

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-452

AUGUST TERM, 2008

Lynn Hedges	}	APPEALED FROM:
	}	
v.	}	Washington Family Court
	}	
Christopher Hedges	}	DOCKET NO. 452-12-05 Wndmd

Trial Judge: James R. Crucitti

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

Husband appeals the family court’s order dividing the parties’ marital property and awarding wife maintenance. We affirm.

The parties married in September 1989 and separated in May 2005. Their two children were born in January 1990 and September 1992. At the time of separation, wife was awarded sole temporary parental rights and responsibilities. The parties stipulated to a temporary child-support order requiring husband to pay wife \$999 per month in unallocated support, with the allocation between child support and maintenance to be determined at the final hearing. In June 2007, fifteen months after the temporary order issued, the parties entered into a final stipulation of parental rights and responsibilities, which gave wife custody of the older child and husband custody of the younger child. The parties later stipulated to wife being awarded use and possession of the martial residence, subject to an equitable division of the equity in the home.

Following an evidentiary hearing, the family court issued a final divorce order that awarded wife approximately fifty-eight percent of the marital assets and required husband to pay wife maintenance in the amount of \$1800 per month for nine years. On appeal, husband argues that the family court abused its discretion: (1) by requiring him to be solely responsible for paying back a loan from his father; (2) by not dividing the marital assets equally, as the parties desired; (3) by designating payments as child support at a time when each parent had custody of one child; and (4) by awarding wife maintenance.

Husband first challenges the family court’s decision to make him responsible for paying back, if necessary, a \$40,000 loan from husband’s father. According to husband, the money was a loan rather than a gift, and wife should share the payment responsibility because the loan benefited both parties by increasing the family’s income and assets. The family court found that

husband's father lent husband the money to assist him in his construction business. Promissory notes were not executed, but the debt was carried on the company's books. The court indicated that the detailed accounting may have been to ensure that husband received credit from the business and his partner. Husband's father testified that he expected repayment, but acknowledged that he had not received any repayment for the loan and that there were no real terms for the loan. The court observed that husband had drawn significant salary from the business over the previous couple of years, and could have paid off at least part of the loan, but did not. Under these circumstances, the court determined that husband would be solely responsible for paying off the loan, if indeed it had to be paid off. Given the nature and purpose of the loan, as well as husband's far superior income and earning capacity, we find no abuse of discretion in the court requiring him to be solely responsible for repaying the loan, to the extent that it had to be repaid. See Milligan v. Milligan, 158 Vt. 436, 439 (1992) (noting that family court has considerable discretion in distributing marital property).

Husband further argues that the court abused its discretion by not taking into account wife's personal property and by awarding her a larger share of the marital assets even though both parties expressed the desire to have the assets divided equally. This argument is unavailing. As we have stated on numerous occasions, the trial court's distribution of marital property "must be equitable," but "not necessarily equal." Myott v. Myott, 149 Vt. 573, 579 (1988). The split here is not so unequal as to be inequitable. Nothing in the record suggests that there was a gross disparity in the personal property awarded to each party. The court distributed the parties' assets based on its consideration of the relevant statutory factors set forth in 15 V.S.A. § 751(b). Notwithstanding husband's argument to the contrary, the court adequately explained its distribution of property. The evidence indicated that the parties' assets totaled approximately \$220,000. Given that wife was awarded the marital residence, the court would have had to require wife to pay husband \$26,000 to equalize the property awards. The court required wife to pay husband \$7000 in the form of a life insurance policy, but declined to require her to pay more in light of the disparity in the parties' incomes and earning capacities. The court acknowledged that both parties had discussed an equal division of assets, but further noted that they disagreed on whether wife was entitled to maintenance. In the end, the court decided to award wife a greater share of the marital property, but to reduce the maintenance award in lieu of the property award. In so doing, the court acted well within its discretion.

Next, husband argues that the court abused its discretion by designating certain payments he made to his wife under the temporary order as child support rather than maintenance. The family court found that a rough calculation under the child support guidelines indicated that the entire amount should be designated as child support. Husband does not challenge that finding, but contends that allocation of the entire monthly amount as child support cannot stand because of the parties' agreement that he have custody of one of the children from October 2006 until the final divorce hearing. According to husband, the allocation is not fair in light of his custody of one of the children and his obligation to pay health insurance for both children.

We find no abuse of discretion. Based on the parties' respective incomes, the monthly payment required under the temporary order did not exceed the amount of child support expected under the guidelines. This is true even factoring in some percentage of husband's health insurance payments for the children. Contrary to what husband has suggested in his brief, there was no agreement between the parties to a change in parental rights and responsibilities until the

first day of trial in June 2007. In short, we find no basis to disturb the family court's designation of the payments made under the temporary order as child support.

Finally, husband argues that the family court's maintenance award is inequitable. According to husband, the court abused its discretion by awarding maintenance based on his dramatically increased income in the last couple of years before the parties' divorce rather than on his modest income during most of the marriage. He acknowledges the recent upswing in his income, but notes that his business is highly dependent on the economy and thus is susceptible to any future downturns in the economy. Again, we find no abuse of discretion. See Clapp v. Clapp, 163 Vt. 15, 20 (1994) (noting that family court has broad discretion in determining maintenance award). The family court may order permanent or temporary maintenance if the court finds that the recipient spouse lacks sufficient income and assets to provide for his or her reasonable needs and is unable to support himself or herself at the standard of living established during the marriage. 15 V.S.A. § 752(a). Ample evidence in the record demonstrated that the parties led a comfortable middle-class life, and that wife's limited income and assets following the divorce would not allow her to meet necessary expenses without support from husband. Wife was making between \$20,000 and \$24,000 a year running a daycare, with little opportunity to increase that income significantly. Husband, on the other hand, had annual business income exceeding \$90,000 during the previous couple of years. Although husband is correct that he was not guaranteed such income in the future, there was no evidence at trial that his income had significantly decreased. Nor does the record support husband's suggestion that wife does not require a maintenance award to maintain the standard of living established during the marriage.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice