

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-348

FEBRUARY TERM, 2005

Erlene Shannon	}	APPEALED FROM:
	}	
v.	}	Windham Family Court
	}	
Damian Gaffney	}	DOCKET NO. F201-7-03 WmDmd
	}	Trial Judge: Katherine A. Hayes

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

Husband appeals the family court's final divorce order, arguing that the court abused its discretion in several respects concerning its distribution of the marital assets. We affirm.

The parties married in 1992 after living together for approximately ten years. They separated in October 2003. Following a one-day hearing concerning only property issues, the family court awarded husband fifty-five percent, and wife forty-five percent, of the total marital assets valued at approximately \$50,000. Husband raises five issues on appeal.

Husband first argues that the family court abused its discretion by awarding wife the marital residence notwithstanding (1) the parties' agreement at trial that he would be awarded the house, and (2) the evidence demonstrating that he alone had purchased the land upon which the house was built and taken out a loan to build the house. We find no abuse of discretion. See Lewis v. Lewis, 149 Vt. 19, 22 (trial court has wide discretion in dividing marital property). The parties were considering an unsigned draft agreement awarding husband the house contingent upon his being able to obtain refinancing so that he could pay wife her share of the equity in the home. Husband never was able to obtain the necessary financing because of credit problems, however, and the parties acknowledged at the final hearing that they were still contesting issues concerning the house. Accordingly, the court recognized that it would have to start from scratch with respect to the house. The court found that both parties had contributed financially to upkeep of the home and had put roughly an equal amount of sweat equity into the home. The parties were jointly liable on a second mortgage. The fact that husband had made the initial financial investment did not preclude the court from awarding the home to wife. See 15 V.S.A. § 751(a) (court has jurisdiction over all property owned by either party, however and whenever acquired; title to property is immaterial, except where equitable distribution can be made without disturbing separate property); Milligan v. Milligan, 158 Vt. 436, 440 (1992) (court has power to distribute marital assets in whatever manner it finds just and equitable, regardless of prior owner).

Husband contends, however, that the family court erred by valuing his equity in the marital home at \$11,000, the amount he paid for the land in 1987, rather than at its appreciated value at the time of trial—\$25,000. Husband misconstrues the court's order. The court plainly required wife to pay husband \$11,000 to arrive at the desired overall property division—fifty-five percent for husband and forty-five percent for wife—not to establish the value of the land associated with the marital home.

Next, husband argues that the family court erred by failing to exclude from the marital estate that portion of his retirement account that he earned before the parties married in 1992. Husband acknowledges that the court awarded him the entire retirement account, which was worth about \$13,000, but contends that, by including the entire account as part of the marital estate, the court skewed the overall property award in favor of wife. Putting aside the fact that the parties lived together a number of years before they married, we find this argument unavailing. Husband's testimony indicates that he worked full-time for the employer from which the account arose between 1991, one year before the parties married, and 1998. Husband presented no evidence at the final hearing concerning what percentage of his retirement account had been earned before the parties married. Under these circumstances, he cannot claim on appeal that the court erred by distributing his entire retirement account as a marital asset.

Husband also argues that the family court erred by failing to ascribe any value to wife's horse tack. Again, we find no error. Wife testified that her horse was worth, at best, \$7000. In an exhibit, she listed the value of the horse at \$6000. One of the court's findings state that wife has a horse worth \$7000 and assorted items of tack. Neither party presented any evidence as to the value of the tack alone. Under these circumstances, the court did not abuse its discretion by valuing the horse and tack at \$7000.

Finally, husband argues that the family court erred by failing to grant his motion for contempt, which alleged that wife had violated the court's temporary order by taking items from the marital home and moving into the house while husband was living out of state. The record does not demonstrate that wife violated the temporary order, and the court did not err by denying the motion as moot upon issuance of the final divorce order.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),  
Specially Assigned