

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-299

MAY TERM, 2007

Joyce H. Emery	}	APPEALED FROM:
	}	
v.	}	Orange Family Court
	}	
Raoul C. Emery	}	DOCKET NO. 79-5-04 Oedm
	}	

Trial Judge: Mary Miles Teachout

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

Wife appeals the family court’s final divorce order. We affirm.

The parties were married in 1974. Their only child has reached her majority. At the time of the final divorce hearing, wife was sixty-seven years old, and husband was seventy-five years old. The parties’ primary asset was the marital residence, which was not subject to a mortgage and was appraised at \$269,000. Following a hearing at which both parties were represented by counsel, the family court awarded the marital home to wife, but required her to pay husband \$120,000 for his share of the equity in the home. The court ordered wife to pay husband \$30,000 within approximately three months of the judgement and \$450 per month thereafter to repay husband’s lien on the house for the remaining \$90,000. The court also ordered that husband’s lien be subordinated to any other loans that wife might take out to improve the property or pay off husband. The court determined that spousal maintenance would not be paid to either party.

In wife’s pro se brief on appeal, she makes numerous factual allegations and claims, without citation to the record, and then argues that she received ineffective assistance of counsel and that the judges were prejudiced against her. Upon review of the record, including the transcripts of the May 2, 2006 evidentiary hearing and the May 25, 2006 hearing in which the court set forth its findings and conclusions, we find no basis for overturning the family court’s decision. The court made detailed findings, examined each of the relevant statutory factors, and carefully explained its decision. See Wade v. Wade, 2005 VT 72, ¶ 13, 178 Vt. 189 (“The family court has broad discretion when analyzing and weighing the statutory factors in light of the record evidence.”). The court found that the parties had made a roughly equal contribution to the marriage, that their incomes would be about the same after husband moved back to Massachusetts following the divorce, and that wife would have a greater opportunity to earn income in the future, given husband’s age and significant health problems. In light of these facts, wife has failed to present any legitimate basis for overturning the court’s distribution of marital property and decision not to award maintenance.

Nor do we find any merit to wife's arguments claiming ineffective assistance of counsel and judicial bias. Apart from a showing of a violation of due process in certain types of civil cases involving a constitutional liberty interest, there is no constitutional or statutory right to effective assistance of counsel in civil cases, and the only potential remedy is a malpractice suit against the attorney. See Watson v. Moss, 619 F.2d 775, 776 (8th Cir. 1980). As for wife's claim of judicial bias, she states only that one of the assistant judges glared at her and that the court's decision was too harsh for her financially. Wife did not seek recusal of any of the judges at the final hearing, and, in any event, these allegations do not establish a basis for disqualification.

Wife also makes several statements and allegations suggesting that the family court was prejudiced against her and failed to give due consideration to various matters concerning the parties' financial circumstances during the marriage, husband's health, husband's failure to pay taxes, and instances of abuse by husband. A review of the court's findings and conclusions reveal that the court carefully considered each of these matters, and wife has failed to demonstrate either that the evidence did not support the court's findings or that the findings did not support the court's conclusions.

Finally, following oral argument on appeal, wife submitted a "motion to stay decision," in which she claims that the May 25, 2006 transcript does not accurately reflect, in certain specified respects, the family court's actual oral findings and conclusions made on that date. Wife received the transcript of the court's findings and conclusions nearly one month before she presented her oral argument on appeal, and yet she did not raise the alleged discrepancies with this Court by way of a motion to remand or a request to file a supplemental brief. The transcript was ordered by wife and produced from the family court's tape by the transcription service that has the contract for producing official transcripts of court proceedings. There is no indication that the transcript in question is anything other than a written record of the family court's oral findings and conclusions set forth on May 25, 2006. In any event, none of the alleged discrepancies appear to be critical to the court's decision, and wife does not explain why any of them are critical. Under these circumstances, we deny wife's motion to stay.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice