

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-120

DECEMBER TERM, 2003

	}	APPEALED FROM:
Carol Coulter	}	
v.	}	Bennington Family Court
Wayne Coulter	}	
	}	DOCKET NO 125-5-01 Bndm
	}	Trial Judge: David Suntag

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

Husband appeals from a final order of divorce, claiming that the Bennington Family Court committed reversible error by failing to make findings on an issue raised by husband= s evidence. We find no error, and therefore affirm the court= s judgment.

The parties were married for approximately twenty-four years when they separated in July 2001. Both husband and wife are retired. Although wife, who is sixty-one years old, has a medical condition that somewhat disables her, husband is in good health at seventy years of age. At the time of their marriage, both parties owned their own home. By the time of the final divorce hearing in September 2002, the parties had accumulated various assets, including retirement accounts, two rental properties in Burlington, and savings and investment accounts. Wife= s monthly income was \$2,953 at the time of the final divorce hearing, and husband= s was \$2,693. The couple has been able to meet their monthly expenses through that income. Considering their retired status and wife= s ill health, the court found that neither party is currently employable.

Following the final divorce hearing, the family court awarded wife her retirement and disability income, the home she brought to the marriage, and fifty-five percent of the value of the parties= investment accounts. The court awarded husband his retirement accounts, the home he brought to the marriage, the two Burlington rental properties, and forty-five percent of the parties= investment accounts. The court awarded husband a lower percentage of the parties= investments to compensate wife for the value of her share in the Burlington properties awarded to husband.

Husband now appeals the decision, claiming that the court= s findings under one statutory element are inadequate to support the property division. Because the family court has wide discretion in making a property award, we will overturn the award only if A there is no reasonable basis to support it.@ Bell v. Bell, 162 Vt. 192, 198 (1994). Equity is the controlling principle in devising a property award upon divorce. See 15 V.S.A. ' 751(a) (family court must divide and assign marital property equitably upon divorce); Klein v. Klein, 150 Vt. 466, 468 (1988) (divorce statute relating to property requires equitable property division). Several statutory factors guide the court= s determination. See 15 V.S.A. ' 751(b). The factor at issue here is ' 751(b)(11), which allows the court to consider A the contribution of each spouse to the acquisition, preservation, and depreciation or appreciation in value of respective estates, including the nonmonetary contribution of the spouse as a homemaker.@ Husband contends that the court failed to consider evidence relevant to that factor, namely that wife transferred money out of a joint account without his consent and in violation of a pre-trial order, and that her actions caused a reduction in the value of the couple= s investments by roughly \$138,000. Husband argues that the lack of findings on this evidence makes it impossible to know why the family court divided the parties=

property in the manner it did. We disagree.

The family court's order reflects that it did, in fact, consider husband's evidence. In its order, the court explicitly noted husband's allegation that wife removed funds from their joint accounts. But the court disagreed with the evidence's significance. The court explained that the evidence had little effect on its determination of the equities involved considering all of the circumstances in the case, including the long-term nature of the parties' marriage. Moreover, as a general matter, we fail to see the inequity husband apparently perceives in the award. The difference between the share of property the court awarded each party is due to the court's decision, at the parties' request, to give husband both income producing properties in Burlington. We conclude that the court's decision here was reasonable, equitable and within the family court's broad discretion.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice