

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-302

FEBRUARY TERM, 2004

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|                    | } APPEALED FROM:                        |
|                    | }                                       |
|                    | } Franklin Family Court                 |
| David A. Desorcie  | }                                       |
|                    | }                                       |
| v.                 | } DOCKET NO. 305-10-01 Frdm             |
|                    | }                                       |
| Janice H. Desorcie | } Trial Judge: Howard E. VanBenthuyesen |
|                    | }                                       |
|                    | }                                       |

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

Wife appeals the family court= s distribution of marital property in this divorce case, arguing that the court failed to consider all of the parties= assets and inequitably divided the assets that it did consider. Because the court appears to have erroneously presumed that marital property obtained following the parties= separation is not subject to distribution, we reverse and remand the matter for further consideration.

The parties were married in May 1989 after living together for two years. They separated for the last time in October 2001. No children were born of the marriage. In 1990, with help from his father, husband purchased the home he had grown up in. The parties resided in that home during the marriage. Husband continued to work at the family grocery store, as he had done for most of his life. In 1995, he purchased the business from his father. He worked long hours at the store every day of the week. Wife worked at a factory until 1991, when she became unemployed. She did not work outside the house again until after the parties separated. In addition to the marital residence, other real estate was acquired during the marriage. In 1999, husband and his father purchased, as joint tenants with a right of survivorship, a house next to the family store. When his father died in March 2002, husband became the sole owner of that property, where he resided after the parties separated. Husband also inherited the store real estate and a one-third interest in a garage. In addition to the real estate, the parties had various retirement and bank accounts.

Following a one-day hearing, the court awarded husband (1) the marital residence subject to a \$20,000 mortgage payable to wife over a ten-year period in recognition of her contributions to the upkeep and maintenance of the residence; (2) the family store business and the real estate in which it operates; (3) one-half of the parties= stock portfolio; and (4) approximately one-half of the pensions accumulated by the parties. For her part, wife was awarded one-half of the stocks, pensions, and personalty. In the end, the court awarded husband approximately eighty-six percent of the marital property. In making this one-sided distribution, the court stated that it had been persuaded that the bulk of the parties= assets had been acquired by husband following the parties= separation. The court also stated that it was struck by wife= s lack of a financial contribution to the acquisition or preservation of the parties= assets, particularly given that the parties had not had children to raise. The court noted that wife had contributed little to the family business and had already gained an earning power equal to that of husband.

On appeal, wife argues that the family court (1) erred by presuming that assets acquired by husband after the parties separated were not subject to distribution, and (2) in any case, inequitably divided the parties= assets by giving a disproportionate emphasis to certain factors and by failing to recognize other important factors. We conclude that the

court= s property distribution must be reversed. We have stated on many occasions that A property division is not an exact science, and the trial court has broad discretion in considering the statutory factors and fashioning an appropriate order.@ Cabot v. Cabot, 166 Vt. 485, 500 (1997); see Dreves v. Dreves, 160 Vt. 330, 333 (1993) (A The trial court has discretion in considering these factors, and is not required to explain the exercise of its discretion with mathematical precision or specify the weight given to each of the statutory factors.@ ). The family court= s discretion is not unlimited, however; the court must provide a clear statement of what was decided and why. Cabot, 166 Vt. at 500; Dreves, 160 Vt. at 333. Further, when a property distribution is weighted heavily in favor of one party, it compels us to examine the record more carefully to assure that equity has been served. See Hendrick v. Hendrick, 142 Vt. 357, 359-60 (1982).

Here, the disparity in the property distribution is striking B the court awarded eighty-six percent of the approximately \$400,000 in marital assets to husband, and fourteen percent to wife. The court cited compelling reasons for giving husband a larger share of the assets B husband= s hard work in building assets acquired mostly from his side of the family, contrasted against wife= s lack of contribution to acquiring and preserving those assets. On the other hand, the court= s stinting acknowledgment of the length of the marriage B calling a fourteen-year marriage one A of modest duration@ B and of wife= s contribution to the marriage as a homemaker over that period of time B awarding her \$20,000 to be paid over ten years at six percent interest in recognition of the upkeep and maintenance of the marital home B bring into question the equity of its property distribution, notwithstanding the rationale given by the court. Cf. Dreves, 160 Vt. at 333-35 (understanding trial court= s rationale in dividing property was paramount, given significant disparity in award B only twelve and one-half percent of \$295,000 in marital assets to wife; court= s explanation that marriage was fairly short and that most assets were originally attributable to husband was insufficient to support one-sided award).

In any event, reversal is required because the court appears to have presumed that assets acquired by husband after the parties separated are not subject to distribution as marital property. This is not correct. See 15 V.S.A. ' 751(a) (A All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court.@ ); Nuse v. Nuse, 158 Vt. 637, 638 (1992) (mem.) (' 751(a) A is broad enough to cover property acquired after the parties separated@ ); see also Osborn v. Osborn, 147 Vt. 432, 434 (1986) (under ' 751(a), trial court should have considered husband= s undistributed share of his mother= s estate when dividing parties= property). We find unpersuasive husband= s argument that the family court was aware that it could distribute, and in fact did distribute, the marital assets acquired by husband following the parties= separation. The language used by the court in its decision suggests otherwise. Further, the court= s failure to indicate how it was dividing such property B including some of the real estate and certain insurance proceeds B demonstrates the court= s presumption that such assets were not subject to distribution. Given these circumstances, reversal is required. Cf. Hendrick, 142 Vt. at 361 (reversal required because of trial court= s erroneous belief that it was precluded by law from apportioning husband= s interest in his plumbing business).

The family court= s decree of divorce is affirmed; however, the court= s distribution of marital property is reversed, and the matter is remanded for further consideration.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice