

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-414

MAY TERM, 2008

Karen Morrison	}	APPEALED FROM:
	}	
	}	
v.	}	Bennington Family Court
	}	
	}	
James Morrison	}	DOCKET NO. 249-9-06 Bndm

Trial Judge: David T. Suntag

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

Husband appeals from a final divorce judgment of the Bennington Family Court. He contends the court erred in: (1) devising a property settlement that underestimated wife's vocational skills and employability; and (2) awarding spousal maintenance without properly considering husband's ability to meet his own reasonable needs. We affirm.

The facts may be briefly summarized as follows; additional material facts will be set forth in the discussion which follows. The parties separated in 2006 after a thirty-two year marriage. Both were fifty-eight years old at the time of the final hearing. During the marriage, wife had served as the primary care provider for the parties' children, all of whom were grown at the time of trial. She had also worked for years as a licensed nurse's assistant, but had left that career to start her own private-duty nursing business in 2002. At the time of the hearing, however, she had stopped operating the business. Although physical limitations leading to a hernia operation in 2007 had left her unable to handle the physical demands of nursing, the court found that these ailments did not interfere with wife's overall ability to run the business, from which she had earned \$4500 in 2005 and \$17,000 in 2006. At the time of the final hearing, wife was working with vocational rehabilitation services to find a new career, possibly as a medical assistant, which would require at least two years of additional training. The court found that wife remained able to generate income, even with her physical limitations. Although the court found some disparity between wife's current reasonable monthly expenses of \$ 2457 and her monthly income, which was marginal, the disparity might explain wife's rather sizeable credit card debt, which exceeded \$17,000.

Husband had worked in the sheet metal business for thirty years, and was currently employed with a company that installs heating and other systems. Although historically quite modest, his income over the past several years had increased substantially, totaling \$65,259 for

the calendar year 2006, or approximately \$5438 per month, an amount that had increased to \$5670 per month during the first three months of 2007. The parties had lived a modest lifestyle during the marriage and accumulated few assets, the principal one consisting of the family home, valued at \$125,000 with equity of \$93,000. Husband also owned a one-quarter interest in real estate in Massachusetts with his three siblings, which the court valued at \$36,750, two motor vehicles with a total equity of \$5000, a 401(k) plan with a value of \$5000, a pension plan with a value of \$19,000, an IRA worth \$1500, and savings bonds which the court valued at \$1800.

In dividing the property, the court awarded wife the marital residence, and awarded husband his interest in the Massachusetts residence, the cars, and his 401(k), pension plan, IRA, and savings bonds. As noted, the parties had also accumulated substantial credit card debt. The court assigned husband sole responsibility for his debts totaling \$17,800, and one-half responsibility to each party for wife's credit card debts, which totaled \$17,442. Concluding that wife could not meet her reasonable needs, even at a level below the standard enjoyed during the marriage, the court awarded her spousal maintenance of \$1200 per month for two years, \$200 of which was rehabilitative and designed to assist wife in finding a new career, and thereafter permanent maintenance of \$1000 per month.

On appeal, husband contends the court "underestimated" wife's vocational skills and employability, and thereby skewed the property division in her favor. The family court enjoys broad discretion in dividing the marital property, and we will uphold its decision absent a showing of abuse or withholding of this discretion. Mizzi v. Mizzi, 2005 VT 120, ¶ 5, 179 Vt. 555 (mem.). As we have observed, our statutory scheme requires that the division be equitable; it does not require absolute equality. Burr v. Burr, 148 Vt. 207, 210 (1987). Assessed in light of these standards, husband's claim plainly lacks merit. First, the property division—which resulted in an assignment of roughly 58 percent of the estate to wife and 42 percent to husband—was by no means inequitable, considering the court's express finding that the "imbalance[] in favor of [wife] . . . is justified by property award factors concerning the length of the marriage, health of the parties, vocational skills and employability of the parties, the respective needs of the parties and the merits of the parties." Second, there is no merit to husband's claim that the court underestimated wife's vocational skills and employability. Indeed, the court expressly found that wife "is able to generate income" and plainly factored this ability into the property and maintenance awards, which left wife with a considerable shortfall that she could make up only through her own efforts to meet her reasonable needs. Husband also claims, in this regard, that the court's view of the parties' conduct during the marriage was one-sided, because the court cited husband's occasional abuse of alcohol while ignoring wife's "irresponsible" abandonment of her business. As noted, however, the court fully considered wife's continued employability and clearly assumed that she would be required to generate future income to meet her needs. Accordingly, we find no abuse of discretion in the court's property award.

Husband also contends that, in awarding wife maintenance, the court improperly failed to consider husband's ability to meet his own reasonable needs. Like the division of marital property, an award of spousal maintenance is discretionary, and we will not disturb its decision unless it was unreasonably exercised or founded upon considerations clearly unreasonable in light of the evidence. Miller v. Miller, 2005 VT 122, ¶ 15, 179 Vt. 147. After categorizing certain claimed expenses as unreasonable, the court determined that husband's monthly expenses, deducted from his monthly income, left him a balance of \$1268. Husband asserts that

an award of \$1200 in maintenance for the first two years is “severe” and unreasonable because it will leave him “little or no money at the end of each month.” Narrow margins are an inherent byproduct of divorce, however, when incomes that may have comfortably paid for one household must be stretched to cover two, and we discern no abuse of discretion in the court’s award. Husband also claims that the court’s deduction of \$45 claimed monthly expenses for entertainment and \$24 for gifts was unreasonable, but he makes no argument and cites no authority to support the claim, which we find to be without merit.

Finally, husband argues that his expenses will exceed his income when the \$726.75 monthly payments for his share of wife’s credit card debt are included. This figure is not in the findings, however, and appears to be entirely speculative, based upon an assumed one-year payment schedule. There is no evidence to show the minimal monthly payment for such debt, and we therefore find no basis to conclude that it is beyond husband’s ability to pay. Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice