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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2007-344 & 2007-385

MAY TERM, 2008

Christine Thompson	}	APPEALED FROM:
	}	
	}	
v.	}	Grand Isle Family Court
	}	
	}	
Michael C. Thompson	}	DOCKET NO. F43-10-06 Gidm
		Trial Judge: Mark J. Keller

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

Husband appeals a final divorce order, challenging the family court's parent-child contact and property distribution decisions. Husband contends that the family court's parent-child contact order is inconsistent with the legislative policy of maximizing parent-child contact with both parents pursuant to 15 V.S.A. § 650. Husband also argues that the court failed to provide a clear statement of why it awarded mother a $180,000 lump-sum payment. We affirm.

The parties were married on August 28, 2004. They had one son together, born in June 2005. On October 10, 2006, wife moved out of the marital home and filed a complaint for divorce. After wife's move, the parties lived forty miles apart. Following husband's motion, the family court issued a temporary order granting wife sole legal rights and responsibilities for the child, and husband parent-child contact Saturday evening until Monday afternoon, Tuesday morning and early afternoon, Thursday evening, and Friday morning and early afternoon.

The court held a final contested hearing in August 2007. The parties were the only witnesses at the hearing. Pertaining to custody of the child, wife proposed that she retain sole parental rights and responsibilities and that husband have contact on alternating weekends and alternating Wednesdays. Wife explained that she felt the current schedule involved too many transitions and was disruptive to the young child's routine. Husband proposed a schedule that would have resulted in approximately equal time with each parent. Husband submitted the deposition testimony of an expert to support his claim that he was a good father and the child needed time with him. Concerning property division, both parties agreed that husband should retain the marital home. Wife requested certain items of the parties' personal property and a monetary payment to reflect a portion of husband's assets, including the marital home, some personal property and the value of some stocks. In addition, wife requested spousal maintenance of $1,000 per month for five years. Wife did not request a portion of husband's business.

The court issued oral findings at the end of the hearing. As to property division, the court ordered husband to pay wife one lump-sum payment of $180,000. The court did not award wife any maintenance. As to the parties' child, the court granted wife sole legal and primary physical rights and responsibilities. The court adopted wife's suggested parent-child contact schedule, explaining that it was reasonable given the child's young age and corresponding need for security, as well as the distance between the parties' homes. Husband filed a motion to reopen the evidence, which the court denied. Husband also sought a stay of the court's order pursuant to V.R.A.P. 8(a). In a written order, this Court denied the stay, concluding that husband could not demonstrate irreparable harm. Husband appeals from the final divorce order.*

We first address husband's challenge to the family court's parent-child contact order. Husband claims that the court's order violates legislative policy to maximize parent-child contact with both parents. Husband points to the Legislature's stated public policy that "after parents have separated or dissolved their marriage it is in the best interests of their minor child to have the opportunity for maximum continuing physical and emotional contact with both parents." 15 V.S.A. § 650. Essentially, husband's argument is that the court's order reduces his contact with his son to such an extent that it violates the statutory directive and is an abuse of discretion. In addition, husband contends that the court failed to provide an explanation for its contact order.

We conclude that the parent-child contact schedule does not violate the Legislature's statutory directive in 15 V.S.A. § 650 to maximize contact with both parents, and is supported by the court's findings. Under the order, husband has contact alternating weekends—Friday evening to Monday morning—alternating Wednesday overnights, and half of major holidays and vacation time. The parties calculate husband's overall percentage of time with their child differently; husband contends he sees his son 23% of the time on a bi-weekly basis, while wife calculates that husband has 32.6% of the child's time on an annual basis. Under either calculation, husband's time with his son is not so diminished as to violate the Legislature's directive that the court maximize contact with both parents. In an almost identical factual situation in Bancroft v. Bancroft, we held that a contact schedule whereby the father had "fifty percent of the children's time on weekends and school vacations, and approximately twenty-five percent of their time overall" did not offend the statutory directive. 154 Vt. 442, 449 (1990).

Furthermore, we conclude that the court's findings support its decision. The court considered the "best interests of the child" as required in 15 V.S.A. § 665(b). The court found that most of the factors did not favor one parent over the other. The trial court found that both parties loved the child and had the ability to care for the child. Id. § 665(b)(1), (2). The court also found the parties could equally meet the child's developmental needs. Id. § 665(b)(3). In addition, the court found that neither parent had demonstrated an ability to foster a positive relationship with the other parent and both had a poor ability to communicate. Id. § 665(b)(5), (8). The court found the parties differed on two factors. The court explained that mother is the child's primary care-giver and that the two have a good relationship. Id. § 665(b)(6). In addition, the court found that the child has an important relationship with father's other three children. Id. § 665(b)(7). Based on these findings, we conclude that the court did not abuse its

* Although husband also appealed from the court's denial of his motion to reopen, he did not brief the issue on appeal and therefore we do not address it. In re Dunnett, 172 Vt. 196, 203 n.* (2001) (explaining that "we will not address issues on appeal that are not briefed").

discretion in adopting wife's proposed contact schedule. As the court explained, the schedule allows each parent to have time with the child, while providing the stability necessary for a young child. The schedule also limits the transitions due to the distance between the parties' homes. While husband did not receive the schedule he desired, the court did not abuse its discretion in adopting the schedule it ordered. See Kasper v. Kasper, 2007 VT 2, ¶ 7 (mem.) (explaining that in reviewing custody determinations, we do not consider "[w]hether the . . . court had other effective options," rather we determine whether the court "abused its discretion in choosing the option it did").

Husband also challenges the court's award of a $180,000 lump-sum payment to wife. Husband does not dispute the court's findings or contend that the property distribution is inequitable; rather, he argues that the family court failed to provide a clear explanation for the award.

The family court is required to divide marital property equitably by considering several statutory factors. See 15 V.S.A. § 751. "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." Dreves v. Dreves, 160 Vt. 330, 333 (1993). The court's discretion is limited, however, in that it must "provide a clear statement as to what was decided and why." Id. (quotation omitted).

In this case, the court fully considered the pertinent factors in 15 V.S.A. § 751. The court found that the parties had a short marriage and were both in good health. Id. § 751(b)(1), (2). The court found that, not including the value of husband's business, husband had over a million dollars in assets against very little debt. Id. § 751(b)(6). In addition, the court found that both parties were able to earn an income, but that husband had a higher income and greater ability to acquire assets in the future through his business. Id. § 751(b)(3), (8). The court also found that husband had provided all of the financial resources for the parties' marriage and wife had contributed significantly by caring for husband's three children from a previous marriage as well as the parties' child. Id. § 751(b)(10), (11). In addressing factor (7), whether the property settlement is in lieu of or in addition to maintenance, the court explained that the property settlement would be one lump-sum payment in lieu of maintenance. The court also addressed the factors in 15 V.S.A. § 752 pertaining to spousal maintenance. In assessing whether wife lacked sufficient income to provide for her reasonable needs, id. § 752(a)(1), the court found, "no, [wife] does not lack sufficient income because we're going to be awarding her some money . . . after those awards she won't need maintenance."

Following its extensive findings, the court ordered husband to pay wife $180,000, but did not grant wife any spousal maintenance. The court again explained, "we're making a general distribution in lieu of maintenance, one-time property division, [husband] pays it, he's done, these parties financially are separate except for child support." The court expressly considered wife's lower comparative earning capacity, lack of assets and her significant contribution to child care. Given the court's thorough examination of the statutory factors and its explanation that the award to wife was intended to be in lieu of maintenance, we conclude that there is no basis for husband's claim that the court failed to provide a clear explanation for its decision. See Gazo v. Gazo, 166 Vt. 434, 447 (1997) (rejecting argument that court the failed to adequately explain the

property award where it "carefully considered each of the statutory factors in § 751(b) and explained the reasons for the distribution").

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Brian L. Burgess, Associate Justice