

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-243

FEB 25 2010

FEBRUARY TERM, 2010

Kevin St. Marie	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
Jean St. Marie	}	
	}	DOCKET NO. 827-9-08 Cndm
	}	
	}	Trial Judge: Linda Levitt

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

Husband appeals the family court's property award in this divorce case. We affirm.

The parties, who are in their early forties, were married for eighteen years between 1991 and 2009. They have four children who ranged in age from twelve to one at the time of the final divorce order in May 2009. During the marriage, husband, who is a pharmaceutical sales person, was the principal wage earner for the family. He had earned approximately \$150,000 annually for several years and was expected to earn as much as \$160,000 in 2009. Wife has a B.S. degree in Education, and has experience as a teacher, caregiver, and athletic trainer. She did not work between 1996 and 2004 while she was caring for the older two children, and she stopped working again when the youngest child was born. In between, she worked full-time as a physical education teacher in two schools, earning \$14,500 per year. The parties' principal assets at the time of the final hearing were their home, with \$188,000 in equity, husband's pension, and husband's 401k account containing \$80,000.

Following an evidentiary hearing, the family court awarded wife the marital home. Wife is responsible for the home's overhead costs, except for mortgage payments, which husband is required to make for a maximum of five years, by which time wife is obligated to sell or refinance the home. Wife was awarded the marital share of husband's pension. Husband was awarded the 401k account and other minor accounts. In the end, the court awarded wife approximately two-thirds of the marital property. The court also awarded wife maintenance for fifteen years—\$4000 per month the first five years, \$3000 monthly the second five years, and \$2000 monthly for the third five years. The court stated that it was awarding wife a larger share of the marital property because the parties had been married for eighteen years and wife's role as homemaker allowed husband to be successful and increase his earning power. The court explained that husband had ten times the earning power of wife, that his financial future was bright, that his income was likely to continue to increase, and that wife's income, in contrast, was likely to increase only slightly. The court also stated that awarding the home to wife would keep the four young children in a stable home environment for at least the next five years.

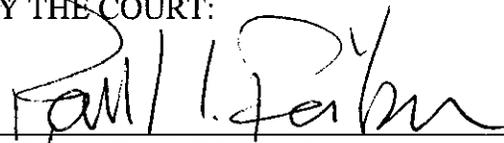
On appeal, husband does not challenge the maintenance award, but argues that the property award is untenable and unsupported by either the evidence or the court's cursory findings, particularly considering the large maintenance award. He also argues that the court

failed to credit him for \$25,000 in his premarital equity rolled into the marital home, and that the court erroneously found his boat had \$7000 in equity. We find these arguments unavailing. Given the wide disparity in the parties' respective earning capacities, which resulted in large part from the wife's role as a homemaker, the court did not abuse its discretion in awarding wife two-thirds of the marital property. See Wade v. Wade, 2005 VT 72, ¶ 13, 178 Vt. 189 (noting that family court has broad discretion in equitably dividing marital property after analyzing and weighing statutory factors). According to husband, the court significantly overvalued wife's homemaker contributions and significantly undervalued his monetary contributions. In making the award, however, the court not only considered "the contribution by one spouse to the . . . increased earning power of the other," 15 V.S.A. § 751(b)(5), and "the contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the nonmonetary contribution of a spouse as homemaker," id. § 751(b)(11), but also "the opportunity of each for future acquisition of capital assets and income," id. § 751(b)(8). Examining the undisputed facts concerning the parties' respective financial positions and prospects following the divorce, we cannot say that the family court abused its discretion by awarding wife a large portion of the marital property, even considering the maintenance award.

As for husband's claimed \$25,000 in premarital equity rolled into the marital home, his own testimony placed that equity at eight or nine thousand, and, in any event, the court was not obligated to award the equity to him following the parties' eighteen-year marriage. See Stafford v. Stafford, 161 Vt. 580, 581 (1993) (concluding that overall property distribution was reasonable even though husband did not receive compensation for his interest in marital home); Williams v. Williams, 158 Vt. 574, 577-78 (1992) (upholding trial court's decision to award marital home to wife notwithstanding fact that husband had contributed more to value of home). Finally, although the court apparently erred in finding that husband's boat had \$7000 in equity, the court also apparently erred, according to husband's testimony that there was no real or meaningful equity in the wife's car, in finding that wife's car had \$8000 in equity, thereby substantially balancing out the two errors, which in any case were not significant in considering the parties' overall finances.

Affirmed.

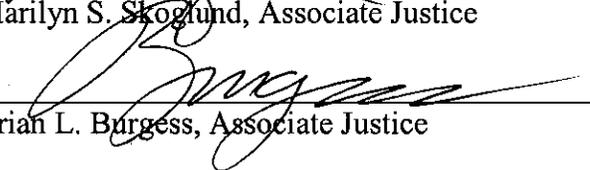
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice