

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-217

DECEMBER TERM, 2003

Beverley Parry	}	APPEALED FROM:
	}	
v.	}	Windsor Family Court
	}	
David Parry	}	DOCKET NO 509-12-00 Wrmd
	}	
	}	Trial Judge: Amy Davenport
	}	

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

Husband appeals pro se from the trial court= s final divorce order. He argues that the court erred in awarding maintenance and in dividing the marital property. We affirm.

Husband and wife Beverley Parry married in 1976. They have two adult children. Husband is fifty-five years old and a tenured professor at Temple University. Wife is fifty-six and works at a copy center. The parties own two homes, one in Norwich, Vermont and one in Charlestown, Massachusetts. They also have an ownership interest in a home and hotel in Nevis, acquired through wife= s mother, Polly Wilson. The parties incurred a substantial amount of debt during their marriage. In January 2000, the parties separated, and wife initiated divorce proceedings.

The court issued a final divorce order in December 2002. Pursuant to husband= s motion to amend the judgment, the court set out findings of fact and conclusions of law to support its order in March 2003. The court awarded wife the Nevis assets after finding that they were acquired through wife= s elderly mother and should be used for her benefit. Wife received the marital home in Norwich, Vermont with a net equity of \$80,421. Husband received the Charlestown home with a net equity of \$298,127. Based on the discrepancy in the value of the homes, the court ordered husband to take on a greater share of debts, including responsibility for the children= s college loans. The court also ordered husband to pay the majority of the parties= credit card debt, finding the debt primarily caused by his excessive spending. Both parties were ordered to repay over \$110,000 borrowed from Ms. Wilson. The court also awarded wife \$1000 per month in spousal maintenance for nine years. The court noted that should wife remarry or sell the Nevis assets, husband could seek a modification of the maintenance award. Husband appealed.

Husband first argues that the court erred in awarding wife \$1000 in monthly maintenance. He asserts that the court did not adequately consider his debt in reaching its conclusion and failed to properly assess wife= s earning capacity.

The court may award maintenance when it finds that a spouse lacks sufficient income and/or property to provide for her reasonable needs and the spouse is unable to support herself A through appropriate employment at the standard of living established during the marriage.@ 15 V.S.A. ' 752(a); Chaker v. Chaker, 155 Vt. 20, 24-25 (1990). The maintenance must be in the amount and for the duration the court deems just, based on the consideration of seven nonexclusive statutory factors. See 15 V.S.A. ' 752(b). Once the trial court finds grounds for awarding maintenance, it has broad discretion in determining the duration and amount. Chaker, 155 Vt. at 25. We will only set aside a maintenance award if there is no reasonable basis to support it. Id.

In this case, the court concluded that wife lacked sufficient income to provide for her reasonable needs and that given her current income she was unable to support herself at the standard of living established during the marriage. This

conclusion is supported by the evidence. Husband earns \$76,200 per year while wife= s income is \$30,000. The court estimated wife= s earning capacity between \$20,000 and \$30,000 based on her age and rural location. The court found wife overqualified for her present job, given her experience as a music therapist, but found her testimony credible regarding the difficulty in finding a job. The court rejected husband= s assertion that he could not afford to pay maintenance while also paying off the marital debts and supporting his new partner and child. The court explained that it had allocated most of the marital debt to husband because he bore significant responsibility for the size of the debt and he had been awarded the Charlestown house with a significant amount of equity. The court added that husband had a greater ability to pay the debts because of his greater earning capacity. The court acknowledged that husband did not have sufficient earning capacity to pay both the debt and spousal maintenance based on an income equalization formula and, in light of the debt, reduced his maintenance obligation from \$1916 per month to \$1000 per month. The court= s findings are supported by the evidence and we find no abuse of discretion in its maintenance award.

Husband next challenges the court= s distribution of the marital assets. He argues that the court: (1) should have ordered wife to pay half of the children= s student loans in the event she sells her shares in the Nevis hotel; (2) should not have assigned wife \$52,000 in debt for education costs paid by Ms. Wilson; and (3) should have ordered wife to use the portion of husband= s retirement account that she was awarded to pay marital debts assigned to husband.

The trial 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 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).

The trial court= s distribution of the marital assets was equitable. The court awarded wife the Nevis assets after concluding that they were a legacy from wife= s family and should be used to benefit Ms. Wilson during her lifetime. The court explained that Ms. Wilson had transferred her interests in these assets to husband and wife at husband= s suggestion to avoid inheritance taxes. Ms. Wilson allowed husband to put half of wife= s hotel shares in his name based on his insistence that it would be beneficial to have a male with an ownership interest. In awarding wife all of the Nevis assets, the court rejected husband= s assertion that the parties had agreed that his shares in the Nevis hotel should be used to pay the children= s college debts. The court stated that wife did not share this belief and, given the difficulty in selling the hotel shares, it seemed unlikely that the parties could have reasonably anticipated having these funds available to pay the children= s college debts. The court= s award of the Nevis assets to wife is supported by its findings.

Excluding the Nevis assets, husband received 56% of the martial assets, while wife received 46%. The court justified the disparity in part on wife= s receipt of the Nevis assets and stated that the disparity would have been greater had husband not incurred such a large amount of credit card debt. Husband was ordered to pay a larger amount of debt to offset his receipt of the Charlestown home. Both parties were ordered to repay Ms. Wilson after the court rejected husband= s argument that the \$112,000 she had given them was a gift, rather than a loan. The court explained that the parties had been paying Ms. Wilson interest on this debt, which was inconsistent with the argument that the money was a gift. Excluding the Nevis assets, husband received a larger share of the marital assets than wife, and we find no abuse of discretion in the court= s award.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice