

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-111

OCTOBER TERM, 2006

Michele Rose

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APPEALED FROM:

}

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v.

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Chittenden Family Court

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Kevin Rose

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DOCKET NO. 89-2-04 Cndm

Trial Judge: Thomas Devine

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

Father appeals from a family court order granting in part and denying in part his post-judgment motion for contempt and enforcement. He contends the court erred in: (1) failing to compensate him for personal property that wife allegedly damaged or sold in violation of the divorce judgment; (2) failing to address his claim that mother improperly withheld certain investment funds, contrary to the provisions of the divorce judgment; (3) ordering him to deliver one of two kayaks to mother in return for her delivering certain artwork; and (4) rejecting his request for sanctions. We affirm.

The record discloses that, in June 2005, the Chittenden Family Court entered a final judgment of divorce between the parties. The court awarded mother parental rights and responsibilities and the marital home, but awarded father \$10,000 in equity from the home, as well as certain investment funds, including a Fidelity account valued at over \$21,000. The court also made certain specific provisions for the personal property, awarding each party his or her own vehicle, awarding a tandem kayak and Cape Horn boat to mother, and awarding father all his personal property that is currently stored in the basement or garage of the marital residence, as well as all items listed under >Kevin= and >Paddleways= on Exhibit 36@ subject to certain specific exceptions.

The divorce appears to have been highly contentious, with both parties filing numerous motions for enforcement and contempt both before and after the final judgment. The post-judgment motion at issue was filed by father in November 2005, claiming that mother had improperly sold his vehicle and damaged other personal property, and had withheld the Fidelity investment funds. He sought a ruling holding mother in contempt, compensation for the allegedly damaged or sold items, and sanctions.

The court held a hearing on the motion on January 17, 2006. Father represented himself, while mother appeared with counsel. The court made findings and conclusions on the record following the hearing and issued a written decision a month later. In its written decision, the court indicated that it had heard testimony from the parties concerning the 29 specific items of personal property that were the subject of father=s motion. The decision contains findings addressing each item. With respect to father=s car, the court found that father knew the vehicle had been sold prior to the final merits hearing, and therefore was not entitled to an award of funds equal to its value. The court further ordered mother to search for an item awarded to father known as the Peter Woodhouse Mounted Card, and to deliver itCif foundCto father in return for his delivery to mother of one of two tandem kayaks purchased by the parties for family use. The court further rejected father=s claim that he was entitled to compensation for damage to certain personal items allegedly caused by wife=s storage of the items in damp conditions in the basement or garage, finding that they had been stored there during the marriage and that mother had not tried to cause the damage. The court did not specifically address the Fidelity investment funds in the written order, apparently because mother had tendered a check for those funds at the end of the

hearing. Finally, the court denied father=s request for compensation and sanctions for his time spent in bringing the motion. This appeal followed.

We note at the outset that father=s arguments are not supported by any citation to the record, despite our rules requiring appealing parties to do so. See V.R.A.P. 28(a)(4) (requiring that appellant=s brief contain citations to the Aparts of the record relied on@); V.R.A.P. 28.1 (requiring that any record citations to hearing include reference to specific location on videotape by date, hour, minute and second). Nevertheless, we have reviewed the videotape to assess father=s claims, which we conclude have no merit. Father first argues that mother acknowledged selling his car and improperly retaining the proceeds, and argues that the court misconstrued his testimony concerning the precise point in time when he became aware of the sale. The final divorce order awarded each party their respective vehicles. Father claimed that his vehicle was the one mother had sold, while mother claimed that both parties had different vehicles at the time of the final divorce hearing, and that the provision in the final order was not referring to the car that she had sold. In its written order, the court ruled that father was not entitled to funds representing the value of the sold vehicle because the vehicle was not specifically mentioned in an exhibit referred to in the final order, and because father testified that he knew before the final hearing that mother had sold the vehicle. Father argues on appeal that the court misconstrued his testimony. Our review of the record reveals that, after being placed under oath, father unambiguously testified that he had learned from his son prior to the final divorce hearing that mother had sold the vehicle. We agree with the court that father failed to demonstrate that the final order awarded him the vehicle that wife had sold.

Father also claims that mother negligently damaged his property by storing it in a wet garage. Based on wife=s testimony, the court concluded that, for the most part, the property father was seeking had always been stored in the basement, and wife simply left the property where it had always been kept. Father disputes mother=s testimony, which he claims was inconsistent with her testimony from a previous hearing, but it is the role of the trial court, not this Court, to determine the credibility of the witnesses. See Root v. Root, 2005 VT 93, & 15, 178 Vt. 634 (mem.) (trial court is in unique position to determine credibility of witnesses).

Father next asserts that the court erroneously failed to address his claim that mother had improperly refused to deliver the Fidelity investment funds, as required by the final judgment. Again, this claim is without merit. At the conclusion of the hearing, the family court addressed in detail the Fidelity account, ordering mother to pay father all of the remaining funds in the account, and informing the parties that the magistrate would be asked to determine whether the funds mother had previously taken from the account in lieu of delinquent child support payments were indeed owed to her. At the hearing, mother=s attorney presented a check for over \$18,000 to father. Father made no evidentiary showing proving any damages resulting from any delay in obtaining the proceeds from the account, and the court declined to award any. The court=s failure to mention the fund in its final order was not error insofar as the matter was resolved at the final hearing.

Father also argues that the family court erred in requiring him to give wife a different kayak in exchange for the one he had given her. We conclude that the court acted well within its discretion in determining that father had not provided mother with the kayak anticipated in the divorce proceedings. Nor did the court abuse its discretion in reaffirming an earlier \$350 award of attorney=s fees in favor of mother and denying father=s request for attorney=s fees in this latest proceeding.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice