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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-436

APRIL TERM, 2002

Reed Fendler v. Cammi Fendler	}	APPEALED FROM: Bennington Family Court DOCKET NO. 119-5-00 Bndm Trial Judge: Karen R. Carrol

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

Wife appeals from a final judgment of divorce, as well as from a post-judgment order denying her motion for contempt. Although she identifies nineteen separate issues on appeal, her arguments are set forth under five broad claims of error. She contends the court erred in: (1) denying her request to extend an abuse prevention order; (2) denying her request for attorney's fees; (3) awarding her an inadequate share of marital estate; (4) denying her request for rehabilitative maintenance; and (5) ruling on her motion for contempt. We affirm.

The parties met in the Fall of 1989, when wife was a guest at the Molly Stark Inn, which is owned and operated by husband. In December of that year, wife moved from Michigan to live with husband at the Inn. For the next several years, wife attended college with financial support from husband, and worked part-time at the Inn, although the court found that her contributions were relatively small compared to husband, who spent almost all of his time on Inn matters, sometimes working eighteen hour days. Eventually the parties married in June 1995. Wife received her B.A. that same month from Bennington College, and later acquired a Master's Degree in Community Mental Health from Trinity College in Burlington. In February 2000, shortly before the parties separated, husband struck wife during an argument, resulting in wife's obtaining a final relief from abuse order in May. In June 2001, the court conducted several days of hearings of the parties' contested divorce, as well as a consolidated hearing on wife's motion to extend the relief-from-abuse order. The court issued its final judgment and order of divorce on August 21, 2001. The judgment included an order denying wife's motion to extend the relief-from abuse order. On September 24, 2001, the court issued an order denying wife's motion for contempt. This appeal followed. Additional facts will be presented as necessary in the discussion that follows.

Wife first contends the court erred in denying her request to extend the abuse prevention order. In a relief-from-abuse proceeding, as in other matters, we review the factual findings of the trial court in the light most favorable to the judgment, disregarding the effect of modifying evidence, and will affirm the findings if supported by any credible evidence, and the court's conclusions if rationally supported by its findings. Coates v. Coates, 171 Vt. 519, 520 (2000) (mem.). Because the trial court is in the best position to assess the credibility of witnesses, observe their demeanor, and weigh the evidence, we will not set aside the court's findings unless clearly erroneous. Benson v. Muscari, 769 A.2d 1291, 1295 (2001). Here, the court noted that despite wife's claim of being in continuing fear of husband, the evidence showed that she had visited him at the Inn on several occasions after the initial abuse-prevention order was issued and that the parties had been intimate on more than one occasion, that they had continued to exchange e-mails in which they

spoke of reconciling until shortly before the final hearing, and that a mutual friend testified that wife had never expressed any fear of husband. In addition, the court noted that the original relief-from-abuse order was based on one incident in which husband had struck wife more than one year earlier, that nothing like it had occurred since, and that wife now lives in Michigan. In light of these findings, which are supported by the record evidence, we discern no basis to disturb the court's conclusion that an extension of the order was not necessary to protect wife.[(1)]

Wife next contends the court erred in denying her request for attorney's fees, which she indicated at trial totaled about $12,000. The trial court may award attorney's fees in a divorce case at its discretion. Kohut v. Kohut, 164 Vt. 40, 45 (1995). The financial circumstances of the parties, their needs and ability to meet them, are the primary consideration. Begins v. Begins, 168 Vt. 298, 305 (1998). The court need not hold a special hearing or take separate evidence on the issue, and its ruling - even if summary - may be upheld if "the detailed findings on the general financial circumstances of the parties support the fee award." Milligan v. Milligan, 158 Vt. 436, 444 (1992). Here, although the court summarily ordered that the parties would be responsible for their own attorney's fees, the extensive evidence and the court's specific findings concerning the parties' incomes and ability to meet their respective financial needs were sufficient for this Court to determine that the ruling was within the trial court's discretion. In particular, the findings indicated that there was not a great disparity in the parties' current net incomes (husband's was about $29,000, wife's was $21,476); that wife had no other dependents to support or substantial debts; and that wife was highly intelligent and well educated, and thus able to earn substantially more than her current income level. Accordingly, we discern no abuse of discretion.

Wife next asserts the trial court abused its discretion in awarding her less than 7% of the overall marital estate. She contends, in this regard, that the court erroneously ignored the length of the marriage; failed to set forth a clear rationale for the award; and erred in finding that fault was not an important factor. The trial court enjoys wide discretion in considering the statutory factors that guide its equitable distribution of the marital assets, and its decision will be upheld unless its discretion was abused, withheld, or exercised on clearly untenable grounds. Jakab v. Jakab, 163 Vt. 575, 585 (1995). Although the court here observed that "[t]he marriage can be considered a short one" (from 1995 until the parties separated in 2000), the court acknowledged that the parties had lived together from late 1989. Wife contends nonetheless that the court erred in failing to consider the entire length of the couple's relationship. See Wall v. Moore, 167 Vt. 580, 580-81 (1997) (mem.) (court may consider "the entire length of the couple's relationship in the distribution of marital assets"). The record does not support the claim. Indeed, the record reveals that the court carefully reviewed the circumstances of the parties' relationship during the period from 1989 to the 1995, noting that husband had provided substantial financial support to wife while she attended college, while wife's contributions to the Inn were fairly minimal. Thus, the case is entirely distinguishable from Wall, where the plaintiff had provided the majority of the couple's financial support during the years before the couple married. See id. Accordingly, we discern no error.

Wife also asserts that the court abused its discretion in failing to set forth a clear rationale for the property award, which she claims represents a massive disparity. Again, the record does not support the claim. The court explicitly considered each of the relevant factors set forth under 15 V.S.A. 751, noting that husband had provided substantial financial support to wife while she obtained an education, whereas wife had contributed relatively little to the value of the Inn; that both parties were relatively young (wife was thirty-four years old, husband was forty-three) and in good health; and that both parties were well situated to adequately provide for their own needs, husband being the owner of a well established Inn, while wife was well educated and eminently employable (although she had opted not to maximize her earning potential by working at an outdoor adventure company rather than in her chosen field). Although the assets of the marriage were substantial ($644,808), the bulk of the estate was comprised of the value of the Inn ($540,000). The court reasonably declined to award wife any portion of the Inn, however, noting that husband had owned the business prior to meeting wife, and that its value was based exclusively on husband's reputation and hard work. Of the liquid assets, totaling about $116,000, the court awarded wife $40,000, or about 34%. In light of the record evidence and the court's findings, summarized above, we cannot conclude that the award of $40,000 was unreasonable or lacked a clear equitable rationale. See Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988) (distribution of property is not exact science susceptible of precise formulas; all that is required is that distribution be equitable).

Wife also asserts that, in dividing the marital estate, the court erred in failing to consider husband's fault as a factor. The court found in this regard that the one undisputed incident that led to the relief-from-abuse order was counterbalanced by wife's engaging in a relationship with another man, which the court found had occurred before the parties' separation. As noted, the court's findings will not be disturbed unless clearly erroneous, and its property distribution must be upheld

absent a clear abuse of discretion. Jakab, 163 Vt. at 585. The record here supports the court's findings and conclusion with respect to the relative merits of the parties. Accordingly, there is no basis to disturb them.

Wife next contends the court committed reversible error in denying her request for rehabilitative maintenance. Under 15 V.S.A. 752(a), a court may award rehabilitative maintenance if it finds that the spouse seeking maintenance lacks sufficient income, property or both, including property apportioned under the court's distribution of marital assets, to provide for his or her reasonable needs, and is unable to support himself or herself through appropriate employment at the marital standard. A party seeking to overturn a maintenance award must show that there is no reasonable basis for the court's decision. Kohut, 164 Vt. at 43. The trial court here concluded that the evidence did not support a finding that wife lacked sufficient income or property to meet her reasonable needs. In so concluding, the court relied on several considerations, including the $40,000 property settlement, which would provide money for wife to buy a new vehicle and stabilize her housing; wife's college education and Master's degree, which the court found provided wife the ability to earn a good income; and the fact that wife had voluntarily worked at lower-paying jobs that did not utilize her education or maximize her earning potential. As for the marital standard, while the court acknowledged that the parties had enjoyed a good standard of living, it further found that there was no reason why wife - who was not overburdened with debt and was responsible only for supporting herself - could not support herself at the standard experienced during the marriage. The record evidence supports these findings, which provide a reasonable basis for the court's decision not to award maintenance. Accordingly, there is no basis to disturb the court's ruling.

Finally, wife contends the court committed several errors in ruling on her contempt motion. After the final divorce hearing, but before the court's decision, wife filed a motion for contempt and protective order, alleging that husband failed to provide temporary support payments of $500 per month ordered by the court at the conclusion of the divorce hearing, and had negligently packaged and mailed certain personal items belonging to wife, resulting in their being damaged. The court scheduled a hearing on the motion for September 14, 2001. On August 21, the court issued its divorce decision. On September 13, one day before the scheduled hearing, wife filed a notice of appeal of the divorce judgment, and moved to transfer the contempt motion to this Court. The trial court denied the transfer motion. Following the hearing, the court denied the motion for contempt, and ordered wife to pay husband's attorney's fees totaling $500.00.

Wife contends the court erred in denying the motion to transfer the contempt proceeding to this Court, arguing that the trial court was divested of jurisdiction when she filed her appeal. The trial court properly ruled, however, that neither of the issues raised in the contempt proceeding involved the final order on appeal: one related to the court's order requiring payment of temporary maintenance until the court issued its final order, and the other involved the propriety of husband's handling of certain personal items, a subject not addressed in the final order. See Kotz v. Kotz, 134 Vt. 36, 38 (1975) (upon appeal, trial court is divested of jurisdiction as to all matters within scope of appeal). Wife also contends the court erred in admitting a letter from wife's mother describing the contents and condition of items received in ten boxes shipped by husband. Wife attached the letter to her motion for contempt, and wife's counsel indicated that she had no objection to its admission. Accordingly, the claim of error was waived. See In re Estate of Peters, 171 Vt. 381, 390 (2000) (to preserve claim of error, party opposing introduction of evidence must make timely objection). Finally, wife contends the court erred in finding that husband owed her only $1000 in temporary support, rather than $1500. The record evidence supports the court's finding that husband owed wife payments for the period from June 15 (the last day of the final hearing) through August

15, the court's final order having issued on August 21. Accordingly, the order will not be disturbed.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

1. Wife also asserts in this context that the court "penalized [her] for following her religious convictions in that she attempted to reconcile the marriage," and suggests that the court erred in excluding the testimony of a maintenance worker concerning husband's attitude toward wife. Apart from the bare assertions, wife has not cited any law or authority to support the contentions. Accordingly, we decline to address them. See Brigham v. State, 166 Vt. 246, 269 (1997) (we will not undertake search for error where claim is not adequately briefed or argued).