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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-410

JULY TERM, 2009

Gwen Hart	}	APPEALED FROM:
	}	
v.	}	Franklin Family Court
	}	
Michael Hart	}	DOCKET NO. 5-1-07 Frdm
		Trial Judge: Howard E. VanBenthuysen

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

Wife appeals from the family court's final divorce order. On appeal, wife argues that the court erred in (1) concluding that husband's interest in property in Montgomery was not a marital asset, and (2) neglecting to specifically award her time with the children on Christmas and during summer vacation. We reverse and remand the property division decision, and affirm the parent-child contact order.

The parties were married in September 1995. They separated on December 15, 2006, and husband moved out on February 9, 2007. Wife remained in the marital home with the parties' two children—a daughter born in September 1998 and a son born in December 2001. The parties' daughter has several health problems, including seizures and cerebral palsy. Wife has been the primary caregiver for the children. Husband has taken a more active role in the children's lives since the parties' separation. Husband and wife both work full time outside of the home and have similar incomes.

At the final divorce hearing, the parties disputed division of the marital assets. The parties' main asset was the marital home. In addition, wife claimed that husband's interest in real property in Montgomery, Vermont should be subject to the court's jurisdiction. The property was acquired by husband's father in 1985 and on May 5, 1993 the father conveyed the property via straw deed to himself, husband, and husband's sister as cotenants. In 2006, husband's father became terminally ill and on December 1, 2006, he created a joint tenancy with rights of survivorship between himself and his children. Shortly thereafter, when husband's father died on December 11, 2006, husband became a joint owner of the property with his sister. Husband transferred his interest in the property to his sister on December 29, 2006 for no consideration. Wife filed for divorce on January 2, 2007. Wife claims she did not learn of the transfer until a title search was done in connection with the divorce. The property was appraised at $144,000 and husband's sister sold the property in April 2008 for $120,000.

Following a contested hearing, the court ordered the following. As to the Montgomery camp, the court found that there was no evidence to suggest that wife did not know that husband had transferred his interest in the property to his sister. The court also found that husband was an occasional user of the camp and a "very passive co-owner" and had received no consideration from the sale to his sister. Thus, the court concluded that the camp was not a marital asset. The court awarded wife the marital home and required her to pay husband for his interest in the home's equity. Both parties were awarded their retirement accounts and some of the parties' personal property.

The parties agreed that wife would have sole legal and physical rights and responsibilities for the children, but disputed the amount of parent-child contact for husband. The court constructed the following parent-child contact schedule. The court granted husband parent-child contact Friday through Sunday evening on alternate weekends, overnight Tuesdays each week, and Thursday evening for dinner.* The court also granted husband five weeks of parent-child contact during the children's summer vacation. As to holidays, the court explained that husband has the "children from noon on Christmas Day to noon the following day." The following holidays were given to wife on even years and husband on odd years: Thanksgiving, New Year's Eve, Fourth of July, and Easter. The court's schedule stemmed from its desire to allow husband adequate time with the children, while minimizing the number of transitions between households during the school year. In response to motions filed by both parties, the court clarified and amended some of its findings, including granting wife the children during February vacation. Wife then appealed.

On appeal, wife challenges the court's property division and parent-child contact orders. Wife first contends that the court erred in concluding that the Montgomery property was not a marital asset. According to wife, husband fraudulently transferred title of the property to deprive wife of a fair portion of the marital assets. Wife asserts that she is entitled to one-half of husband's interest in the property—an amount she submits is $36,000.

The family court has broad discretion in distributing marital assets within the limits of 15 V.S.A. § 751. Atwood v. Atwood, 143 Vt. 298, 300 (1983). We will affirm if there is a reasonable basis to support the court's findings and if the findings support the conclusions. Id.

On review of the record, we conclude that the evidence does not support the court's decision that the Montgomery property was not a marital asset. Per statute, "[a]ll property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court." 15 V.S.A. § 751(a). In this case, the undisputed evidence was that at the time the parties separated, husband held joint title with his sister to the Montgomery property. Thus, husband had an interest in this property that was subject to the court's jurisdiction. See Mizzi v. Mizzi, 2005 VT 120, ¶ 6, 179 Vt. 555 (mem.) (concluding that wife's interest in property she held jointly with her mother and sister was subject to court's jurisdiction); Lynch v. Lynch, 147 Vt. 574, 576 (1987) (per curiam) ("[I]t does not matter whether the property is held separately, jointly, or as tenants by the entirety; all property owned by either of the spouses is subject to distribution.").

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* In response to husband's motion to alter or amend, the court clarified that husband had contact with the children on Thursday evenings for dinner only.

The fact that husband conveyed his interest to his sister a few days before wife filed for divorce does not in itself remove the property from the court's jurisdiction. Husband conveyed his interest after the parties had separated and husband knew that they would be divorcing. The court may disregard "an agreement that would have conveyed marital assets in contemplation of divorce in return for little or no consideration. Such an agreement has long been contrary to public policy and unenforceable as a fraudulent transfer." Clayton v. Clayton, 153 Vt. 138, 142 (1989). Where one party to a divorce makes such a transfer, the court has a duty to consider the bona fides of the transfer, and the transferor is free to present evidence that the conveyance was bona fide and "not undertaken for the purpose of diminishing the value of the marital estate." Id. at 142-43.

In this case, husband failed to present such evidence. Cf. Kasser v. Kasser, 2006 VT 2, ¶ 18, 179 Vt. 259 (affirming trial court's finding that husband's contributions to children's trusts prior to divorce were bona fide and not done with purpose to deplete marital estate). The record does not support the trial court's finding that there was no evidence "to suggest that [wife] did not know about [husband's transfer to sister], or that it was undertaken to protect an asset from being considered in the divorce." On the contrary, husband testified that he did not discuss with anyone that he planned to transfer his interest in the property to his sister. Cf. id. (concluding there was sufficient evidence to show that husband's transfers of assets were bona fide where wife was aware of the transactions). In addition, husband's purported reasons for the transfer—that he did not want to look after the camp and giving it to his sister would keep it in the family—do not demonstrate that the transfer was bona fide. Husband's desire to be free from managing and maintaining the camp does not explain why he transferred his interest for no consideration. Further, his purported desire to keep the camp in the family is inconsistent with the uncontested evidence that sister sold the property four months after husband quit-claimed his interest to her.

Because husband failed to present evidence that demonstrated that the transfer of his interest in the property was bona fide and not done with the purpose of depleting the marital estate, we conclude that the property was a marital asset. We remand for the court to decide the value of husband's interest and how that interest should be equitably divided between the parties.

Wife's second argument concerns the court's parent-child contact schedule. Wife argues that the court erred in failing to specifically grant her vacation time and part of Christmas.

The trial court is vested with broad discretion in crafting or modifying a parent-child contact schedule that serves the best interests of the children, and its decision will not be reversed unless clearly unreasonable on the facts presented or based on unfounded considerations. Gates v. Gates, 168 Vt. 64, 74 (1998). In this case, the court denied husband's request for an additional overnight with the children on Thursday evening, agreeing with wife's concern that an additional transition mid-week would be difficult for children their age. Instead of the overnight, the court granted husband five weeks of vacation during the summer. Thus, the court's schedule allows each parent to have time with the children, while minimizing transfers during the school year. The court expressly balanced children's need for extensive contact with husband, and wife's desire to minimize transitions during the school year. While the court did not expressly grant wife time with the children during their summer vacation and Christmas, the schedule gives wife ample time with the children during the summer, grants wife February

vacation, and allows wife to have the children until noon on Christmas. Wife has not shown that the schedule established by the court in this case was clearly unreasonable or an abuse of discretion, and therefore we affirm it.

Reversed and remanded for proceedings consistent with this opinion.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice