

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-233

DECEMBER TERM, 2002

Joanne Mapes

v.

Kim C. Mapes

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APPEALED FROM:

Grand Isle Family Court

DOCKET NO. F19-7-00 Gidm

Trial Judge: Ben W. Joseph

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

Husband appeals the family court's final divorce order, arguing that the court abused its discretion in dividing the marital property and establishing the amount of husband's maintenance obligation. We affirm.

The parties married in 1976 and separated in 2000. They were both in their mid-forties when they separated. They have three children, who were born between April 1986 and May 1991. Both parties had a high-school education going into the marriage. During the first ten years of the marriage, wife did clerical work in various office positions. She worked while husband went to college and obtained an associate's degree. Husband began working for the Immigration and Naturalization Service in 1982, and was still there at the time of the final divorce hearing. In 2001, he earned approximately \$85,000. After the parties' first child was born in 1986, wife stopped working outside the home. She did not return to the workforce until the parties separated. At the time of the final hearing, wife was earning \$11,000 per year as a teacher's aide.

Before the final divorce hearing, the parties stipulated that wife would have primary physical rights and responsibilities over the children, with husband entitled to specified parent-child contact. Husband was ordered to pay wife \$1073 per month in child support. The parties also agreed to divide equally the value of husband's retirement pensions accrued during the marriage. At trial, the principal issues in dispute were how much maintenance to award wife and how to divide the remaining marital property. The family court awarded wife (1) the marital home, in which the parties had approximately \$85,000 in equity, (2) one-half of the value of husband's deferred compensation account, and (3) \$2500 per month in maintenance. The court awarded husband a piece of unimproved lakeshore property, and required him to pay wife \$6500 to apply against a home equity loan that was used, in part, to purchase husband's truck. The court also awarded each party a vehicle and divided the personal property.

On appeal, husband first argues that the family court abused its discretion by awarding wife a grossly disproportionate amount of the marital assets. In making this argument, husband claims that the court awarded wife far more than even she sought. We find no abuse of discretion. See Cabot v. Cabot, 166 Vt. 485, 500 (1997) (family court has broad discretion in considering statutory factors and fashioning appropriate property award). The court awarded wife most of the marital property after considering the relevant statutory factors, see 15 V.S.A. § 751(b), finding that this was a long-term marriage during which wife acted primarily as a homemaker, thereby enabling husband to obtain a higher education and increase his earning power and employability. The court also noted that husband had a significant

drinking problem during the latter part of the marriage and had engaged in an extra-marital affair that led to the parties' separation. Thus, nearly all of the statutory factors weighed heavily in favor of wife. The parties' most significant assets were the equity in the marital home and husband' s retirement and deferred compensation accounts. The accounts were divided equally between husband and wife, while wife received the entire \$85,000 of equity in the home as well as a \$6500 payment from husband. Husband received an undeveloped piece of lakefront property. Apparently, there was no evidence as to the value of the property, but we can assume that wife received, at most, \$70,000 or \$80,000 more in marital property than husband. Given the length of the marriage, the parties' respective roles during the marriage, and the weight of the other statutory factors in wife' s favor, such an award was within the court' s discretion.

We find unavailing husband' s claim that the court gave wife far more than she asked for. First, the parties never reached an agreement on a maintenance award or on a division of most of the marital property; thus, the court was not obligated to defer to the parties' wishes, as husband suggests. Cf. Damone v. Damone, 172 Vt. 504, 511 (2001) (court should give deference to agreements entered into between divorcing parties). Second, husband greatly exaggerates the differences between what wife was seeking and what she got. Wife asked for sixty percent of the equity in the marital home, half of husband' s deferred compensation account, and \$3108 per month in maintenance. She received \$30,000 more in home equity than she asked for, but that sum would have been made up for within four years by the higher maintenance she requested. We also disagree with husband' s contention that the court made erroneous findings concerning his girlfriend' s income and the parties' home equity loan, which was used in part to pay for the parties' vehicles. The court' s findings were supported by the evidence, and, as noted, the court' s property award was within its broad discretion.

Next, husband argues that the court abused its discretion by requiring husband to pay wife \$2500 per month in maintenance (1) without taking into account the disproportionate property award favoring wife, (2) without considering how the maintenance payments would affect him when he retires, and (3) without inquiring as to the value of husband' s pensions. Again, we find no abuse of discretion. See Johnson v. Johnson, 155 Vt. 36, 40 (1990) (family court has considerable discretion in ruling on maintenance; party seeking to overturn maintenance award must show that there is no reasonable basis to support it). In making its maintenance award, the court considered that wife had not developed the skills that would allow her to be able to attain the standard of living established in the marriage because she had spent most of her adult life caring for her family and allowing husband to obtain a higher education and increase his earning power to support the family financially. Notwithstanding husband' s arguments to the contrary, the court' s maintenance award was made in conjunction with its division of marital property. Although wife was awarded more marital property than husband, the parties' marital assets were not substantial, certainly not substantial enough to compensate wife for her homemaker role during the lengthy marriage or to make up for the vast difference in the parties' financial circumstances and earning power. See Delozier v. Delozier, 161 Vt. 377, 382-83 (1994) (discussing rehabilitative and compensatory functions of maintenance award).

Husband' s concerns about how he will be able to meet his maintenance obligation following retirement are speculative at this point. Even assuming that husband elects not to work after taking a mandatory retirement from his federal job when he reaches fifty-seven years of age, that scenario is years away. If circumstances change to the extent that the maintenance award is inequitable, husband may file a motion to modify. Regarding the value of husband' s retirement accounts, those assets were divided pursuant to the parties' stipulation, and the court was not obligated to uncover information not presented to it concerning the value of the accounts. Finally, for the reasons discussed above, the family court did not err in denying husband' s motion to amend its final divorce order.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice