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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-186

DECEMBER TERM, 2007

Robert W. Maguire, et al.	}	APPEALED FROM:
	}	
	}	
v.	}	Rutland Superior Court
	}	
	}	
Samuel J. Gorruso and Sammy G. Media Corporation, et al.	}	DOCKET NO. 381-7-99 Rdcv
		Trial Judge: Nancy Corsones

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

Defendant Sam Gorruso appeals the trial court's determination of his expenses pursuant to a trustee process. Defendant argues that the trial court erred in halving his utility expenses to account for the portion attributable to his live-in girlfriend. We affirm.

In 2001, plaintiffs obtained a judgment against defendants and since that time have sought to recover on their judgment. Plaintiffs instituted a trustee process against defendant Samuel Gorruso to attach his wages. The court held a two-day bench trial. At trial, defendant claimed that after expenses he did not have any available income to pay plaintiffs, and in support submitted a document detailing his weekly earnings and expenses. In its written findings and conclusions, the court found that defendant's statement of his expenses was not accurate. The court found that defendant receives his food and gas through barter and thus removed those expenses. The court also found that although defendant's girlfriend lives with him, he did not deduct any of her costs from his expenses. Thus, the court halved defendant's utility costs. The court ordered that $69.41 be withheld each week from defendant's wages and delivered to plaintiffs.

Defendant argues that the court erred in reducing his utility expenses because his girlfriend did not actually contribute to his expenses or improve his financial situation. A court may award a judgment creditor trustee process against a judgment debtor's wages. 12 V.S.A. § 3168. In fashioning an award, the court must consider a judgment debtor's reasonable expenses, which are defined by statute as "the weekly expenses reasonably incurred for maintenance of the debtor and dependents." Id. § 3169(a)(4). The trial court found that because defendant's girlfriend was not the debtor or a dependent, defendant could not deduct expenses incurred on her behalf. We agree. In interpreting a statute, we first look to the plain meaning of

the statute. Wright v. Bradley, 2006 VT 100, ¶ 6. Here, the statute unambiguously allows a judgment debtor to deduct only expenses for himself or his dependents. The court's findings that defendant's girlfriend resides with him and is not a dependent are uncontested. Thus, the court correctly held that expenses incurred on girlfriend's behalf cannot be deducted.

Defendant further contends that, because his girlfriend does not actually contribute to his expenses, the court should not have deducted her costs and its holding otherwise conflicts with our decision in Miller v. Miller, 2005 Vt 122, ¶ 18, 179 Vt. 147. In Miller, we held that cohabitation can reduce a recipient spouse's maintenance award only upon a demonstration that the cohabitation improves that spouse's financial circumstances enough to substantially reduce the need for maintenance. We fail to see how our decision in Miller is applicable to this case. The situation in Miller and the one presented in this case are totally different. Miller involved modification of a maintenance award that requires the moving party to demonstrate a "real, substantial, and unanticipated change of circumstances." 15 V.S.A. § 758. Consequently, the issue in maintenance cases is how much a recipient spouse actually receives from a cohabitant and how much that amount improves the recipient spouse's financial circumstances. In contrast, in the present context, the issue is not how much debtor receives from his girlfriend, but how much he actually spends on his own maintenance. Expenses incurred for the maintenance of other individuals are simply irrelevant under the statute. See 12 V.S.A. § 3169(a)(4).

Finally, defendant argues that the court erred by simply halving his utility expenses to account for girlfriend's use and instead should have apportioned the utility costs. We will affirm the trial court's factual findings unless they are clearly erroneous. Stanley v. Stanley, 2007 VT 44, ¶ 13. Defendant presented no evidence at trial of how utilities are apportioned between him and his girlfriend. Therefore, given the undisputed evidence that both defendant and his girlfriend live in the house full time, the court's finding that half of the utilities are attributable to defendant's maintenance is not erroneous. Id. (explaining that findings will be reversed only where there is no credible evidence to support them).

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice