

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-058

NOVEMBER TERM, 2005

Daniel Anderson	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Family Court
	}	
Beth Anderson	}	DOCKET NO. 23-1-03 Frdm
	}	

Trial Judge: James R. Crucitti

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

Husband appeals from a final divorce judgment of the Franklin Family Court, contending the trial court: (1) failed to make adequate findings to support the award of rehabilitative maintenance to wife; and (2) abused its discretion in dividing a car debt equally between the parties. We affirm.

The parties were married in October 1989, and separated after thirteen years of marriage in January 2003. Both parties were in the Air Force when they met. Wife, who was nineteen at the time, became pregnant and was honorably discharged after less than one year of service. She received no special training or benefits. Husband completed four years of service and was trained as a mechanic. He left the service to marry wife, and has since worked principally as a commercial trucker. Wife worked sporadically during the marriage as a factory worker and waitress, and was the principal homemaker and childcare provider for the parties= three minor children. Wife testified that, since the separation, she had been laid off from her latest factory job and had commenced a training program in cosmetology. By stipulation, custody of the two youngest children was awarded to mother, and custody of the oldest child was awarded to father. Wife acknowledged that she had since moved with the two children into the home of another man, who provided some support to the children. In its final order and decree, the court divided the marital assets (which consisted principally of the family home) and debts (consisting of several outstanding loans and credit card bills) roughly equally. The court awarded wife rehabilitative maintenance of \$250 per month for six years. With the exception of one modification to the judgment not relevant here, the court denied husband=s motion to alter or amend. This appeal by husband followed.

Husband contends the court failed to make adequate findings with respect to the statutory criteria for an award of rehabilitative maintenance under 15 V.S.A. ' 752. A fundamental purpose of maintenance is to Aameliorate the financial impact of divorce,@ and the court Ais authorized to award maintenance if the receiving party does not have enough income, through employment or otherwise, or property to provide for his or her reasonable needs at the standard of living enjoyed during the marriage.@ Watson v. Watson, 2003 VT 80, & 4, 175 Vt. 622 (mem.). Although the record must reflect that the court, in awarding maintenance, considered the relevant factors set forth in ' 752, it Ais not required to issue specific findings on each factor, and the party challenging the award on appeal must show there is no reasonable basis for it.@ Id. (quotations omitted).

Husband first contends that, in awarding spousal maintenance, the court failed to make the requisite threshold findings that wife lacks sufficient income or property to provide for her needs, and is unable to support herself through

appropriate employment at the standard established during the marriage. 15 V.S.A. ' 752(a). Although, as husband points out, the court found that the parties' tax returns for 2001 and 2002 showed their incomes to be close to equal (husband's was about \$32,000, wife's was approximately \$29,000), the evidence demonstrated that wife's employment over the course of the marriage was sporadic and unskilled, while husband had been continuously employed as a commercial trucker and had mechanical skills acquired while in the Air Force. Moreover, wife had been laid off from her most recent factory job at the time of the hearing because she could not work the third shift and care for the two younger children in her custody. Thus, although the court did not expressly compare the parties' income and expenses, there was sufficient evidence concerning their finances to show that wife's current income and future ability to support herself at the standard established during the marriage were not equal to husband's, and the court's decision reflects this understanding. This was adequate to meet the standard on review. Watson, 2003 VT 80, & 4.

The court here further found that the length of the marriage (thirteen years) and the fact that wife was the principal homemaker and childcare provider were key factors in awarding maintenance. Although husband has not challenged these findings, and acknowledges that they are proper considerations for an award of maintenance under 15 V.S.A. ' 752, and our case law, see e.g., Strauss v. Strauss, 160 Vt. 335, 338-39 (1993), he nevertheless appears to argue that they are outweighed by the fact that the evidence here does not show a vast inequality between the parties' financial positions. Although this particular phrase appears in Buttura v. Buttura, 143 Vt. 95, 99 (1983), and is quoted in Klein v. Klein, 150 Vt. 466, 473 (1988), a careful reading of these decisions shows that it was employed solely to describe the facts of the case, not to establish a precondition for an award of spousal maintenance. Accordingly, husband's claim is without merit.

The court here also found that rehabilitative maintenance was necessary to allow wife to acquire a vocational trade by completing her cosmetology training and establishing herself in that business. Husband acknowledges that a primary purpose of rehabilitative maintenance is to assist[] the recipient spouse in becoming self-supporting. @ Gulian v. Gulian, 173 Vt. 157, 163 (2001); see 15 V.S.A. ' 752(b)(2) (directing court to consider the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment@). Husband asserts, however, that wife's real purpose was not to acquire a trade, but to obtain a more flexible work schedule and to obtain income to pay for the children's extracurricular winter activities. We discern nothing inconsistent with the purpose of rehabilitative maintenance, however, in affording wife the opportunity and flexibility to work at a skilled trade during regular daytime hours, rather than at unskilled third-shift factory jobs. Nor do the evidence or findings support husband's claim that the court's purpose was to provide the equivalent of child support rather than rehabilitative maintenance. Accordingly, we find no error.

Husband further contends the court failed to find that he had the ability to pay the maintenance award of \$250 per month for six years. As noted, however, the court had before it evidence concerning husband's income and anticipated future earning ability, as well as his income from other sources, including regular infusions of cash from his father, which the court found to be in the nature of gifts rather than loans. This evidence was sufficient to show that the award was reasonable and within husband's ability to pay. Accordingly, we find no abuse of discretion.

Finally, husband claims the court abused its discretion in equally dividing a car debt between the parties. The trial court enjoys broad discretion in dividing the marital property, and its decision must be upheld absent a showing that the court abused or withheld this discretion. Weaver v. Weaver, 173 Vt. 512, 513 (2001) (mem.). The record shows that husband signed for a loan for the purchase of a van to be used and paid off by wife, that she failed to make several payments, claiming that she could not afford the car after she was laid off, and that husband remained liable on the debt, which was found by the trial court to total \$4500. The court found that it was appropriate, given his obligation, to award husband the car and divide the debt equally between the parties, for a total individual debt of \$2250. Although it is not in the record, the parties represent that the car has since been repossessed.

Husband asserts that he should not have been made responsible for half the debt, but he offers no factual or legal argument to demonstrate how or why the award represents an abuse of the court's broad discretion. Therefore, there is no basis to disturb the award. Weaver, 173 Vt. at 513. Husband also claims that he should have been afforded an opportunity to sell the car to mitigate the debt, but the record shows that the court derived the debt figure based on husband's testimony as to the car's resale value, and that the court awarded the car, and presumably the opportunity to

resell it, to husband. Accordingly, we discern no basis to conclude that the court abused its discretion.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice