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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-231

MARCH TERM, 2002

Nina Udell	}	APPEALED FROM:
	}	
v.	}	Bennington Family Court
	}	
Eric A. Pillemer	}	
	}	DOCKET NO. 298-11-98 Bndm
	}	
	}	Trial Judge: David Howard
	}	
	}	

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

Wife appeals from a family court order that husband's disability insurance policy was not a marital asset subject to equitable distribution. She contends the court erred. We affirm.

The facts, as set forth in the trial court's comprehensive findings, may be summarized as follows. The parties met in college in 1970, and married in 1972. While husband attended college, graduate school, and medical school, wife worked at various teaching positions and raised the couple's two adopted children. In 1988, husband started a medical practice in Vermont, earning a very substantial income. Wife cared for the children and the marital home. In 1996, wife returned to school and eventually found employment as a teacher. In April 1998, following a period of increasing stress, husband separated from wife. The court found that soon thereafter husband became disabled from mental health problems, and essentially terminated his practice. In April 2000, husband's disability insurance carrier began paying him benefits of $11,700 per month. Husband later began a relationship with another woman, and had another child. Wife moved to California in 2000.

The court noted that the parties had accumulated considerable marital assets, including a number of residences. The property award to wife included 70% of the proceeds from the sale of the marital home, valued at not less than $490,000 (with a mortgage balance of $100,000), personal stocks, a payout from a trust established by her parents which the court estimated would have a value of at least several hundred thousand dollars, and her retirement accounts from several teaching positions. The court also awarded wife permanent spousal maintenance of $5,000 per month. The court awarded custody of the parties' sixteen-year old son to husband.

In March 2001, after the divorce proceedings but before the judgment had issued, husband filed a motion for permission to settle a dispute with his disability insurance carrier, which husband claimed was threatening to cease payments. The proposed settlement was for a lump sum payment of $500,000. Wife filed an opposition to the motion, asserting that the settlement would jeopardize her opportunity to obtain sufficient maintenance. On March 28, the court issued an entry order, ruling that the policy was not a marital asset and that its approval of the settlement was not necessary. The court noted further that it was in the process of issuing a decision in the divorce case, but that either party could move to reopen on this issue. Neither party so moved. The court issued the divorce judgment on April 13. On April 16, wife moved to reconsider the March 28 entry order. The court denied the motion. This appeal followed.

Wife contends the court erred in declining to treat the disability insurance policy as a marital asset subject to equitable division, and in failing to provide some other form of security for the maintenance payments. We decline to address the contentions for two reasons. First, although it was readily apparent before and during the divorce proceedings that the disability policy was a significant asset and husband's principal source of income, wife failed to request that it be treated as a marital asset and included in the property settlement. Further, wife failed to request that some other "security" for maintenance be provided, despite the fact that her initial and supplemental requests for findings and conclusions contained a detailed proposal setting forth the purported marital assets and requesting a substantial number of those assets. Issues not raised before the trial court are not preserved for review on appeal. See Guiel v. Guiel, 165 Vt. 584, 585 n.2 (1996) (mem.).

We recognize that husband's proposal to settle the insurance dispute through the $500,000 buy-out was not raised until after the divorce hearing, in March 2002, when he filed a motion for permission to settle the claim. In its March 28 entry order, the court ruled that its permission was not necessary, but noted that the parties were free to move to reopen the evidence in the divorce proceeding on this question. Wife did not so move, and failed to brief or argue the question of whether the disability policy should be treated as a marital asset under the law. The family court issued the final divorce judgment on April 13. Because the marital-asset issue was not adequately addressed to the trial court in the divorce proceeding, we conclude that the issue was not properly preserved for review on appeal.

Even if the claim were preserved, we would decline to address it for the additional reason that the question is moot. Wife concedes that the insurance dispute was settled following the court's ruling that husband was free to do so without the court's permission. Accordingly, the matter is moot. See In re Moriarty, 156 Vt. 160, 163 (1991) (case is moot if court can no longer grant effective relief).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Denise R. Johnson, Associate Justice