

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-085

SEPTEMBER TERM, 2005

Robert Thayer	}	APPEALED FROM:
	}	
	}	
v.	}	Orleans Family Court
	}	
Kerry Gibbons-Thayer	}	DOCKET NO. 122-6-03 Osdm
	}	

Trial Judge: Dennis R. Pearson

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

Wife appeals from a final order of divorce, claiming that the family court abused its discretion by inequitably dividing the parties= property and by denying her request for rehabilitative maintenance. We affirm.

The parties were married in July 1999 after living together for over two years. They effectively separated in January 2003, although husband did not move out of the marital residence until November 2003. Husband has two children from a prior marriage, the oldest of which is now eighteen. The parties have no children together, and their marriage was the second one for both. Husband=s oldest child has lived with wife since the parties separated.

Wife stayed at home to help care for husband=s two children for approximately five years. From time to time she took substitute teaching assignments, and she is now studying to become a teacher. At the time of the divorce hearing, wife was working a full-time job as a paraprofessional at North Country High School. Wife=s previous employment was with IBM where she served as a financial planner/analyst from 1979 to 1996. Before joining IBM, wife was a bank branch manager and loan officer. Thus, wife has substantial experience with cost accounting, expense forecasting, and bookkeeping.

Husband has been employed by a construction firm since 1988. He is a project manager and office supervisor. Husband has owned the marital home since 1988 when he bought it from his father for \$51,500. He paid off the first mortgage in 1997, and the parties remortgaged the home in 2002 to pay off some debt and to purchase a vehicle for wife. Wife purchased a lot next to the parties= home with money she obtained from the sale of a home that she owned before the parties began living together. The net value of the home and neighboring lot combined is approximately \$44,300.

The court allocated \$103,702 of the parties= property to wife and \$107,017 to husband. The total marital estate included the marital home and the adjacent lot, retirement accounts, life insurance, cash savings, and personal property, including motor vehicles. To account for wife=s share of the martial home, the court ordered husband to pay her \$21,110 in monthly installments of \$500. Wife requested rehabilitative maintenance to reflect her contributions to the improvement of the martial home, her five-year withdrawal from the workforce to care for husband=s minor children, and to allow her to continue her education. The court rejected the request for maintenance. Wife then filed the present appeal, challenging the property division and the denial of her request for spousal maintenance.

In divorce cases, the family court has broad discretion to distribute property. Wade v. Wade, 2005 VT 72, & 13.

When fashioning a property award, the court must consider a number of statutory factors, including the parties' respective merits, the source of the assets, the parties' occupations, and the length of the marriage. *Id.* So long as the court explains the rationale underlying its decision, we will not overturn the property distribution absent a showing that the court abused its discretion. *Id.* 15 V.S.A. ' 751(b).

Wife argues that she should have received a larger share of property in the final order because she brought substantially more property to the marriage than did husband. Her argument relies on the fact that during the marriage, the parties spent the proceeds from the sale of her home. The court addressed that issue and analyzed the evidence under the factors set out in ' 751(b). The court explained that the proceeds the parties spent are now gone like other funds expended over the course of the marriage and they cannot be included in the value of the marital estate. The court recognized wife's contributions to improving the marital home and her temporary work as a homemaker to benefit husband's children. It determined that a cash award to wife was necessary to make the final award equitable. Wife has not demonstrated any abuse of discretion under the circumstances.

Wife also claims that the court should have awarded her rehabilitative maintenance. The family court has broad discretion to award maintenance if the recipient spouse lacks enough income or assets to support his or her reasonable needs after divorce. *Stickney v. Stickney*, 170 Vt. 547, 548 (1999) (mem.); see 15 V.S.A. ' 752 (giving the family court authority to order spousal maintenance and setting forth relevant factors for court to consider). A decision on maintenance will be set aside on appeal only if there is no reasonable basis to support it. *Stickney*, 170 Vt. at 549. Rehabilitative maintenance, which wife seeks, is intended to assist[] the recipient spouse in becoming self-supporting. @ *Gulian v. Gulian*, 173 Vt. 157, 163 (2001). It is often awarded in cases where the spouse seeking maintenance stopped working outside the home for a period of time and needs education and training to reenter the workforce and become self-sufficient. See, e.g., *Klein v. Klein*, 150 Vt. 466, 474 (1988) (reversing divorce order for lack of maintenance award where wife was forty years old and had not worked for eighteen years while raising the parties' children and allowing husband to develop his law practice).

In this case, the family court decided that the marriage was short, the parties' standard of living exceeded their combined incomes, and wife has considerable experience in financial and accounting matters. It acknowledged that wife chose to pursue a new career as a teacher, but explained that, given her prior work experience, husband should not have to underwrite [her] choice to retool her professional career. @ No abuse of discretion appears.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice