

IN THE NEBRASKA COURT OF APPEALS

JESSICA CERRA,  
Plaintiff/Appellee,

vs.

ROBERT CERRA,  
Defendant/Appellant.

DOCKET A-24-726

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APPEAL FROM THE DISTRICT COURT OF SARPY COUNTY,  
NEBRASKA  
HONORABLE NATHAN B. COX, PRESIDING

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BRIEF OF APPELLANT

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## **INTRODUCTION OF THE PARTIES**

This is an appeal of a Decree entered by the district court of Sarpy County, Nebraska on September 4, 2024 (T31-51). The Appellant is Robert J. Cerra, who is referred to in this Brief as “Robert”. Appellee is Jessica Cerra, who is referred to in this Brief as “Jessica”.

## **STATEMENT OF JURISDICTION**

Under Neb. Rev. Stat. § 25-1911, this Court has jurisdiction over “a judgment rendered or final order made by the district court . . . .” A final order includes the following: 1). an order affecting a substantial right in and action when the order determines the action and prevents a judgment; 2). an order in a special proceeding which affects a substantial right; 3). an order from a summary action after a judgment is entered affecting a substantial right; and 4) an order denying summary judgment based upon sovereign immunity or immunity of a government official. Neb. Rev. Stat. § 25-1902.

The district court entered a Decree on September 4, 2024 (T31-51) and the Robert filed his Notice of Appeal on September 30, 2024.

## **STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE**

Appellant Robert Cerra, (hereinafter “Robert”) and the Appellee, Jessica Cerra, (hereinafter “Jessica”) both filed for dissolution of their marriage. Jessica filed a Complaint for Dissolution of Marriage October 6, 2022 (T1) and Robert filed his Answer and Cross-complaint on November 7, 2022. (T5). The district court entered a Decree on September 4, 2024 dissolving the marriage, dividing the assets, and debts, awarding Jessica sole custody of their daughter, Violet, born in 2019 along with permission to move to Iowa and limiting Robert’s visits to therapeutic visits as recommended by a therapist chosen by

Jessica. In addition the court divided property and debt in a manner Robert believes is unfair (T31-51) and he filed a Notice of Appeal on September 30, 2024.

## **B. ISSUES TRIED IN THE COURT**

The issues tried by the court included Jessica's Complaint and Amended Complaint for Dissolution where she requested the dissolution of the marriage, name change, custody, child support, the equitable division of marital assets, and attorney fees. (T1-11).

Robert filed his Answer and Counterclaim seeking a dissolution of their marriage, the equitable division of marital assets, parenting time, attorney fees and an equitable division of marital assets. (T5; T17).

## **C. HOW THE ISSUES WERE DECIDED**

The trial court entered a Decree of Dissolution on September 4, 2024 (T31) and relevant to this appeal, the Decree made the following rulings:

1. **Real Estate:** The home located at 1205 Potter Street in Bellevue, Nebraska was determined to be entirely marital and the marital equity of that home was determined to be \$147,908.78 (T31, P3). The home was awarded solely to Jessica with no interest to Robert. Total awarded to Jessica : \$147,908.78. Total awarded to Robert : \$0.
2. **Vehicles:** The vehicles were divided as follows:
  - a. **The 2018 Chevy Equinox** was awarded to Jessica with a finding of **no equity**. (T33).
  - b. **The 2008 Toyota 4Runner** was awarded to Robert with a \$10,000 marital equity assignment. (T34).
  - c. **The 1991 Toyota 4Runner** was found to have been modified during the marriage and thus the entire

vehicle's equity was found to be marital equity of \$20,000 and awarded to Robert. (T34).

- d. **The 2003 Jayco Camper** was awarded to Robert with the marital equity determined at \$1,000. Total awarded to Jessica \$0. Total awarded to Robert \$1,000. (T34)

3. **Retirement:**

- a. **401(K):** The Court found Robert's 401(K) had been cashed out by Robert and that he solely utilized those funds. The trial court assigned a marital value of \$123,190.67. The court found this was 100 percent a marital asset that was depleted entirely and awarded solely to Robert. (T34).

**Total Awarded:**

Total awarded to Robert: \$123,190.67 for purposes of valuation. (depleted by Robert to \$0 prior)

Total awarded to Jessica: \$0.

- b. **Empower IRA:** The court found 100 percent of this account a marital asset and that Robert cashed out all of this account and utilized the funds solely for his own benefit. The court awarded this depleted account to Robert and valued it at \$44,663.33. Total awarded to Jessica \$0 and total awarded to Robert \$44,663.33. (T34)

4. **Bank Accounts:**

- a. **Plaintiff's Cobalt Credit Union:** The court found Jessica's account to have \$269.61 of marital value / equity and awarded this to Jessica. (T34).
- b. **Joint Kellogg's Credit Union (checking):** The court found the parties had \$576.65 in this account at the time of filing. The trial court awarded this joint account to Robert. (T34).

- c. **Kellogg's Credit Union (shared):** The court found this account contained \$9,708.69 at time of filing. The trial court awarded this to Robert. (T34).
- d. **Debts:** The court stated the parties stipulated to incurring their own debts and to be responsible for those debts. (T35).
  - i. **Awarded to Jessica:** \$299.61.
  - ii. **Awarded to Robert:** \$0.
- e. **Dissipation of Coinbase Investment:** The court found Robert dissipated the marital estate when he sold his shares of a Coinbase investment purchased from June 2021 to July 2022 and utilized the funds solely. The court valued the investment at \$17,429.00. (T35). This dissipated Coinbase asset was awarded to Robert: \$17,429.00 based on the cost when purchased and awarded to Jessica: \$0 for purposes of valuing the entire estate.
- f. **Domestic Violence:** The court references Robert's domestic violence conviction and incarceration and gave no weight or credibility to the testimony of his expert and adopted in full Jessica's proposed Parenting Plan which restricted all visitation except as recommended by an expert to be determined. (T36).
- g. **Equalization:** The court ordered Robert to pay Jessica \$62,652.39 to equalize the marital estate. The total marital estate was valued at \$319,487.22 with each party entitled to \$159,743.61. The court credited Robert with previously receiving his shares when he cashed out his 401(K), his IRA and the Coinbase account along with the vehicles previously noted.

Jessica was awarded the marital home, the Chevy Equinox, any money in any account in her name only, plus and equalization payment of \$62,652.00 owed to

her from Robert to ensure she would receive ½ the marital equity of \$159,743.66. (T40; T49).

i.	Real Estate	\$147,908.78
ii.	Vehicles	\$31,000.00
iii.	401(K)	\$123,190.67 *dissipated
iv.	IRA	\$44,663.33 *dissipated
v.	Bank Accounts	\$12,058.95
vi.	<u>Coinbase</u>	<u>\$17,429.00</u> *dissipated
	TOTAL	\$376,250.73

Total assets awarded to Jessica \$148,178.39.

Total assets awarded to Robert \$216,283.10.

Total amount Robert is ordered to pay Jessica to equalize the estate \$62,552.39.

#### D. SCOPE OF REVIEW

A judicial abuse of discretion exists when a Judge, within the effective limits of authorized judicial power, elects to act or refrains from acting, and the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or just result in matters entrusted for disposition through a judicial system. *Wild v. Wild*, 13 Neb. App. 495, 696 N.W.2d 886 (Neb. App. 2005).

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. *Kauk v. Kauk*, 310 Neb. 329, 966 N.W.2d 45 (2021). 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.*



## PROPOSITIONS OF LAW

1. 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 in his or her determinations regarding custody, child support, division of property, alimony, and attorney fees. *Stava v. Stava*, 318 Neb. 32 (2024).
2. 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. *Stava v. Stava*, 318 Neb. 32 (2024).
3. 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. *Stava v. Stava*, 318 Neb. 32 (2024).
4. When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court. *Stava v. Stava*, 318 Neb. 32 (2024).
5. Any given property can constitute a mixture of marital and nonmarital interests; a portion of an asset can be marital property while another portion can be separate property. *Stava v. Stava*, 318 Neb. 32 (2024).
6. The burden of proof rests with the party claiming that the property is nonmarital. *Stava v. Stava*, 318 Neb. 32 (2024).
7. The extent to which the property is marital versus nonmarital presents a mixed issue of law and fact. *Stava v. Stava*, 318 Neb. 32 (2024).
8. All property accumulated and acquired by either spouse during the marriage is, as a general rule, part of the marital estate. *Stava v. Stava*, 318 Neb. 32 (2024).
9. Appreciation, be it active or passive, in the marital interest is always marital; it is simply part of the marital property. *Stava v. Stava*, 318 Neb. 32 (2024).

10. The equity in property at the time of marriage is a nonmarital asset which, if established, should be set aside as separate property. *Stava v. Stava*, 318 Neb. 32 (2024).
11. The real value of property is the equity and not the mere legal title. *Stava v. Stava*, 318 Neb. 32 (2024).
12. Under the “source of funds” rule, acquisition of encumbered property only occurs when and to the extent it becomes unencumbered by paying off the principal of an encumbering loan. *Stava v. Stava*, 318 Neb. 32 (2024).
13. The use of marital funds to pay down the mortgage on what was initially separate property acquires the property during the marriage to the extent the principal is paid, creating a proportionate marital interest in that property. *Stava v. Stava*, 318 Neb. 32 (2024).
14. The mere fact of incarceration is not sufficient justification for the denial of the right of visitation even if the same may only be exercised at the institution. *Bruce v. Bruce*, 11 Neb. App. 548 (2003).

### **ASSIGNMENT OF ERROR**

- I. **THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT INCLUDED ROBERT’S PREMARITAL AND NONMARITAL ASSETS AS PART OF THE MARITAL ESTATE AND WHEN IT USED IMPROPER VALUATIONS FOR ASSETS NOT SUPPORTED BY THE BEST EVIDENCE AND INACCURATELY AND IMPROPERLY DIVIDED ASSETS AND DEBTS OF THE MARRIAGE.**
- II. **THE DISTRICT COURT ABUSED ITS DISCRETION BY CREATING A CONDITIONAL DECREE AND NOT PROVIDING A REALISTIC MECHANISM FOR ROBERT TO MAINTAIN A RELATIONSHIP WITH HIS MINOR DAUGHTER AND PLACING THE OUTCOME OF ANY FUTURE VISITS IN THE HANDS OF AN UNKNOWN**

**EXPERT WITH UNKNOWN CRITERIA AND WHO IS  
HIRED EXCLUSIVELY BY THE CUSTODIAL PARENT.**

**STATEMENT OF FACTS**

Jessica and Robert were married in April 2018 and one (1) minor child was born of this marriage, namely; Violet Cerra, born in 2019. In October 2023 Jessica filed a Complaint for Dissolution of Marriage asserting that the marriage was irretrievably broken and requesting that the court dissolve the marriage, award her sole custody of their minor child, child support, spousal support, restoration of her maiden name, attorney fees, and an equitable division of debts and assets. (T1). This was later amended to allow removal to Iowa. (T11). In his Answer and Counterclaim Robert requested a dissolution of marriage, joint custody, and an equitable division of debts and assets. (T5; T17).

A bench trial was held on June 14<sup>th</sup> and 26<sup>th</sup>, 2024 and the parties had limited the contested issues to Robert's visitation, the division of debts and assets and attorney fees. Robert did not contest Jessica's request for sole legal or physical custody or removal to Iowa.

Testimony was adduced from both parties, along with Robert's father, Mike Cerra, Doctor Glenda Cottam and Robert's mother, Cindy Cerra. Both parties also submitted supporting documents.

On September 4, 2024, the District Court entered a Decree of Dissolution. As relevant to this appeal, the court decided the issues as previously discussed and again as follows:

1. **Real Estate:** The home located at 1205 Potter Street in Bellevue, Nebraska was determined to be entirely martial and the marital equity of that home was determined to be \$147,908.78 (T31, P3). The home was awarded solely to Jessica

with no interest to Robert. Total awarded to Jessica :  
\$147,908.78. Total awarded to Robert : \$0.

2. **Vehicles:** The vehicles were divided as follows:

- a. **The 2018 Chevy Equinox** was awarded to Jessica with a finding of **no equity**. (T33).
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- c. **The 1991 Toyota 4Runner** was found to have been modified during the marriage and thus the entire vehicle's equity was found to be marital equity of \$20,000 and awarded to Robert. (T34).
- d. **The 2003 Jayco Camper** was awarded to Robert with the marital equity determined at \$1,000. Total awarded to Jessica \$0. Total awarded to Robert \$1,000. (T34).

3. **Retirement:**

- a. **401(K):** The Court found Robert's 401(K) had been cashed out by Robert and that he solely utilized those funds. The trial court assigned a marital value of \$123,190.67. The court found this was 100 percent a marital asset that was depleted entirely and awarded solely to Robert. (T34).

**Total Awarded:**

Total awarded to Robert: \$123,190.67 for purposes of valuation.

Total awarded to Jessica: \$0.

- b. **Empower IRA:** The court found 100 percent of this account a marital asset and that Robert cashed out all of this account and utilized the funds solely for his own benefit. The court awarded this depleted account to Robert and valued it at \$44,663.33. Total awarded to Jessica \$0 and total awarded to Robert \$44,663.33. (T34).

4. **Bank Accounts:**

- a. **Plaintiff's Cobalt Credit Union:** The court found Jessica's account to have \$269.61 of marital value / equity and awarded this to Jessica. (T34).
- b. **Joint Kellogg's Credit Union (checking):** The court found the parties had \$576.65 in this account at the time of filing. The trial court made no specific finding on division of this jointly held asset within the Decree. (T34).
- c. **Kellogg's Credit Union (shared):** The court found this account contained \$9,708.69 at time of filing. The trial court made no specific finding on the division of this jointly held asset. (T34).
- d. **Debts:** The court stated the parties stipulated to incurring their own debts and to be responsible for those debts. (T35).
  - i. **Awarded to Jessica:** \$299.61.
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- e. **Dissipation of Coinbase Investment:** The court found Robert dissipated the marital estate when he sold his shares of a Coinbase investment purchased from June 2021 to July 2022 and utilized the funds solely. The court valued the investment at \$17,429.00. (T35). This dissipated Coinbase asset was awarded to Robert: \$17,429.00 based on the cost when purchased and awarded to Jessica: \$0 for purposes of valuing the entire estate.
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g. **Equalization:** The court ordered Robert to pay Jessica \$62,652.39 to equalize the marital estate. The total marital estate was valued at \$319,487.22 with each party entitled to \$159,743.61. The court credited Robert with previously receiving his shares when he cashed out his 401(K), his IRA and the Coinbase account along with the vehicles previously noted.

Jessica was awarded the marital home, the Chevy Equinox, any money in any account in her name only, plus and equalization payment of \$62,652.00 owed to her from Robert to ensure she would receive ½ the marital equity of \$159,743.66. (T40; T49).

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	TOTAL	\$376,250.73

Total assets awarded to Jessica \$148,178.39.

Total assets awarded to Robert \$216,283.10.

Total amount Robert is ordered to pay Jessica to equalize the estate \$62,552.39.

## **ARGUMENT**

- 1. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT INCLUDED ROBERT'S PREMARITAL AND NONMARITAL ASSETS AS PART OF THE MARITAL ESTATE AND WHEN IT USED IMPROPER VALUATIONS FOR ASSETS NOT SUPPORTED BY THE BEST EVIDENCE AND INACCURATELY AND IMPROPERLY DIVIDED ASSETS AND DEBTS OF THE MARRIAGE.**

Robert alleges in this appeal the trial court improperly included his premarital equity in assets toward the marital estate and failed to adjust the division of assets pursuant to current law. The specific relief he seeks is for this court to set aside his nonmarital assets to him solely and to properly account for equity assigned by the court improperly. He alleges property was dissipated by the parties during the marriage jointly, but the court assigned dissipation to Robert. Further, he argues the court inappropriately assigned him joint debt as his alone. The specific breakdown of errs by the trial court are as follows:

- A. **Premarital / Nonmarital Assets erroneously included by the court**
  - 1. Robert's Premarital 401(K) balance: **\$87,753.30.**
  - 2. Robert's Premarital 1991 Toyota 4Runner: **\$20,000.00.**
  - 3. Robert's Premarital down payment on his home: **\$13,290.00.**
  - Total Premarital Equity: \$121,043.30.**
- B. **Additional assets improperly included by the court in its division of marital assets**
  - 1. Distribution from Robert's 401(K) used by the parties during the marriage to pay off their vehicle and windows for their home. The court improperly added this to the marital equity and assigned it to Robert: **\$53,000.00.**
  - 2. Funds Transferred from Robert's 401(K) to his IRA double counted by the court in the amount of **\$27,000.00.**
  - Improper inclusion of additional assets by the trial court : Total \$80.000.**
- C. Robert was also entitled to credit toward his payments toward the principal in his home prior to marriage: **(\$3,414.84).**
- D. **Debt:** Robert was assigned the expected tax debt for the dissipation of the retirement even though \$53,000.00 was removed jointly.
- E. **Coinbase:** The court improperly assigned improperly assigned the purchase value of a Coinbase investment to Robert as opposed to its equity at the time of distribution after the market

collapsed: **\$17,429.00.**

The appropriate law that applies here includes Neb. Rev. Stat. § 42-365 (Reissue) and Nebraska Supreme Court decision in *Stava v. Stava*, 318 Neb. 32 (2024). Specifically, the equitable property division under § 42-365 is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and determine the parties' marital liabilities. The third step is to calculate and divide the net marital estate between the parties in accordance with its principles. *Id.*

The court in *Stava* explained that any given property can constitute a mixture of marital and nonmarital interests; a portion of an asset can be marital property while another portion can be separate property. The burden of proof rests with the party claiming that the property is nonmarital. *Stava v. Stava*, 318 Neb. 32 (2024).

The extent to which the property is marital versus nonmarital presents a mixed issue of law and fact. The manner and method of acquisition involve questions of fact, but the classification of the property under those facts is a legal question and not a matter of the court's discretion. The second step, valuation, involves questions of fact, and the third step, dividing the marital estate in accordance with the principles of § 42-365, is a matter of discretion. *Stava v. Stava*, 318 Neb. 32 (2024).

All property accumulated and acquired by either spouse during the marriage is, as a general rule, part of the marital estate. The manner in which property is titled or transferred by the parties during the marriage does not restrict the trial court's ability to determine how the property should be divided in an action for dissolution of marriage. Appreciation, be it active or passive, in the marital interest is always marital; it is simply part of the marital property. *Stava v. Stava*, 318 Neb. 32 (2024).



In contrast, property that a party brings into the marriage is usually excluded from the marital estate. We have said that the equity in property at the time of marriage is a nonmarital asset which, if established, should be set aside as separate property. This includes its passive appreciation. *Stava v. Stava*, 318 Neb. 32 (2024).

Separate property can become marital property under either "transmutation" or "active" appreciation. These two categories are mutually exclusive. Transmutation converts an asset entirely from separate to marital and can occur through commingling if the separate property is inextricably mixed with marital property or with the separate property of the other spouse. Active appreciation converts to marital property only the increase in a nonmarital asset's value due to a contribution of marital funds or efforts." This is opposed to passive appreciation, which is appreciation caused by separate contributions and nonmarital forces. *Stava v. Stava*, 318 Neb. 32 (2024).

"Acquisition" of property in the first instance can be an ongoing process. It occurs only as it is paid for, as the real value of property is the equity and not the mere legal title. Under the majority "source of funds" rule, acquisition of encumbered property only occurs when and to the extent it becomes unencumbered by paying off the principal of an encumbering loan. Said property has not been acquired to the extent the principal balance of that debt remains unpaid. Instead, it is acquired when, and to the extent, the parties reduce the principal balance. Thus, the use of marital funds to pay down the mortgage on what was initially separate property acquires the property during the marriage to the extent the principal is paid, creating a proportionate marital interest in that property. This is "regardless of how many different mortgages existed during the marriage." *Stava v. Stava*, 318 Neb. 32 (2024).

Furthermore, it is the overwhelming majority rule that when acquisition occurs via payments on the principal of encumbering debt,

the marital estate receives not just a refund of the monetary contribution toward the principal of the loan, but also a fair return on its investment, which includes passive appreciation. "The commonsense result, and the consensus rule nationwide," is to divide the passive appreciation proportionately between the marital and separate interests if marital funds were used to pay down the principal of a mortgage for property that appreciates during the marriage due to passive market forces. All of the appreciation caused by market forces should not go to the separate estate merely because inception of title happened to occur before the marriage," as it is unfair to allow an owner spouse to receive the full benefit of the passive appreciation when marital funds were used to pay the mortgage and acquire equity in the property. *Stava v. Stava*, 318 Neb. 32 (2024).

To summarize, the court in *Stava* found that the equity in property at the time of marriage is a nonmarital asset number and under the "source of funds" rule, the use of marital funds to unencumber that asset can only be done by paying down the principal on the loan which creates a proportional marital interest only to the extent the principal had been paid.

To calculate the respective values of a hybrid marital/nonmarital property, a percentage value of the respective marital and nonmarital parts must be determined:

Since the marital and separate interests attach to the entirety of the asset and not to specific parts, each interest appreciates or depreciates passively in the same percentage as the entire asset. *Stava v. Stava*, 318 Neb. 32 (2024).

The marital contribution is therefore equal to the marital contribution, plus the passive appreciation in the marital contributions. The passive appreciation in the marital contributions is the amount of the marital contribution, multiplied by the percentage of appreciation in the entire asset. *Stava v. Stava*, 318 Neb. 32 (2024).

The court further explained that the separate interest is equal to the separate contributions, plus the passive appreciation in the separate contributions. The passive appreciation in the separate contributions is the amount of the separate contribution, multiplied by the percentage appreciation in the entire asset. *Stava v. Stava*, 318 Neb. 32 (2024).

The percentage appreciation in the entire asset is equal to the value of the asset at divorce, minus the total marital and separate contributions, divided by the total marital and separate contributions. The simplest formula for this is  $\frac{MI}{V} \times 100$  where "MI" is the marital interest, "MC" is marital contributions, and "TC" is the total marital and separate contributions. "V" is the value at the time of divorce. *Stava v. Stava*, 318 Neb. 32 (2024).

In this case, Robert argues the trial court did not properly credit him for the premarital value of assets and instead included all assets, including his premarital assets in the property division. Specifically, he argues as follows for the assets in question:

1. **Real Estate:** The home located at 1205 Potter Road, Bellevue, Nebraska was purchased by Robert in April 2017 prior to their marriage on April 14, 2018. Robert was on the Deed of Trust (E59) and the closing documents show he paid \$13,290.00 down payment on the property at the time of purchase in 2017 owing \$147,250.00. (E68). Robert also paid monthly payments for one (1) year prior to marriage on the home in the amount of \$1,093.00 (E68) of which is \$284.57 per month went toward the principal for a total of \$3,414. 84. (E16).

The court determined the marital equity was \$147,908.78 and awarded **all** equity in the home to Jessica and gave Robert no credit for his premarital payments. (E59; E68). Robert argues that his down payment of \$13,290.00 on his home along

with the one (1) year of premarital payments toward the principal of \$3,414.84 for a total of \$16,704.84 was his premarital equity and should have been set aside and awarded to him solely as nonmarital.

2. **Robert's 401(K):** The court found the marital value of this account to be \$123,190.67 (T31) and based this figure on Exhibit 17 which was a March 2022 statement prior to separation. (58: 24-25; E17). Jessica testified this account was down to \$11.55 on September 2022 when they separated (59: 10-11) and admitted \$53,000.00 of this account had previously been withdrawn to pay down what was owed on their 2009 Toyota 4Runner and new windows for the house. (61: 22-24). Jessica was also aware Robert's 401(K) was funded from the rollover account valued at \$87,753.45 prior to marriage. (140: 7-11).

Mike Cerra further testified and submitted quarterly statements showing Robert's 401(K) was valued at \$87,753.45 on December 31, 2017 prior to marriage and was rolled over to his current 401(K). (E38; E39; 155: 1-21). Robert introduced additional evidence that \$123,000.00 was eventually withdrawn by Robert from his 401(K), but \$39,000.000 of this had been transferred to his son's IRA account and shouldn't be counted twice. (158: 6-23; E60). The remaining \$84,000.00 in the 401(K), he argued was the premarital or nonmarital amounts and he used funds from his own account balance, not Jessica's to pay his attorney fees and recovery treatment along with living expenses. (158: 25; 159: 1; E43; E66; 106: 3-25).

Mike Cerra testified that Robert was battling drug addiction during the marriage (161: 1-3) and Robert confirmed Jessica was aware of and agreed to this treatment. (204: 12-22). Here Robert argues that the evidence proves the trial court erroneously included into the marital estate his \$87,753.45 of premarital equity in his 401(K) and erroneously charged Robert with using an additional \$53,000.00 of the 401(K) for his purpose when it was soundly established the \$53,000.00 was

used to pay off a marital vehicle and new windows on the home. In total Robert alleges the court's error related to this asset was \$140,753.45.

3. **Empower IRA:** The District Court stated the value of this account was \$38,983.26 at the time of filing but Robert cashed the funds out for his own purpose in determining the entire \$44,663.33 should be found as marital funds subject to division. (T31-34). Jessica testified the actual balance of this account was \$10,198.00 on March 31, 2023, a full six (6) months prior to filing for divorce. This was later down to zero on June 30, 2023. (T18; 63: 3-23). The origin of the \$38,983.26 valuation is murky at best and as Jessica testified was valued on September 30, 2023 of \$28,983.00 (date of separation). However, the trial court ignored the fact the value used included the funds transferred from Robert's 401(K) to this IRA account that was essentially double counted by the court. (E60; 158: 10-12). Further, Robert proved he pulled \$25,000.00 from his IRA to pay off marital credit cards on December 15, 2022, a full eight (8) months prior to separation or filing, yet the court valued the account without crediting Robert for the legitimate marital use of those funds. (157: 6-19). Jessica did not offer contradicted testimony and admitted she had little knowledge of the account establishment or how the funds were used. (62: 6-19). Robert argues that at a minimum, the court should only have valued the account at \$10,198.00 which was the value prior to the separation.
4. **Coinbase Accounts:** The court found that Robert dissipated this marital asset from June 2021 through July 2022 for Robert's benefit solely and valued the dissipated asset at \$17,429.00. (T31-35). This asset valuation was based solely on the amount paid for the initial investment (E23; 104: 4-6). However, Mike Cerra testified that while his son sold the cryptocurrency, it was because the value had plunged from the original purchase price of \$17,429.00 to approximately \$150.00. This reduction, he explained, was simply market forces due to a

poor investment and Robert should not be penalized for the market loss and the actual equity used was \$150.00. (164:4-14).

Jessica admitted in her testimony to having no knowledge of the share values on the date of separation (140: 15-18) and she had no idea of the valuations when the shares were redeemed. (140: 19-22). She was aware of the investment in 2021 prior to their separation (103: 13-15) and she was unaware of the stocks value or loss in values at the time of redemption. (145: 2-5). The court states in *Stava v. Stava*, 318 Neb. 32 (2024) the only marital value to use is its equity which was \$150.00 when redeemed and Robert should not be punished for the market fall when both parties were still together when this risky investment was made. A \$17,279.00 mistake. (140: 15-18; 140: 19-22; 145: 2-5).

5. Vehicles:

- a. **1991 Toyota 4Runner:** The court found this vehicle had a marital value of \$20,000.00 and awarded it to Robert as a marital asset even though it was owned outright by Robert years before marriage. (T31-34). Jessica testified that Robert owned this vehicle prior to marriage (113: 16) and that she was unaware of the cost of any modifications to the vehicle since marriage. (114: 6). The evidence presented by Mike Cerra, confirmed this vehicle was premarital (148: 13-16; E70), owed by Robert who purchased it for \$17,300.00. (E70; 148: 13-16). Further, Mike provided photographic proof that all improvements were completed in 2014 long prior to marriage. (E79; 150: 19-21; 151: 3-6). He also provided a Kelley Blue Book current valuation of the vehicle was only \$1,907.00 (E64; 151: 18-21) and Robert confirmed no modifications had been done, post marriage, only maintenance (205: 20-21) proving there was zero marital equity. Jessica provided no contradictory evidence. Robert argues the court erred in including any equity of this vehicle into the

marital estate. A \$20,000.00 mistake that should be awarded solely to Robert as a nonmarital asset.

- b. **2008 Toyota 4Runner:** The court awarded this to Robert and valued the vehicle at \$10,000.00 based solely on Jessica's opinion. (T31-34). Mike Cerra provided an independent valuation of this vehicle through Kelley Blue Book, sold to a dealer, of \$7,300.00. (E62; 153: 11-15). It should also be noted that Jessica was aware this vehicle was paid off from Robert cashing out his 401(K). (139: 18). The court, however, mistakenly included the \$53,000.00 back into the value of Robert's 401(K) even though the evidence proved and both parties agreed that the \$53,000.00 was used for marital purposes including their vehicle and new windows on their house. (T31-34). Here, Robert argues both that the \$10,000.00 valuation was not the best evidence of value but also that the court double counted its value when it added it back in the \$53,000.00 into the 401(K) valuation.

- 6. **Debts:** The court ordered each party to be responsible for debts in their own names stating this was a stipulation. (T31-35). However, Robert argued and provided proof of owing \$24,388.00 for his recovery treatment that started prior to their separation and filing (E66; 160: 3-25; 201: 12-15) and there was further testimony Robert was battling this addiction during the marriage (161: 1-3) and that Jessica agreed he should attend treatment. (204: 12-22). Robert believes if he is solely assigned this debt, it should reduce the marital estate proportionately as he was awarded the 401(K) and IRA a full value when it was dissipated for legitimate marital purposes. He does not agree he stipulated to paying this bill solely as it is a joint obligation. A \$24,388.00 err.

Further, Robert argued he will have tax debt and penalties owed for the couple's withdrawal and use of the 401(K) account that should be a joint expense. In addition Robert

provided proof his 401(K) retirement account was near a zero balance due to withdrawals for payments of marital expenses such as the 4Runner, and windows for the home (61: 13-25; 214: 5-7), along with other expenses noted previously herein. (E74; 162: 4-19). Testimony established that Robert would owe a 10% penalty on the \$134,000.00 withdrawn and another 20% for taxes for any debt owing of approximately \$39,000.00 that was not addressed by the District Court. (163: 2-12). Given the court found the entirety of Robert's retirement accounts to be marital (T31-34), he believed the tax and early withdrawal penalty would be a joint debt not accounted within the Order. *Id.* Robert argued this potential debt and penalty should be equally shared as it was used for marital purposes at least in the amount of \$53,000.00.

**2. THE DISTRICT COURT ABUSED ITS DISCRETION BY CREATING A CONDITIONAL DECREE AND NOT PROVIDING A REALISTIC MECHANISM FOR ROBERT TO MAINTAIN A RELATIONSHIP WITH HIS MINOR DAUGHTER AND PLACING THE OUTCOME OF ANY FUTURE VISITS IN THE HANDS OF AN UNKNOWN EXPERT WITH UNKNOWN CRITERIA AND WHO IS HIRED EXCLUSIVELY BY THE CUSTODIAL PARENT.**

Parenting Time: The court order gave Robert parenting time only under the supervision of a licensed therapist who Jessica chooses, designates and **conditional** as it can only occur at the therapist's office and by therapist recommendations it would be beneficial to the minor with the parties equally sharing the costs. (T31-45).

Robert, however, was allowed visits prior to his incarceration up to August of 2023 that were supervised by his mother (202: 14-21) and his mother and Jessica maintain a good relationship (137: 8-10) and she would be willing to continue these supervised visits. Further Dr.



Cottom testified that based on her experience as a psychologist since 1987 and her interview of Robert that it would be in the minor's best interest to continue the face-to-face visits offered at the Community Corrections Center where Robert is finishing his sentence (E58; E77; 81: 20-25) and she would recommend allowing grandma to handle the transportation.

Robert argues that the trial court erred when it disallowed supervised visits while still incarcerated and left all future visits up to an unknown expert with unknown criteria who is chosen exclusively by the custodial parent, Jessica. This conditional criteria allows no realistic opportunity for Robert to maintain a relationship with his daughter as Jessica has testified she would not allow visits at any time in the future absent a specific Order. The court's decision lacked any specific identifiable criteria for Robert other than to leave the decision in the hands of this unknown expert with unidentified criteria.

The court adopted Jessica's proposed Parenting Plan which included findings that Robert's expert, Dr. Glenda Cottam's opinions should not be given any weight despite the fact she has nearly forty (40) years of experience and opined a minor child should maintain a relationship with both parents if possible. Here, Robert had regular visits supervised by his mother and there was no expert testimony offered that this was detrimental in any way to the minor child. Further, Jessica admitted to maintaining a good relationship with Robert's mother and having no specific knowledge of any detrimental effects any visits had caused the minor only her own opinion this could be traumatic. (202:14-21).

The court in *Bruce v. Bruce*, 11 Neb. App. 548 (2003) states incarceration alone should not limit a parent's ability to maintain a relationship with their child. Here, Robert was found guilty of assaulting Jessica and she has an understandable opposition to allow visits. However, Robert alleges the court ignored the fact he had been struggling with addiction at the time and had now been involved in

counseling and treatment and would be supervised at all times by a loving grandmother for which both parties maintain a loving relationship with. (201: 12-15; 202: 14-21). He argues the Court's order gives him no realistic expectations or ability to maintain a relationship. The order only states that an unknown expert would decide when it will be in the minor's best interest, with no defined criteria or steps and allowed Jessica to pick her own expert. The obvious results can be assumed that Jessica will oppose any expert willing to allow visits as she testified she was opposed to any visits. Robert believes this conditional order robs his and the minor child of maintaining any relationship in the foreseeable future.

### **SUMMARY OF ARGUMENT**

The trial court abused its discretion when it included Robert's premarital assets. These include a). \$87,753.45 he had in his 401(K) prior to marriage; b). \$20,000.00 valuation the court made on Robert's 1991 Toyota 4Runner owned prior to marriage of which all major improvements had been completed pre-marriage; c). Including \$53,000.00 of Robert's 401(K) that had been used jointly during the marriage to pay off their 2008 Toyota 4Runner and to replace windows in the home; d). The court's failure to credit Robert for his premarital down payment on his home in the amount of \$13,290.00 or any credit for one year of mortgage payments toward the principal totaling \$3,414.84; e). The court's double counting of Robert's 401(K) account balance that was transferred from his 401(K) to Robert's IRA and used to pay marital debt in the amount of \$25,000.00; f). The court's failure to account for the tax debt for the 401(K) distribution; and g). Lastly, the court erred by disallowing any meaningful opportunity for Robert to maintain a relationship with his daughter based on the conditions placed by the court for future visits.

## CONCLUSION

The trial court erred in its property division. Robert's premarital value of his 401(K) in the amount of \$87,753.45, the \$20,000.00 finding of equity in his 1991 Toyota 4Runner and his premarital down payment and payment toward the principal of the home in the amount of \$13,290 should be set aside as nonmarital and awarded solely to Robert. The marital estate shall consist as follows:

<b>Description</b>	<b>Jessica / Appellee</b>	<b>Robert / Appellant</b>
<b>REAL ESTATE</b>		
1205 Potter Drive Bellevue, NE 68005 *Note: Actual market equity is \$97,091.00 (-) \$16, 704.00 (=) \$80,386.00	\$97,091.00	\$0
<b>VEHICLES</b>		
2018 Chevy Equinox	\$0	\$0
2008 Toyota 4Runner	\$0	\$7,300.00
2003 Jayco Camper	\$0	\$1,000.00
<b>RETIREMENT/ INVESTMENT ACCOUNTS</b>		
Kellog's FCU (checking)	\$0	\$576.65
Kellog's FCU (secondary share)	\$0	\$1,504.73
Kellog's FCU (share account)	\$0	\$9,708.69
Cobalt		
<b>COINBASE</b>		
Total Coinbase transactions used for Defendant's drug addiction		\$150.00
<b>TOTAL</b>	<b>\$97,091.22</b>	<b>\$30,438.07</b>

**TOTAL ESTATE (\$16,704.00 is nonmarital): \$110,824.22 ÷ 2 (=)  
\$55,412.00 due each.**

**EQUALIZATION PAYMENT OWED TO ROBERT FROM JESSICA:  
\$97,091.22 (-) \$55,412.00 (=) \$41,679.00.**

ROBERT CERRA, Appellant

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## **CERTIFICATE OF WORD COUNT COMPLIANCE**

I, Kelly T. Shattuck, attorney for Appellant, certify that this brief was prepared using Microsoft Word, version 16.74; that this brief complies with the typeface requirements of §2-103; and that this brief contains a total word count of 6,896.

ROBERT CERRA, Appellant

/s/ Kelly T. Shattuck

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# Certificate of Service

I hereby certify that on Friday, January 31, 2025 I provided a true and correct copy of this *Brief of Appellant Robert C.* to the following:

Jessica M Cerra represented by Kimberly J. Workman (27961) service method: Electronic Service to **kim@binning-plambeck.com**

Signature: /s/ Shattuck,Kelly,T (20485)