to be given to Barnes' testimony. And as discussed below, we consider this issue in light of the rebuttable presumption that the best interests of the children are not served by awarding custody to a registered sex offender.

B. Evidentiary Issues

Father makes two arguments regarding the admission of evidence but fails to cite any legal authority in support of his arguments. He asks this Court to review the "sex video" that he claims depicts KGD present while Mother is "gratifying herself." Father states the video can be found in the record at page 467. He does not indicate in his brief, however, where he introduced the video at trial or the trial court's decision on admission of that evidence. It does not appear the trial court admitted the video at trial—Father attached a copy of the video to his petition to reinstate visitation filed on November 2, 2023, and the video is included in the appellate record at page 467 with that motion. However, we are reviewing the trial court's custody decision after trial on the question. Because there is no indication the trial court considered the video in reaching its decision—and Father has failed

to show that the trial court committed any legal error in failing to consider the video—we refuse to find any error regarding the video. We also decline to view the video or consider it on appeal.

Father testified he reported to DHS that Mother groomed and had a sexual relationship with his then 15-year-old son. Father asserts his attorney attempted to inquire about this sexual relationship by referencing DHS Referral 2122819 dated December 14, 2020. According to Father, the referral was based on an incident in which EJD “had apparently walked in the room and witnessed Appellee Mother, and Dakota, her stepson, having sex.” Father states:

The Trial Court erred in not allowing Appellant’s counsel to further inquire, therefore counsel made an offer of proof stating that, had the testimony been allowed, the evidence would show that DHS investigated the incident, but deemed it “unsubstantiated” because the child walking in on his relatives having sex was “unintentional.”

Father asserts that the trial court denied admission of further corroborating evidence in the form of messages from Facebook that showed sexual abuse by Mother of Father’s son Dakota who was 15 years-old at the time. Father fails to cite any legal authority to support his claim of trial court error in failing to admit the Facebook messages or allow the testimony on this subject.

C. DHS Referrals

Father next asserts that he “was punished for lodging good faith referrals of

abuse to DHS.” Father details the seven referrals he made to DHS and explains that DHS found his complaints to be unsubstantiated. He claims his due process rights were violated by the trial court’s action regarding several applications and motions but fails to cite any legal authority to support his claim. We conclude that Father has failed to show that any action by the trial court punished him or denied him due process for filing a DHS referral.

D. Criminal Charges and Sex Offender Registry

Father asserts he was subject to meritless criminal charges that were later dismissed. In his brief in chief he states he “reasonably believed that Appellee Mother played a role in his false arrest to gain leverage in the custody case.” He continues, “The idea is not far-fetched.” In an attempt to validate this theory, he directs this Court to Barnes’ claim that Mother bragged to Barnes that she called the police to arrest Father when he was at the children’s school. This incident was discussed by Father at trial.

Father claims Mother has tried to use his background against him to prejudice him before the courts. He states:

That is, prior to their common law marriage, Appellee was well aware that in 2004, [Father], then in his late 20’s [*sic*], was falsely accused of propositioning a 16 year old, in the State of Michigan. [Father] maintains his innocence to this very day, but has been plagued with the stigma for now more than twenty (20) years. . . . He testified that he never went to trial on the matter, he never had a hearing whereby the alleged victim testified,

he never went to the penitentiary and was never on parole. [Father] added that he has never been accused of anything like this *before* or even *after* his pleading of “no contest” to the charges in 2004. . . . He testified that he regrets pleading “no contest” to the allegations, but he just wasn’t in the mindset for a criminal trial while his Mother was fighting Cancer.

(Citations to the record omitted.).

The record confirms that Father did plead no contest to the charges against him and he acknowledged at trial he will need to register as a sex offender for life. As discussed below, these are facts that by law and for obvious reasons, the trial court is required to consider in deciding custody of the children.

Father does not directly address how his status as a registered sex offender affects his request for custody. He points out that pursuant to 57 O.S.2021 § 590(B), he is allowed to live with the minor children:

It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act for any offense in which a minor child was the victim to reside with a minor child or establish any other living accommodation where a minor child resides. *Provided, however, the person may reside with a minor child if the person is the parent, stepparent or grandparent of the minor child and the minor child was not the victim of the offense for which the person is required to register.* Any person subject to the provisions of the Sex Offenders Registration Act who resides with a minor child must report to the statewide centralized hotline of the Department of Human Services the name and date of birth of any and all minor children residing in the same household and the offenses for which the person is required to register pursuant to the Sex Offenders

Registration Act within three (3) days of intent to reside with a minor child.

(Emphasis added.)

The parties' children were not the victims of Father's offense for which he had to register as a sex offender. The fact that Father is allowed by statute to live with the children is not dispositive of the question of whether it is in the children's best interests to do so.

Title 43 O.S.2021 § 112.2⁴ mandates that the trial court must consider Father's status as a registered sex offender in awarding custody:

A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child whether any person seeking custody or who has custody of, guardianship of or visitation with a child:

1. Is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

....

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody or guardianship granted to a person who:

1. Is subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state

⁴ Title 43 O.S. § 112.2 was amended in 2024, but the rebuttable presumption provisions remain.

A “rebuttable presumption operates to impose upon the opposing party the duty to offer evidence to the contrary.” *Conaghan v. Riverfield Country Day Sch.*, 2007 OK 60, ¶ 13, 163 P.3d 557. “A presumption is a rule of law compelling a conclusion of fact in the absence of evidence against the conclusion.” *Id.* ¶ 11.

To be awarded custody, Father was required to rebut the presumption that it is not in the children’s best interests for the court to do so. He did not present evidence directly on the question of how his status as a sex offender affects the children. Instead, he presented evidence of Mother’s conduct, mostly in the form of testimony by Mother’s former online partner.

The trial court was in the best position to evaluate Mother’s, Father’s and Barnes’ testimony and credibility. “Because the trial court is in the best position to evaluate the demeanor of the witnesses and to gauge the credibility of the evidence, we will defer to the trial court as to the conclusions it reaches concerning those witnesses and that evidence.” *Stephens Prod. Co., a division of SF Holding Corp. v. Larsen*, 2017 OK 36, ¶ 12, 394 P.3d 1262; *see also Childers v. Childers*, 2016 OK 95, ¶ 18, 382 P.3d 1020 (“The trial court is ideally situated to assess the credibility of witnesses.”). For these reasons, matters involving custody and visitation are best “left to the sound discretion of the trial court.” *K.R. v. B.M.H.*, 1999 OK 40, ¶ 18, 982 P.2d 521. If the trial court’s decision were unsound factually or legally or against established principles of law or the clear weight of

the evidence, we would be under an obligation to reverse it, but that is not the case here.

The trial court's order "need not rest upon uncontradicted evidence." *Carpenter v. Carpenter*, 1982 OK 38, ¶ 10, 645 P.2d 476. Father and Mother presented conflicting evidence, and the trial court was in a better position to weigh that evidence. The trial court was not required to accept either party's version of events. But Father did not offer evidence to directly rebut the presumption arising from his status as a registered sex offender other than to deny he committed the act that landed him on the registry. Governed by this presumption and Father's failure to rebut it, we do not see the trial court's decision regarding custody as an abuse of discretion or against the clear weight of the evidence.

E. Guardian ad litem report

Father asserts the guardian ad litem (GAL) failed to prepare and submit a report as required by statute. Title 43 O.S. Supp. 2019 § 107.3(A), the statute in effect at the time Father filed his petition and which remains in effect, gives a GAL multiple responsibilities including the duty to "present written factual reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child, which determination is solely the decision of the court." 43 O.S. Supp. 2019 § 107.3(A)(2)(d).

The trial ended on May 17, 2023. Father did not appear at the second day of trial and only Mother testified that day. He does not direct this Court to any portion of the record where his attorney objected to the GAL's failure to file a report before trial or that he asked the trial court to require the GAL to file a written report. In its final order, the trial court indicated Father did not object to the GAL's failure to file a report. Father did not file his appeal until after November 15, 2023, less than ten days after the divorce decree was filed on November 6, 2023. Father had ample time to address any alleged error in the GAL's failure to file a report between the time of trial and the filing of the decree.

“[I]ssues not properly presented to the trial court cannot be considered by this Court on appeal.” *Oklahoma Dep't of Sec. ex rel. Faught v. Wilcox*, 2011 OK 82, ¶ 17, 267 P.3d 106. “Nothing tendered here warrants a deviation from the general rule that bars from review issues raised for the first time by appeal.” *Jernigan v. Jernigan*, 2006 OK 22, ¶ 26, 138 P.3d 539.

II. Property division

Father asserts the trial court's division of property was inequitable. The trial court awarded both parties their personal effects, clothes, jewelry, separate property and household furnishings and personal property in their possession not distributed in the decree. The court further awarded Mother the home and land, the Harley Davidson motorcycle, and a toolbox acquired during marriage. Father was

further awarded only his tools, truck, and certain household furnishings and ordered to pay Wife \$500 in property division alimony.

Title 43 O.S.2021 § 121(B) governing the division of marital property states:

The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the dissolution of marriage. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof.

Citing *Brazil v. Brazil*, 2007 OK CIV APP 108, ¶ 9, 171 P.3d 325, the Court in

Fitzpatrick v. Fitzpatrick, 2023 OK 81, ¶ 13, 533 P.3d 757, described a trial court's duties this way:

[G]enerally, in dividing marital property a court must (a) determine what property is subject to division, (b) determine its value, and (c) fairly, justly, and equitably divide it between the parties.

“The words ‘just’ and ‘reasonable’ in [43 O.S. § 121] are equivalent to ‘equitable’ and not synonymous with ‘equal.’” *Childers v. Childers*, 2016 OK 95, ¶ 22, 382 P.3d 1020 (footnote omitted). “The division of a marital estate does not necessarily need to be equal in order to be just and reasonable.” *Id.*

Unfortunately, there is neither a total value assigned to each party’s assets nor values assigned to any of the items of marital property being divided in the decree. Without *any* marital property values assigned in the decree itself, we are unable to determine whether the property division was equitable. *See Stevenson v. Stevenson*, 1984 OK CIV APP 10, ¶¶ 22-23, 680 P.2d 642 (reversing the trial court’s property division for failing to contain “findings of fact as to the values of all the property” so that the appellate court could determine the fairness of the trial court’s order). The *Stevenson* Court remanded the issue to the trial court “to determine the value and character of the property and enter an equitable division.” *Id.* ¶ 23.

We adhere to the rule stated in *Bouma v. Bouma*, 1968 OK 35, 439 P.2d 198:

The usual rule is that in cases of equitable cognizance this Court may effect complete adjudication and disposition of the cause. The record in this case is insufficient to provide means for determining an equitable disposition of these parties’ affairs without risk of creating further inequity. For this reason that portion of the judgment purporting to fix an equitable division of jointly acquired property must be reversed for further proceedings.

Id. ¶ 13. Without this fundamental fact-finding, we must reverse the trial court's property division and remand with directions to assign values based on the evidence presented to the items of marital assets and debts, if any, being awarded in the decree and to make an equitable division as required by 43 O.S.2021 § 121(B).

Mother submitted a proposed property division with the following values: (1) house and land, \$48,000; (2) 2006 Chevy Silverado \$5,000; (3) 2015 Harley Davidson Road Glider, \$8,000; (4) household furnishings, \$10,000, (5) tools acquired during marriage, \$60,000; and (6) toolbox acquired during marriage, \$18,000. The trial court *in toto* adopted Wife's proposed allocation of marital property and awarded Husband the Chevy Silverado, the household furnishings, and his tools. Mother listed the total value of the estate at \$149,000, and the value of the property awarded to her at \$74,000, and the value awarded to Husband as \$75,000. She asked for Father to pay \$500 in property division alimony, and the trial court ordered Father to do so.

Father testified that he has "close to 50-, 60 grand wrapped up in tools." He estimated he spent \$5,000 to \$6,000 per year for tools, but there is nothing to indicate what the tools are worth today. Mother admitted at trial that she had no proof that the household furnishings are worth \$10,000. Mother indicated she was not aware that Father was still making payments on the Harley Davidson

motorcycle. The alleged total value of the marital estate, the discrepancy in the value of the tools and household furnishings, and any amount left to be paid on the debt for the motorcycle are not small factors in a marital estate of this size. Wife's values are not all supported by the record, nor are we permitted to assume the trial court adopted those values. In his appellate brief, Father further maintains that Mother left Oklahoma and moved to Michigan with the children in June 2020, leaving him to reside in the marital property and pay for it, that the Harley Davidson was his property and he had made all of the payments on it during the parties' separation, and that the toolbox awarded to Wife is his work toolbox he uses as a diesel mechanic.

It is incumbent on the trial court to make a fair and reasonable allocation of property to the parties and to determine the values of the items of property awarded to each party to enable us to determine if the division is fair and reasonable.

The trial court's property division in the decree is reversed and the case remanded to the trial court with directions to determine, as of the date of the decree, the values assigned to each of the marital assets and debts, if any, to be divided and then to make a fair and reasonable division between the parties.

III. Recusal

Father argues the trial court's refusal to recuse was an abuse of discretion. The trial court announced its decision on custody and property division at the

conclusion of the second day of trial on May 17, 2023. Father asserts in his brief in chief that he filed a judicial complaint on June 22, 2023. At a hearing on June 15, 2023, however, Father's attorney informed the court that a judicial complaint had been filed. At a hearing on August 10, 2023, on the motion to settle journal entry, Father's attorney stated that she had made an in camera oral request for Judge Mowdy to disqualify and she did not receive a response. Judge Mowdy then denied the request to recuse.

On August 21, 2023, Father filed a motion for disqualification. Father cited the trial judge's statement made in an October 25, 2022 proceeding, and the trial judge's refusal to allow Father to participate in a February 8, 2023 hearing. Father also referred to the trial judge's actions at trial and in making his decision.

District Court Rule 15(a), 12 O.S.2021, ch. 2, app.,⁵ provided:

Before filing any motion to disqualify a judge, an in camera request shall first be made to the judge to disqualify or to transfer the cause to another judge. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial a motion to disqualify a judge or to transfer a cause to another judge may be filed and a copy delivered to the judge.

The Honorable Mark R. Campbell found that Father's request to disqualify was not timely pursuant to Rule 15. We agree.

⁵ District Court Rule 15 was amended effective November 18, 2024, but this provision remains the same.

A substantial portion of the acts of which Father complains occurred before trial, but he did not ask Judge Mowdy to disqualify at least ten days before the case was set for trial. The statements alleged to have been made by Judge Mowdy for which Father attached witness statements to his motion for disqualification occurred on October 25, 2022, which was 41 days before the trial started on December 5, 2022. But Father waited until 29 days after trial to ask the trial court to recuse, based in part on the statements allegedly made on October 25. We therefore conclude Father's request for disqualification made after trial and after the trial judge announced his decision was untimely.

CONCLUSION

Based on our review of the record and applicable law, Father has not shown the trial court abused its discretion in awarding Mother custody of the minor children or in denying his request for disqualification because his request was not timely. Because we agree with Father that the trial court's division of marital property must be reversed for further consideration, we reverse that portion of the trial court's decree and remand with directions to determine, as of the date of the decree, the values assigned to each of the marital assets and debts, if any, to be divided and then to make a fair and reasonable division between the parties.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
FOR FURTHER PROCEEDINGS.**

FISCHER, J., concurs, and BLACKWELL, J., concurs in part and dissents in part.

BLACKWELL, J., concurring in part and dissenting in part.

I respectfully dissent from Part II of the Court's opinion. I would affirm the trial court's property division. In all other respects, I concur.

April 10, 2025