

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-470

APRIL TERM, 2004

	} APPEALED FROM:
	}
Douglas W. Hodgdon	} Essex Family Court
	}
v.	} DOCKET NO. 38-8-02 Exdm
	}
Julie K. Hodgdon	} Trial Judge: Barb Zander
	}
	}

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

Husband appeals from a final order of divorce, challenging the court= s division of the parties= marital property. We affirm.

The parties were married for approximately eight years and had no children together. Husband filed his complaint for divorce first, and wife cross-filed. Neither party sought spousal maintenance as part of the divorce, and thus, the only issue during the contested proceeding concerned an equitable division of property. After considering the factors under 15 V.S.A. ' 751(b), the court concluded that each party should retain the property in their possession and the financial accounts in their respective names. The court found that husband was still able to work, but that wife was disabled and had a lesser ability to acquire property or capital in the future. The court also found that husband infected wife with a sexually transmitted disease at a time when she did not know that he had a disease. The infection caused wife to suffer recurring medical problems. Under the circumstances, the court ordered husband to pay wife \$30,000 to achieve equity. Husband appealed the decision to this Court.

On appeal, husband seeks a new trial and a more equitable division of property. Husband= s burden here is a heavy one. Because the family court has wide discretion in awarding property upon divorce, husband may prevail only if he demonstrates that the court abused or completely withheld its discretion. Weaver v. Weaver, 173 Vt. 512, 513 (2001) (mem.). Husband attacks the family court= s decision by arguing that the court failed to deduct from the calculation of his assets the balance of a loan he took against one of his life insurance policies. He also argues that the award is inequitable.

As to the value of the life insurance policy, husband= s characterization of the order is inaccurate. In its findings, the court noted that one of husband= s life insurance policies had a loan against it of approximately \$7300. The court explained that the value of the policy was, at that time, \$8700, the amount husband argues for on appeal. Thus, the court properly accounted for the loan in its decision. Husband has failed to demonstrate that the court abused its discretion on this ground.

Husband has likewise failed to establish an abuse of discretion in the court= s decision to make the property division more equitable by ordering husband to pay wife \$30,000. The court was required to consider many factors in reaching its determination, including the ability of each party to secure income and assets in the future, and each party= s relative fault during the marriage. See 15 V.S.A. ' 751(b)(8), (12). Husband does not challenge the court= s findings on wife= s disability or her future lack of employability. Nor does he challenge the court= s finding that he infected his wife

knowing that he had a sexually transmitted disease but without disclosing that fact to her. Because they are not challenged on appeal, the findings are binding here. Bevins v. King, 147 Vt. 203, 206 (1986). The findings on future earnings and relative fault were key to the court's decision to require husband to pay wife \$30,000 as a matter of equity. Because the findings are not clearly erroneous, and reflect consideration of the statutory factors, the court was within its discretion to weigh those factors more heavily in its property division, and no reversible error appears.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Paul L. Reiber, Associate Justice