

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

ANNA M. CLAYTON,	)	
Plaintiff and Appellee,	)	
	)	
vs.	)	
	)	
THOMAS W. CLAYTON,	)	
Defendant and Appellant.	)	
	)	

CORRECTED  
ORDER AFFIRMING IN PART,  
REVERSING IN PART, AND  
REMANDING FOR FURTHER  
PROCEEDINGS  
#31012

-----

The Court having considered all the briefs filed in the above-entitled matter, together with the appeal record, concludes that it is manifest on the face of the briefs and the record that this case is suitable for summary disposition pursuant to SDCL 15-26A-87.1(A)(4) and SDCL 15-26A-87.1(C)(4).

Having determined that the circuit court did not abuse its discretion, we affirm the court's order on the following issues: (1) The court's inclusion of the Palm Desert condo, the Fifth Avenue Duplex's sale proceeds, and the Mercedes as all being marital property subject to equitable division; (2) The court's finding that Tom violated the temporary restraining order; (3) The court's denial of Tom's motion to reopen the record; and (4) The court's order requiring Tom to pay \$15,000 of Anna's attorneys' fees.

However, the circuit court did abuse its discretion by including Tom's farmland, the ethanol shares (and the partial sale proceeds), and the full value of his retirement accounts in the

marital estate. "[T]he principal rule for analyzing a discrete claim of separate property provides that only where one spouse has made no or de minimis contributions to the acquisition or maintenance of an item of property and has no need for support, should a court set it aside as non-marital property." *Dunham v. Sabers*, 2022 S.D. 65, ¶ 39, 981 N.W.2d 620, 636 (citation modified). Here, the court determined that "Anna made more than de minim[i]s indirect contributions to the retention and maintenance of all assets, regardless of title or origin, throughout the marriage." But, based on the record before us, this finding was clearly erroneous. See *Conti v. Conti*, 2021 S.D. 62, ¶ 31, 967 N.W.2d 10, 18 ("[W]e review a circuit court's finding that one spouse made a de minimis contribution for clear error."). Tom brought all three of these assets with him into the marriage, they required little to no maintenance, and given the passive nature of the assets, Anna's contribution cannot be considered more than de minimis.

Even though the circuit court made a general determination that Anna has a need for support—a finding we affirm on appeal—that determination does not justify including all of these disputed assets within the marital estate without more particularized findings. As the rule in *Dunham* states, a spouse's need for support must be analyzed under each *discrete* claim of separate property. See 2022 S.D. 65, ¶ 39, 981 N.W.2d at 636. Here, the court included the farmland, ethanol shares (and the partial sale proceeds), and

retirement accounts in the marital estate without making specific findings pertaining to each discrete asset and how that asset's inclusion in the marital estate was necessary to address Anna's need for support. Given the significant value and income producing capability of each of these assets, the court should have considered each asset separately to determine whether Anna's need for support warranted its inclusion in the marital estate.

In addition, the circuit court's calculation for assessing the nonmarital share of the Elderberry Home's sale proceeds constituted an abuse of discretion. *King v. King*, 2025 S.D. 67, ¶ 18, 28 N.W.3d 560, 566 ("An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." (citation modified)). The court set aside \$89,364 of the net sale proceeds for Tom as premarital property not to be included in the marital estate. The court arrived at that figure by dividing the total net sale proceeds (\$804,277) by 18 (which appears to represent the number of years Tom lived in the house after his first divorce in 2006 up through the divorce trial in 2024), which equated to \$44,682. But the court's use of "18" appears to be unjustified. Although we do not require "exactitude" in a court's valuation of assets, the method used by the court must be capable of reasoned explanation. See *Osdoba v. Kelley-Osdoba*, 2018 S.D. 43, ¶ 13, 913 N.W.2d 496, 501 ("We do not require exactitude in the

circuit court's valuation of assets; it is only necessary that the value lie within a reasonable range of figures."). Here, the court's calculation inexplicably included three calendar years after the home was sold (2022-2024) and failed to account for the 14 years between when Tom built the house in 1992 and his first divorce in 2006. Because there is no rational basis in the record for doing so, the court's method of calculation constitutes an abuse of discretion.

Therefore, it is

ORDERED that circuit court's order dividing the parties' assets is vacated, and the case is remanded for further findings and division consistent with this Order.

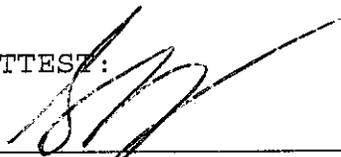
It is further

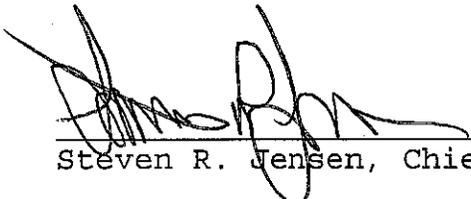
ORDERED that Anna's request for appellate attorney fees under SDCL 15-26A-87.3 is denied.

DATED at Pierre, South Dakota, this 23rd day of February, 2026.

BY THE COURT:

ATTEST:

  
\_\_\_\_\_  
Clerk of the Supreme Court  
(SEAL)

  
\_\_\_\_\_  
Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Mark E. Salter, Patricia J. DeVaney, Scott P. Myren and Robert

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 23 2026

  
Clerk