

VERMONT SUPREME COURT
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Case No. 22-AP-089

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2022

Brandy Mathieu v. Kenneth Mathieu, II*	}	APPEALED FROM:
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	CASE NO. 21-DM-00618
		Trial Judge: Megan J. Shafritz

In the above-entitled cause, the Clerk will enter:

Husband appeals from the trial court's final divorce order. He argues that the court abused its discretion in dividing the marital estate. We affirm.

The parties married in September 2015, and wife filed for divorce in 2021. The parties have three minor children together. Neither party sought maintenance, and the parties reached a stipulation regarding parental rights and responsibilities and parent-child contact. In a March 2022 order, the court made the following findings. Wife and the children live in the marital home; husband lives nearby. Both parties are thirty-nine years old. Wife works as a health insurance administrator for the State of Vermont, earning \$60,000 annually. For the past few years, husband had owned a towing business; prior to that, he worked for Twincraft and Global Foundries. The towing business had an unknown value. Wife is in good health; husband reported that he had experienced some back issues that had recently limited his work capacity.

The parties had few assets and considerable debt. They purchased the marital home in 2017 for \$160,000, which was below its assessed value in the town's grand list. The court found that the parties secured a good deal on the property due to father's family connection while mother's good credit enabled the parties to obtain a mortgage to purchase the home. Wife borrowed \$155,200 to finance the purchase in her name only due to husband's poor credit. According to the closing documents, \$4800 in closing costs was credited to the parties by the seller as a "gift of equity." The parties agreed that the fair market value of the property was \$300,000 and they held \$159,300 in equity. Wife paid the mortgage during the marriage and separation period; she also applied any stimulus payments she received toward the mortgage.

The court rejected as not credible the testimony of husband's father who claimed to have given the parties \$100,000 in equity in the home, paid certain closing costs, and made the \$4800 equity gift referenced above.

The parties struggled with their finances during the marriage, and wife sought a divorce in part due to husband's financial irresponsibility and lack of financial contribution. Wife testified that she paid the family bills and that husband did not assist with household expenses; husband asserted that he bought groceries or otherwise contributed funds to the household.

In 2020, the parties borrowed nearly \$95,000 to purchase a tow truck for husband's business. Wife was listed as the primary guarantor due to husband's poor credit. Husband used the truck exclusively for his business, which was supposed to be paying the loan. At the time of the court's decision, the loan was in default and had a balance of over \$90,000. Although wife was making payments as she was able, she believed the truck would soon be repossessed and that there would be a large deficiency judgment.

Wife owns a 2019 GMC Sierra and is solely responsible for the loan used to purchase this vehicle. Wife also has credit cards in her name, which she used for family and household expenses. She took out a \$15,000 personal loan to pay off some of this credit card debt. The balance at the time of the court's order was approximately \$11,000. In 2020, husband charged \$1688 for his business to wife's credit card without telling her. Husband believed he might be responsible for between \$2000 to \$3000 on wife's credit cards. The court credited wife's testimony and found that the outstanding balances on her credit cards were incurred for household expenses.

Based on these and other findings, the court divided the marital estate as follows. It awarded wife sole possession and ownership of the tow truck, including responsibility for any debt, and it authorized her to approve voluntary repossession. The court had little confidence that husband could assume sole responsibility for the truck loan or that he could obtain refinancing to remove wife's name from the loan to protect her credit score. Husband had no concrete plan to address the outstanding loan and impending repossession or any real grasp of the financial details. The court considered his promise to hold wife harmless from any deficiency judgment unrealistic.

The court also awarded wife sole possession and ownership of the marital home, including responsibilities for the debt and other home expenses. It rejected husband's request that the home be sold, explaining that wife intended to continue living in the home with the children, the mortgage was solely in her name, and she was able to continue paying the mortgage. The court began by evenly dividing the equity in the marital home (\$159,300) and it then deducted husband's debts from his share. This included husband's \$12,141 share of the credit card and personal loan debt, the \$1688 he had charged for his business to wife's credit card, and \$50,000 representing the expected deficiency judgment for the tow truck, which the court found should be paid by husband's business. Husband thus received \$15,821 of the equity. The court also awarded husband his business. Wife was awarded her vehicle. Each party

retained their individual bank accounts, retirement accounts, credit card accounts, and personal property. Husband moved for reconsideration, which the court denied. This appeal followed.

Husband argues that he received an unfair share of the marital estate and that we must examine the trial court's decision closely. According to husband, because we have held in another case that a 75%-25% split was an abuse of discretion, we must necessarily reach the same conclusion here. Husband complains that the court failed to consider how its award would affect his financial condition. He faults the trial court for failing to make explicit findings on all of the statutory factors or to address certain financial issues that husband deems critical, such as why the parties purchased the marital home below market value. In support of his arguments, husband recites his view of the evidence.

The trial court has broad discretion in dividing marital property, Chilkott v. Chilkott, 158 Vt. 193, 198 (1992), and it "is not required to explain the exercise of its discretion with mathematical precision or specify the weight given to each of the statutory factors [set forth in 15 V.S.A. § 751]," Dreves v. Dreves, 160 Vt. 330, 333 (1993). All that is required is that the distribution be equitable. Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988). On review, the court's findings will stand unless clearly erroneous, and its conclusions will stand where supported by its findings. Semprebon v. Semprebon, 157 Vt. 209, 214 (1991). We leave it to the trial court to weigh the evidence and assess the credibility of witnesses. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995).

Husband fails to show that the court abused its discretion here. The court adequately explained the basis of its decision. See Dreves v. Dreves, 160 Vt. 330, 333 (1993) (explaining that, to withstand appellate review, findings made in support of property division determinations must "provide a clear statement as to what was decided and why" (quotation omitted)). It was not required to make specific findings as to each factor or make findings on the particular questions identified by husband on appeal. We note that the court did find that the parties were able to secure a lower price for the marital home due to husband's family connections, but it found that wife enabled the parties to purchase the home. For that reason, it began with an even split of the home's equity. As set forth above, the court then deducted various debts from husband's share and explained why it did so. We reject husband's assertion that the court was somehow unmindful of the decision that it made. We also reject his generalized assertion that the court's decision was "based on speculation and inference" rather than facts. Husband fails to show that any of the court's findings are clearly erroneous. While husband may disagree with the court's conclusion, he fails to show an abuse of discretion. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion).

The cases cited by husband do not persuade us otherwise. Each case must be decided on its own facts, and an unequal division is not inherently inequitable. In Daitchman v. Daitchman, 145 Vt. 145, 150 (1984), we upheld a distribution where the wife received "an award about five times that of the [husband]." We found it clear from the record why the court made the award that it did and emphasized that an unequal distribution may be an equitable one "when the

circumstances of the parties are taken into account, as they must be.” Id. at 151. That is equally true here. In Emmons v. Emmons, also cited by husband, we reversed the trial court’s distribution because it was based on clearly erroneous findings. 141 Vt. 508, 512 (1982). There is no such showing here. We find no basis to disturb the court’s decision.

Affirmed.

BY THE COURT:

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice