ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-277

MARCH TERM, 2010

Gail Latuch	}	APPEALED FROM:
	}	
v.	}	Franklin Superior Court
	}	
William Marshall	}	DOCKET NO. S 466-06 Fc
		Trial Judge: A. Gregory Rainville

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

Defendant appeals from the superior court's March 18, 2009 judgment awarding plaintiff $14,000 plus interest to compensate her for defendant's use of her money to help purchase a truck and pay down the mortgage on his home. We affirm.

The trial court found the following facts, which defendant has not disputed on appeal. The parties resided together for twenty-three years. In March 2006, as the result of an automobile-accident settlement, plaintiff received approximately $18,000 and defendant received approximately $21,000. Both sums were deposited into defendant's bank account. To avoid losing state benefits, the parties believed that they had to spend most of the settlement funds. By mutual agreement, defendant purchased a truck in his name, using $5000 of his money and $4000 of plaintiff's money. The parties also each contributed $10,000 toward reducing the mortgage on their residence, which was in defendant's name. Plaintiff was removed from the home by court order, at defendant's request, in August 2006. In the ensuing lawsuit, plaintiff alleged conversion and petitioned for an accounting. Following a December 29, 2006 hearing, the trial court denied plaintiff's motion for a writ of attachment on the home. Following a March 18, 2009 merits hearing, the court awarded plaintiff $14,000 plus interest based on her not receiving the benefits from the contributions she made toward the purchase of defendant's truck and the reduction of the mortgage on his home.

On appeal, the pro se defendant styles his brief as a "motion to dismiss writ of attachment," and he asserts that on March 18, 2009 the trial court granted plaintiff a writ of attachment. The record in this case indicates, however, that plaintiff's request for a writ of attachment was denied on December 29, 2006. Moreover, at the close of the hearing on March 18, 2009, the court responded to plaintiff's queries about how to execute the judgment against defendant by telling her that the hearing concerned only whether she was entitled to a judgment and not how she could execute on any such judgment. In short, the record indicates that there is no writ of attachment from which to appeal.

We find no error. Defendant agreed that plaintiff's $4000 contribution to his truck should be returned to her. As for plaintiff's contribution to the house, defendant testified that the parties agreed that their residence would be an investment for the children living in the

household with them, and that plaintiff agreed to pay $10,000, along with defendant's $10,000, towards the home mortgage with that understanding in mind. Aside from defendant's testimony, there was no other evidence that plaintiff intended to give $10,000 to the children as a gift. Plaintiff denied such an agreement, and defendant's assertions to the contrary were evidently not credited by the trial court. See Massey v. Hrostek, 2009 VT 70, ¶ 14, 980 A.2d 768 (question of donative intent is ultimately for trier of fact to determine, and this Court reviews such determinations under deferential standard). The fact that the children could obtain some interest in the home in the future does not undercut the court's decision. To the extent that there was any donative intent on plaintiff's part, the children, not defendant were to be the recipients. Yet, as the trial court found, defendant was the owner of the truck and home and thus he alone derived the legal benefit from plaintiff's contributions when plaintiff was forced to leave the parties' residence shortly after contributing her money for the truck and home.

Finally, defendant states that the trial court abused its discretion by not granting his request for a continuance at the start of the March 18, 2009 merits hearing. He claims that he was unable to defend himself because he was sick. We find no abuse of discretion. See Finkle v. Town of Rochester, 140 Vt. 287, 289 (1981) ("A decision to grant or deny a continuance is a discretionary matter and will not be disturbed unless there is shown an abuse of discretion which causes prejudice."). As the court later stated in denying defendant's motion for reconsideration, defendant actively and fully participated in the merits hearing and coherently testified as to his defenses. The court discerned no impairment on defendant's part.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice