

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-258

MARCH TERM, 2004

	} APPEALED FROM:
	}
	} Essex Family Court
Keith Stevens	}
	}
v.	} DOCKET NO. 24-5-01 Exdm
	}
Christine Stevens	} Trial Judge: Barb Zander
	}
	}

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

Husband appeals from a divorce judgment of the Essex Family Court. He contends that in making an award of permanent maintenance to wife, the court: (1) abused its discretion in failing to limit the duration of the award; (2) erroneously failed to impute tax-credit income to wife; (3) gave improper weight to husband= s recent income; (4) improperly considered the parties= future standard of living; and (5) improperly considered wife= s ability to acquire future capital. We affirm.

The facts, as found by the trial court, may be summarized as follows. The parties were married in 1983, when wife was twenty years old and husband was twenty-one. When they separated in 2001, after almost nineteen years of marriage, wife was thirty-nine and husband was forty. They had three children, who were sixteen, thirteen, and eleven years at the time of the final divorce hearing. During the first several years of the marriage, father served in the Navy, where he received training and worked as a medical laboratory technician. Wife, who had no education or training beyond her high school degree, worked as a babysitter.

After his discharge, husband received additional training from George Washington University, and worked from 1988-1995 as a laboratory technician earning about \$30,000 per year. The parties moved to Vermont and eventually settled in Concord in 1991. Wife started a daycare center in the marital home, which she continues to operate, earning about \$8500 per year on average. Husband operated his own woodworking business from 1995-2001, but earned very little and supplemented his income by working as a laboratory technician on a per diem basis at Cottage Hospital. In 2001, husband returned to fulltime work at Cottage Hospital, and later supplemented his income with per diem work at Northeastern Vermont Regional Hospital. His combined income in 2002 was \$51,000.

The parties had accumulated few assets during the marriage, which the court divided equally. By agreement of the parties, the court awarded wife sole legal and physical parental rights and responsibilities, and husband agreed to pay child support of \$850 per month, which was later reduced when the oldest child reached his majority. The court further awarded wife permanent maintenance of \$1000 per month, citing several factors. The court found that the parties had been in a longterm marriage of almost twenty years; that husband= s income exceeded wife=s by a ratio of six to one (\$51,000 compared to \$8500 per year); that husband has transferable skills as a laboratory technician and superior earning capacity compared to wife, who has few transferable skills and no employment experience outside the home and her chosen field of daycare; that husband had accumulated social security retirement benefits and was eligible for a retirement plan through his employer, while wife= s social security earnings were negligible, and she had no prospect of

acquiring future capital; that wife, although appropriately employed, has severely limited resources, must rely on food stamps and fuel assistance to help meet her needs, is the custodial parent of three children, and is unable without maintenance to support herself at the modest standard of living established during the marriage.

Husband contends the court abused its discretion in making an award of permanent maintenance, rather than a time-limited award of rehabilitative maintenance. The family court has broad discretion in determining the amount and duration of a maintenance award, and we will set aside an award only when there is no reasonable basis to support it. @ Delozier v. Delozier, 161 Vt. 377, 381 (1994). A [T]he most important factors in determining whether maintenance should be permanent or time-limited are the length of the marriage, the role played by the recipient spouse during the marriage, and the income that the recipient spouse is likely to achieve in relation to the standard of living during the marriage, which in turn is closely related to the recipient spouse's age, health, child-care duties, and access to income-producing assets. @ Begins v. Begins, 168 Vt. 298, 303 (1998).

Assessed in light of these principles, the court's award of permanent maintenance in this case must be affirmed. The court's decision reflects a careful, point-by-point analysis of the relevant factors, which included a lengthy (nearly twenty-year) marriage, substantial contributions by wife as the primary parent, a sharp disparity in income and earning-capacity between husband and wife even when measured by the parties' relatively modest standard of living during the marriage, and wife's continuing child-care duties. Although the court acknowledged that wife was only thirty-nine and in good health, it concluded that her lack of education and experience outside the context of the home and her childcare business made it unlikely that she would be able to develop additional skills or significantly enhance her earning capacity. Although husband contends the court should have recognized that wife could attempt to earn more money by expanding the childcare business, and that the teenage children did not require significant attention, he cites no substantial evidence that wife's earnings could have increased significantly, or that wife's childcare duties were any less for school-age teenagers. Husband also contends the court erroneously relied on wife's A shy@ personality, elevating it to a disability that merited permanent maintenance, but the decision does not show that this was a substantial factor in its ruling. Husband also engages in an extended comparison of the factual circumstances here as compared with other allegedly similar cases, but as we have observed, broad discretion in dividing property or awarding maintenance is necessary precisely because these matters A are not susceptible to fixed patterns@ or A inflexible rules. @ Delozier, 161 Vt. at 381. The award of permanent maintenance in this case was reasonably supported by the record evidence, and therefore cannot be disturbed.

Husband further contends the court gave A inappropriate weight@ to husband's more recent earnings, ignoring the family's A historic financial struggle. @ Although husband struggled financially for several years when he abandoned his career as a laboratory technician to be a self-employed woodworker, his longterm earnings record as a laboratory technician amply supports the court's reliance on husband's 2002 income as indicative of his current and future earning capacity. See Begins, 168 Vt. at 301 (we will not set aside court's findings if supported by the evidence, or its conclusions if supported by the findings). Husband also claims the court's reliance on husband's more recent earnings resulted in an exaggeration of the family's standard of living during the marriage. The record shows, however, that the court predicated the award on a very modest standard of living during the marriage, and that the award was designed to meet wife's very minimal needs. Additionally, husband contends the court based the maintenance award upon an impermissible desire for wife to A acquire future capital,@ but the court merely observed that wife's circumstances allowed A almost no prospect of the acquisition of future capital. @ Accordingly, the assertion is baseless.

Finally, husband contends the court erroneously failed to consider about \$3000 in earned income tax credits as part of wife's income. Although it appears that the court failed to consider this income, we are not persuaded that it affected the court's maintenance award in light of the otherwise substantial disparity in incomes between the parties. See Plante v. Plante, 148 Vt. 234, 237 (1987) (although court clearly erred in finding that wife did not contribute some income from florist business to household expenses, error did not prejudice overall property division and therefore did not require reversal). Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice