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CONCLUSION

We conclude that the district court was correct in determining that the gun case and the rifle were lawfully seized from Vyhnalek's home under the plain view exception to the warrant requirement of the Fourth Amendment. Accordingly, we affirm the order of the district court overruling Vyhnalek's motion to suppress and affirm Vyhnalek's conviction and sentence for possession of a deadly weapon by a prohibited person.

AFFIRMED.

HARRY CHARLES SUGHROUE, APPELLANT, V. LORRAINE ANNE SUGHROUE, APPELLEE.

815 N.W.2d 210

Filed June 19, 2012. No. A-11-947.

1. **Child Custody: Property Division: Child Support: Alimony.** Domestic matters such as child custody, division of property, child support, and alimony are entrusted to the discretion of trial courts.
2. **Appeal and Error.** A trial court's determinations on domestic matters are reviewed de novo on the record to determine whether there has been an abuse of discretion by the trial judge.
3. **Divorce: Property Division.** In a divorce action, the purpose of a property division is to distribute the marital assets equitably between the parties.
4. **Property Division.** The ultimate test in determining the appropriateness of the division of property is fairness and reasonableness as determined by the facts of each case.
5. ____. Equitable property division under Neb. Rev. Stat. § 42-365 (Reissue 2008) 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 liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in § 42-365.
6. **Property Division: Proof.** The burden of proof to show that property is nonmarital remains with the person making the claim.
7. **Divorce: Property Division.** 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.
8. **Property Division.** With some exceptions, the marital estate does not include property acquired by one of the parties through gift or inheritance.

Appeal from the District Court for Red Willow County: DAVID URBOM, Judge. Affirmed.

Nathan A. Schneider, of Mousel, Brooks, Garner & Schneider, P.C., L.L.O., for appellant.

R. Bradley Dawson, of Lindemeier, Gillett, Dawson & Troshynski, for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Harry Charles Sughroue appeals from a decree of dissolution issued by the district court for Red Willow County on September 13, 2011. For the reasons that follow, we affirm the decision of the trial court.

BACKGROUND

Harry and Lorraine Anne Sughroue were married on July 5, 1991. Harry filed a complaint for dissolution of the marriage in the district court for Red Willow County on September 15, 2010.

On October 15, 2002, Harry's father, Charles Sughroue, died. Charles' wife was bequeathed a life estate in certain real estate located in Frontier County, Nebraska. Harry and his sisters entered into a family settlement agreement with Charles' wife and thereafter obtained title to the real estate in Frontier County. At the time of his death, Charles owed Adams Bank and Trust $416,107.02, and this debt was partially secured by the real estate in Frontier County. Harry and his sisters assumed a portion of the debt Charles owed to Adams Bank and Trust.

Harry and his sisters formed a limited liability company named "Poverty Knob, LLC." Harry and his sisters are the only members of Poverty Knob. The real estate was transferred from Harry and Lorraine, Harry's sisters, and the sisters' spouses to Poverty Knob on February 10, 2004. At that time, Harry and his sisters owed Adams Bank and Trust approximately $243,000. Poverty Knob borrowed money in 2004 to pay the existing debt of Charles' estate and to pay a debt to Charles'

wife pursuant to a family settlement agreement. Poverty Knob has paid $153,434.75 on the debt. The annual amortized payment to the lender has been $21,919.25. Of the $153,434.75 paid, $88,894.60 is attributable to the interest on the debt and $64,540.15 is the reduction of the principal portion of the debt.

The real estate owned by Poverty Knob was leased to a cash tenant. Poverty Knob received annual rental income from 2004 through 2011. The tenant's annual payment was $60,000 at the date of trial, and this is Poverty Knob's only income during the year.

The evidence adduced at trial showed Poverty Knob is a "pour-through" entity. It receives income, pays farm-related expenses, and reports income through its members. The income generated by Poverty Knob was included on the joint income tax returns filed by Harry and Lorraine as rental real estate income. Harry testified that he receives $2,000 from Poverty Knob for each tax year and that this cash payment is made to defray the tax consequences incurred by the members resulting from reporting Poverty Knob's income. Harry also receives $1,000 as a yearly management fee.

The decree of dissolution divided Harry and Lorraine's marital assets and debts. One-third of the decrease in Poverty Knob's debt, or $21,513.38, was included in the calculation of marital property. A judgment was entered in the decree in favor of Lorraine and against Harry in the amount of $8,000 to equalize the property distribution. Harry asserts the marital property should have been calculated without the decrease in Poverty Knob's debt. He suggests the marital property assigned to him should have been $8,146.04 rather than $29,659.42.

ASSIGNMENT OF ERROR

Harry asserts the trial court erred by including the decrease in Poverty Knob's debt from 2004 to 2010 as marital property for the purposes of equalizing the property distribution.

STANDARD OF REVIEW

[1,2] Domestic matters such as child custody, division of property, child support, and alimony are entrusted to the

discretion of trial courts. *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007). A trial court's determinations on such issues are reviewed de novo on the record to determine whether there has been an abuse of discretion by the trial judge. *Id.*

ANALYSIS

[3,4] In a divorce action, the purpose of a property division is to distribute the marital assets equitably between the parties. *Tyma v. Tyma*, 263 Neb. 873, 644 N.W.2d 139 (2002). The ultimate test in determining the appropriateness of the division of property is fairness and reasonableness as determined by the facts of each case. *Id.*

[5] Equitable property division under Neb. Rev. Stat. § 42-365 (Reissue 2008) 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 liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in § 42-365. *Tyma v. Tyma, supra.*

[6-8] The burden of proof to show that property is nonmarital remains with the person making the claim. *Gangwish v. Gangwish*, 267 Neb. 901, 678 N.W.2d 503 (2004); *Heald v. Heald*, 259 Neb. 604, 611 N.W.2d 598 (2000). 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. *McGuire v. McGuire*, 11 Neb. App. 433, 652 N.W.2d 293 (2002). With some exceptions, the marital estate does not include property acquired by one of the parties through gift or inheritance. *Id.*

The trial court did not include Harry's share of the real estate inherited from Charles in the calculation of marital assets. Therefore, we must consider only whether the income generated by or resulting from the inherited property is considered marital or nonmarital.

Between 2004 and 2010, Poverty Knob earned $60,000 per year and paid $153,434.75 to Adams Bank and Trust, decreasing the principal debt by $64,540.15. The trial court determined that Harry's one-third share of the decrease in the debt during the marriage should be included as a marital asset. Harry

asserts that any income from Poverty Knob belongs solely to him and is thus nonmarital.

In *Williams v. Williams*, No. A-07-1103, 2008 WL 5064933 (Neb. App. Dec. 2, 2008) (selected for posting to court Web site), this court was presented with a similar factual situation and came to the same conclusion as the trial court in this case. In *Williams*, the husband owned stock prior to the parties' marriage and the stock was clearly nonmarital property. Nonetheless, in the calculation of marital assets, the trial court included the reduction in debt on the stock occurring during the marriage. The court found this was adequate compensation for the wife's contribution to the payment of the debt on the husband's separate property.

We apply the same logic to this case. Though the Poverty Knob property was clearly nonmarital, the income generated between 2004 and 2010 is marital, because it was "accumulated and acquired" by Harry during the marriage. This income was included in the joint income tax returns prepared by Harry and Lorraine's accountant and filed by Harry and Lorraine as rental real estate income. Though the income was not paid to the parties, it was directed to Adams Bank and Trust for payments on the Poverty Knob debt, thereby decreasing the debt owed. Lorraine is entitled to a portion of that decrease, because it was achieved through contributions from marital income. Thus, it was not an abuse of discretion for the trial court to include a one-third share of the decrease in debt as a marital asset subject to equitable division.

CONCLUSION

We find it was not an abuse of discretion for the trial court to include the reduction of principal on a debt in the calculation of marital assets, because it was obtained by the use of marital income.

AFFIRMED.