

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-529

SEPTEMBER TERM, 2005

Roger Provost	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Family Court
	}	
Teresitia Provost	}	DOCKET NO. 481-12-03 Wndm

Trial Judge: Geoffrey Crawford

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

Wife appeals the family court=s division of marital property in its final divorce order. We affirm.

The parties met in August 2000, began living together one month later, married in May 2001, and separated in December 2003. The only issue at the final divorce hearing was the division of marital property. The court awarded wife \$67,168 in addition to approximately \$40,000 that wife had received following the parties= separation in anticipation of the property settlement. For his part, husband received the marital home, including two-thirds of the \$177,000 in net equity that it gained during the marriage. Wife levels a multi-pronged attack on the family court=s decision, arguing that the court=s numerous mistakes in its findings resulted in a disproportionate and inequitable division of marital property. According to wife, among other things, the court undervalued by at least \$7000 husband=s accumulated debt at the time of the marriage, overvalued by several thousand dollars the monthly rental income taken in by husband before the marriage, failed to take into account the \$37,000 in personal property she brought into the marriage, failed to take into account at least \$29,000 she contributed to the marital home, undervalued by \$5000 her earnings during the marriage, and overvalued personal property she retained at the end of the marriage. Wife claims that these numerous mistakes led the court to give her less than one-half of what she brought into the brief marriage, while giving husband thirty times what he brought into the marriage. We conclude that the record supports the court=s findings, and that the court acted within its broad discretion in dividing the parties= marital property. See Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988) (disposition of property is matter of wide discretion for trial court, and thus court=s disposition will not be disturbed absent showing of clear abuse of discretion).

Before addressing issues concerning the parties= finances, we first consider wife=s contention that the family court failed to make findings of fact with respect to marital fault. In her counterclaim for divorce, wife alleged intolerable severity as a basis for the divorce. Among other things, wife recounted husband=s alienating behaviorChis failure to bathe and his demand for unnatural sexCthat began when the cash she had brought into the marriage ran out. In a brief order responding to the parties= post-trial motions concerning fault, the family court found that the parties had been faithful to each other during their brief marriage, but that they developed marital problems over finances and husband=s lack of hygiene. The court concluded that there was no basis to find that either party=s pre-separation actions constituted fault such as to affect the division of marital property. We discern no basis for disturbing the court=s exercise of discretion in this regard. Wife shows no failure by the court to consider fault as a factor in property distribution. Nor does wife cite any evidence that would support granting the divorce on grounds of intolerable severity, notwithstanding her claim that he ordered her out of the marital home shortly before she was scheduled to have gall

bladder surgery. See Winslow v. Winslow, 127 Vt. 428, 431 (1969) (AThe well-established rule in this jurisdiction is that to constitute intolerable severity the acts and conduct of the offending spouse must be of such aggravated nature that the health of the innocent spouse is threatened to the point of present and imminent danger.@).

Regarding the financial issues, we examine first the big picture. The family court found that wife came into the marriage with \$417,000 in retirement funds and \$167,000 in cash, while husband came into the marriage with \$19,000 in retirement funds, \$35,000 of equity in his house, and over \$14,000 in credit card debt, much of it resulting from courtship gifts to wife. The court awarded the parties their respective retirement funds outright. The court then reimbursed wife for \$40,000 she paid to refinance the mortgage on the marital home and for \$32,000 she paid to cover husband=s debt to his ex-wife. The court also awarded wife one-third of the remaining increase in equity in the home after the \$40,000 payment to her was deductedCapproximately \$46,000. The court reasoned that wife was entitled to only one-third of the increased equity in the home because husband had owned the home for fifteen years prior to the brief marriage, and much of the increased equity was due to market forces rather than wife=s contributions. In sum, the court=s order reimburses wife for all but \$50,000 of the \$167,000 that she brought into the marriageC\$72,000 for payments she made to refinance the house and pay off husband=s ex-wife, and \$46,000 for contributions she made that increased the marital home=s fair market value. When one further considers that husband earned approximately \$75,000 more in income than wife during the brief, childless marriage, the family court=s division of marital property is not manifestly inequitable. Victor v. Victor, 142 Vt. 126, 130 (1982) (A[T]he distribution of property is not an exact science and does not always lend itself to a precise mathematical formula; all that is required is that such distribution be equitable.@).

Wife raises a multitude of specific arguments, none of which demonstrate that the family court=s property division constituted an abuse of discretion. First, we find no error in the court awarding husband two-thirds of the increased equity in the marital home, given his long-time ownership of the home before the marriage, the brevity of the marriage, and the influence of market forces on the increased equity. See 15 V.S.A. ' 751(b)(10) (court may consider party through whom property was acquired). Notwithstanding plaintiff=s claims to the contrary, there is support in the record for the court=s finding that market forces were a significant factor in the increased equity in the home during the marriage. Second, we find unavailing wife=s claim that she was not reimbursed for her contributions to the home. Her share of the increased equity adequately reimbursed her for her financial contributions, which she claims to be at least \$29,000, as well as her Asweat equity,@ which was offset to a large extent by husband=s own labor in renovating the marital home. Third, wife has failed to demonstrate that the court plainly undervalued husband=s pre-marital debt, overvalued husband=s pre-marital rental income, failed to consider her personal property brought into the marriage, overvalued her personal property taken from the marriage, and underestimated her income during the marriage. For the most part, the record supports the court=s calculations regarding these issues, which, in any event, were not the most significant factors in the court=s division of marital property. Due to the brevity of the marriage, the court attempted, as best as it could, to restore to wife the monies she spent directly to benefit husband during the marriage, and to award wife a portion of the increased equity in the marital home. The court=s attempt to do so fell within its broad discretion.

Finally, wife complains that the family court erred by finding that she was capable of earning \$45,000 per year as an office manager and that the parties had a similar opportunity to acquire future assets. Again, the record supports the court=s findings. Indeed, when husband met wife, she was making \$45,000 per year as an office manager, and she plainly has the capital to allow her to acquire future assets. In any event, these two factors are less critical in a short-term marriage such as this, in which wife did not serve as homemaker for years while husband steadily increased his earning capacity. Cf. Harris v. Harris, 162 Vt. 174, 183-84 (1994) (fact that mother withdrew from workforce for seven years to care for children and provide home for father, who gained earning power, weighed in favor of giving mother larger share of marital assets).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice