

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-135

JANUARY TERM, 2007

Scott Orselet

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APPEALED FROM:

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v.

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Chittenden Family Court

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Betsy Orselet

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DOCKET NO. 591-8-04 Cndm

Trial Judge: Thomas J. Devine

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

Wife appeals from a divorce judgment of the Chittenden Family Court. She contends the court abused its discretion in setting the amount and duration of the maintenance award by: (1) failing to compensate her adequately for her contributions to husband=s increased earning power; and (2) relying on an erroneous view of the parties=s reasonable needs. We affirm.

The material facts as found by the trial court may be briefly summarized. The parties were married in 1988, and separated in 2003. They had one child, who was ten years old at the time of these proceedings.

The parties entered into a stipulation, adopted by the trial court, which provided for shared legal rights and responsibilities for the child and awarded primary physical rights and responsibilities to wife. The stipulation also provided for an equal distribution of the marital assets. The principal contested issue at trial concerned spousal maintenance.

In this regard, the court found that both husband, who was 49 years old and wife, who was 51, were in reasonably good health. Both have four year college degrees and Master=s degrees. Both parties were employed outside the home prior to the birth of their child, husband as a special educator and wife as director of a municipal parks and recreation department. They earned comparable salaries. Thereafter, by mutual agreement, wife left her outside employment to care for child and home. In 2001, when the child entered first grade, wife took a part-time job in her field in which she earns about \$25,000 per year. In addition, she conducts a consulting business from home in which she earns about \$1000 per month net income, for a total annual income of approximately \$37,000. The court found that wife could expect to see her income increase over the years. Husband had left teaching some years earlier to become a school administrator. After steady promotions, his income had reached a high for the 2005/2006 school year of approximately \$80,000. The court found that husband=s income had plateaued, and would see relatively small increases in the future.

The court found that the parties enjoyed a modest, middle-class standard of living during the marriage. They were fiscally frugal, taking occasional trips and dining out from time to time. Their major extravagance was to acquire a condominium in Tremblant, Quebec. Until 2002, they lived in a small home which defendant had acquired before the marriage with a downpayment from her parents. In 2002, however, the parties purchased a new, larger home with substantially higher carrying costs totaling about \$2000 per month.

Wife=s financial statements showed monthly expenses of \$4300 per month (including child expenses) and, as noted, income of \$3700, or \$3,083 per month. The court concluded that wife was not able to meet her reasonable needs or sustain the former marital standard of living on her income alone. The court also noted that wife had left full-time outside employment to be a homemaker, allowing husband to advance in his career. Accordingly, the court concluded that a maintenance award was appropriate. Although wife sought an

award of \$2000 per month, the court determined that \$1350 per month for seven years, plus \$579 per month child support (based on the child support guidelines) was adequate. At the conclusion of the seven-year maintenance period, the order provided that husband would elect to begin receiving his teachers' retirement pension and the maintenance award would be replaced by wife's equal share of the pension, about \$1500 per month. The court noted that, due to the requirements of maintaining two separate homes, the amount might not enable wife to remain longterm in the current marital home with its higher carrying costs, but found that wife's share in the proceeds of the sale of the Quebec condominium (approximately \$29,000 to \$48,000) plus her share of the equity in the house (about \$67,700), as well as \$63,500 in retirement accounts, would provide a suitable amount for her to meet her needs at the standard established during the marriage.

On appeal, wife contends the court abused its discretion in setting both the amount and duration of the maintenance award. We apply a deferential standard of review to decisions of this nature. The trial court enjoys broad discretion in fashioning the amount and duration of maintenance awards, and its ruling must be upheld unless it fails to exercise discretion or exercises it upon clearly untenable grounds. Kasser v. Kasser, 2006 VT 2, & 38, 179 Vt. 259; Guiel v. Guiel, 165 Vt. 584, 584-85, 682 A.2d 957, 958 (1996) (mem.). In deciding whether maintenance is appropriate, the court must consider whether one spouse lacks sufficient income, property, or both . . . to provide for his or her reasonable needs, and is unable to support himself or herself through appropriate employment at the standard of living established during the marriage. @ 15 V.S.A. ' 752(a)(1)(2). The amount and duration of the award are based on factors including the length of the marriage, the standard of living during the marriage, the age and health of the parties, and the skills and earning ability of each. Id. ' 752(b). Maintenance is particularly appropriate to compensate a spouse for contributions to the marriage and sacrifices that enabled the other spouse to advance his or her career and earning ability. Gulian.v Gulian, 173 Vt. 157, 163, 790 A.2d 1116, 1120 (2001).

Wife contends that the maintenance award was inadequate because it failed to equalize the parties' income, and thus purportedly failed to recognize wife's contributions to the marriage. She argues that the court abused its discretion in failing to award monthly maintenance of \$1806 for a period of 15 years, which would have precisely equalized the parties' income and matched the length of their marriage. We disagree. As

noted, the basic purpose of maintenance is to enable a spouse with insufficient income or property to provide for his or her reasonable needs at the standard established during the marriage, considering the length of the marriage, the receiving spouse's contributions, and the parties' ages, health, and earning capacity. The record shows that the court properly considered all of these factors in fixing an amount that would meet wife's reasonable needs in light of the relatively modest standard of living established during the marriage and the relatively limited resources available to maintain two separate households. The law does not require mathematical parity of income in setting a maintenance award, Downs v. Downs, 159 Vt. 467, 470, 621 A.2d 229, 231 (1993), and the fact that the award here did not precisely equalize the parties' income after expenses does not render it invalid where the basic goals of maintenance were otherwise met.

Wife's remaining claims are also unpersuasive. She contends the court failed to condition the termination of maintenance after seven years upon husband's election to retire early and receive his teacher's retirement pension, with the result that she could be deprived of income from either source if husband determined not to retire until later. The court's order, however, plainly provides that, A[i]n connection with his Vermont State Teacher's Retirement benefit, [husband] shall elect to commence receiving benefits as of July 21, 2011.@ Thus, the claim is without merit. Wife also asserts that, given the length of the marriage and her contributions to it, the court should have awarded 15 years of maintenance. Apart from the bare assertion, wife cites no evidence or authority to support the claim. The court here found that wife was healthy and well within her prime earning years, was well educated and respected within the professional circles in which she worked, and could expect to see her income increase over the years. The court also ensured that wife would receive \$1500 per month in husband's pension benefits at the conclusion of the maintenance period. Under the circumstances, we discern no abuse of discretion in the duration of the award. Kasser, 2006 VT 2, & 38.

Wife further contends the court failed to properly discount husband's discretionary costs from his monthly expenses, resulting in an erroneous finding that husband had been incurring a deficit while paying temporary maintenance of over \$2000 per month. Wife cites, in particular, husband's testimony that he frequently traveled out-of-state at a cost of about \$600 per month. Neither husband nor the court, however, included

these travel costs within the budget that formed the basis of the court=s finding. The court expressly took note of other discretionary expenses claimed by husband, including \$100 per month for vacations and \$100 for gifts, but apparently did not consider these to be excessive, particularly in light of wife=s claimed expenses of \$250 per month for entertainment/travel and \$150 per month for gifts. The record thus does not support wife=s claim that the court=s findings inadequately failed to take account of husband=s discretionary expenses, or misstated his actual discretionary income. Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice