

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-418

APRIL TERM, 2003

Francis Mason	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
v.	}	DOCKET NO.149-2-01 Cndm
	}	
Linsey Mason	}	Trial Judge: Linda Levitt
	}	
	}	
	}	

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

In this divorce action, plaintiff Francis Mason appeals pro se from the family court's final divorce order. He argues that the court erred by failing to apportion the \$75,000 debt he incurred while the parties were separated. We affirm.

While this appeal was pending, defendant filed a motion to strike plaintiff's supplemental printed case because it contained information that was not part of the record below and was untimely filed. We grant defendant's motion to strike those documents that were not part of the underlying record. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (appellate review confined to the record and evidence adduced at trial; court cannot consider facts not in the record). The remainder of her motion is denied.

Plaintiff and defendant were married in October 1979, and they have two young children. Plaintiff is in his mid-fifties and defendant is in her late forties. The parties moved to Vermont from California in the early 1990s. Plaintiff began working at IBM, and defendant stayed home to raise the children. In 1999, after plaintiff was terminated from IBM, he relocated to California to begin a new job. Defendant did not join plaintiff in California, and plaintiff initiated divorce proceedings. While the divorce was pending, the parties stipulated that they would share parental rights and defendant would have primary custody of the children.

In August 2002, the court granted the parties a divorce. At the parties' request, the court set out abbreviated findings of fact. The court divided the parties' assets equally, with the following exception: twenty-five percent of plaintiff's vested stock options and a 401k account that plaintiff had acquired through his new position were awarded to defendant in exchange for reduced maintenance payments. Each party was awarded the personal property in his or her possession, and each party was ordered to pay his or her own debts. The court also ordered plaintiff to pay defendant a monthly maintenance award of \$1800. Plaintiff filed a post-judgment motion for reconsideration and/or clarification, and the court clarified several property issues. This appeal followed.

It is difficult to ascertain plaintiff's exact arguments on appeal. He appears to argue that the court abused its discretion by holding him solely responsible for the \$75,000 debt he accrued while the parties were separated. At the hearing, plaintiff testified that he owed \$21,500 to a friend for back rent in California and \$17,500 to his mother for moving costs and other expenses. He did not provide any admissible documentary evidence to support these claims. Plaintiff also testified that he had \$30,000 in credit card debt. However, he did not provide the court with detailed information about his expenses. Plaintiff testified that this debt generally included relocation and living expenses.

The court is authorized to equitably divide and assign marital property, and it may consider various statutory factors in making its decision. Cabot v. Cabot, 166 Vt. 485, 500 (1997); 15 V.S.A. § 751. The trial court has broad discretion in

considering these factors and we will uphold its decision unless its discretion was abused, withheld, or exercised on clearly untenable grounds. Semprebon v. Semprebon, 157 Vt. 209, 215 (1991). The party claiming an abuse of discretion bears the burden of showing that the trial court failed to carry out its duties. Field v. Field, 139 Vt. 242, 244 (1981). We have noted that the distribution of property is not an exact science and, therefore, all that is required is that the distribution be equitable. Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988).

In this case, with the exception of twenty-five percent of plaintiff's vested stock options and a 401k account, the court divided the marital property equally. In its decision, the court acknowledged plaintiff's debt and found that it stemmed partly from maintaining two households and partly from "unnecessary spending." The court concluded that each party should pay his or her own debts. Plaintiff has not established that the distribution of marital assets was inequitable and, in light of the court's even distribution of the parties' assets as a whole, we find no abuse of discretion in the court's decision not to divide this debt.

By her response, defendant indicates that plaintiff has challenged the court's maintenance award. Although plaintiff has intimated that the maintenance award is excessive, he has not shown why the level ordered by court was not within its discretion. In the absence of a challenge to the court's order, we do not address the maintenance award.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned