

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-359

JANUARY TERM, 2003

Eileen D. Anderson	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
v.	}	
	}	DOCKET NO. 968-11-98 Cndm
Arthur P. Anderson	}	
	}	Trial Judge: Linda Levitt
	}	
	}	

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

Husband appeals from a family court order granting wife' s motion to enforce the parties' divorce judgment, holding husband in contempt for failure to comply with the judgment, and denying husband' s cross-motion for reimbursement of taxes allegedly owed under the terms of the judgment. Husband contends the court erred in: (1) construing the divorce judgment to require that husband transfer to wife stocks from a retirement account in an amount totaling \$346,481.06, and stocks from an investment account totaling \$475,000; (2) denying his claim for reimbursement of tax payments; (3) finding him in contempt; and (4) ordering him to pay wife' s attorney' s fees and costs. We affirm.

The parties entered into a stipulation for final order of divorce on August 22, 2000, which was incorporated into a final judgment on September 15. The final order provided that the parties' three retirement accounts, consisting of an IRA in wife' s name and an IRA and 401k plan in husband' s name, would be divided:

such that [wife] receives 56.33% of the total value of the three accounts as valued on September 30, 2000. The distribution shall be accomplished by granting [wife] sole right, title and interest to the IRA currently in her name and by granting her so much of the IRA of [husband] by Qualified Domestic Relations Order in order to accomplish the distribution of 56.33% of the total values into [wife' s] name.

The order required wife' s counsel to prepare the QDRO or letters of documentation necessary for completion of the distribution. In a separate section, the judgment provided that wife " shall be granted \$475,000" from the parties' Fidelity investment account, and that " [t]he parties shall work with the Fidelity account representative to divide the Fidelity account in such a way as to proportionately share tax consequences, capital gains consequences or other consequences arising from the basis of the assets in the account."

In March 2001, wife moved to enforce the foregoing provisions of the divorce judgment, and to hold husband in contempt for failure to comply with the judgment, asserting that husband had transferred funds from the investment account in the amount of \$421,344.66, leaving a deficiency of \$53,655.34, and had failed to transfer any funds as required from the IRA accounts. As to the latter, she claimed to be entitled to funds totaling \$346,481.05, which was the amount required to equal 56.33% of the total value of the accounts as of September 30, 2000. Husband filed an opposition and cross-motion to enforce, seeking reimbursement of \$18,589.87, which he claimed represented wife' s proportionate share of income taxes that he had paid in 2000 as a result of the distribution of the Fidelity investment account.

Following an evidentiary hearing, the court issued a written decision, granting wife' s motion to enforce, denying

husband' s cross-motion, holding husband in contempt, and awarding wife attorney' s fees and costs of \$9991. This appeal followed.

Husband contends the court erred in ordering him to pay the \$53,655.34 deficiency. The court found, in this regard, that wife had consulted with an investment advisor to determine which stocks should be transferred to her, and had submitted a list of stocks" worth a little over \$475,000 on August 31, 2000" to husband' s counsel on September 8, 2000. On September 15, counsel gave the list to husband. The value of the stock had fallen by September 15 to \$421,344.65, however, and husband refused to make up the difference, claiming that wife had unreasonably failed to consult with a Fidelity account representative and had unreasonably delayed in submitting the list of desired stocks. The court concluded to the contrary, finding that the parties were aware the stock market was in flux, that the stipulation had contemplated some short delay in dividing the stocks in the account and making the transfer, that there was no evidence the delay until September 8 was prolonged by wife' s consulting an independent adviser rather than a Fidelity representative, and that husband was therefore required to transfer the full amount provided for in the judgment.

Husband argues that his acceptance of the September 8 letter setting forth the proposed stocks for transfer from the investment account represented an enforceable agreement that those stocks would satisfy the provision requiring transfer of \$475,000 from the account, regardless of their value on the date of transfer. It is unclear whether this argument was raised below, but in any event nothing in the letter or otherwise suggests that wife intended to supercede the plain language of the divorce judgment calling for transfer of \$475,000 from the account. John A. Russell Corp. v. Bohlig, 170 Vt. 12, 17 (1999) (we do not read terms into agreement unless they arise by necessary implication). Husband also argues that he should not be penalized for wife' s unreasonable delay in specifying the stocks for transfer. The court expressly found, however, that the agreement contemplated a short delay in accomplishing the transfer, and that the delay until September 8 was not unreasonable. Husband has not shown that these findings were erroneous. Accordingly, we discern no basis to disturb the judgment.

Husband also contends the court erred in finding that the plain language of the divorce decree required him to transfer \$364,481 from his retirement accounts, which represented the amount necessary to bring wife' s payments to 56.33% of the total value of the accounts as of September 30, 2000. Husband claims that wife' s counsel failed to timely prepare the necessary documents for transfer of the funds, that he had offered in January 2001 to transfer 78% of the value of his IRA, which by then had lost substantial value, but wife refused, and that he remains obligated to transfer only that percentage of the IRA. He argues that wife' s interest in the IRA accounts became " vested" as of September 30, that \$364,481 represented 78% of defendant' s IRA account on that date, and that he was therefore required to transfer only that percentage.

The trial court correctly concluded that the final order was unambiguous, and plainly established that defendant was required to transfer 56.33% of the retirements accounts, as valued on September 30. Husband' s argument that the order somehow established only a percentage to be determined as of that date, and that the date of valuation could be the date of transfer, whenever it occurred, finds no support in the divorce decree or the extrinsic evidence. See Bohlig, 170 Vt. at 17. Although husband also claims that he was excused from complying with the order because wife' s counsel failed to prepare the necessary documents for the transfer, the record evidence supports the court' s finding that the failure was not solely attributable to counsel, and did not excuse husband' s compliance. See Mayo v. Mayo, __ Vt. __, __, 786 A.2d 401, 406 (2001) (we review court' s findings in light most favorable to judgment, with burden on appellant to show there is no credible evidence to support them).

Husband next contends the court erred in ruling that wife was obligated to pay a proportionate share of only the taxes on the capital gains, rather than the entire income, resulting from the distribution, and that husband' s evidence was insufficient to calculate the amount that wife owed. Husband' s argument fails to address the text of the order or demonstrate that the court' s interpretation was incorrect. Further, the record supports the court' s finding that the evidence was insufficient to calculate wife' s proportionate share. Accordingly, we discern no error.

Husband contends the court' s finding of contempt was unsupported because he was not obligated to make any transfers of stocks or funds, but only to sign transfer documents that were not presented because of wife' s unreasonable delays. As noted, the evidence supports the court' s finding that wife did not unreasonably delay, and that husband was not excused from transferring the amounts called for in the judgment. Accordingly, we discern no basis to disturb the

finding of contempt.

Finally, based on the court's other alleged errors, husband contends the court also erred in awarding wife attorney's fees and costs. Having rejected husband's other claims, we find no basis to reverse the award of fees and costs.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice