

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-056

SEPTEMBER TERM, 2004

	}	APPEALED FROM:
	}	
Richard Spaulding	}	Lamoille Family Court
	}	
v.	}	DOCKET NO. 69-5-02 Ledm
	}	
Charlene Spaulding	}	Trial Judge: Edward J. Cashman
	}	
	}	

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

Wife appeals the family court's final divorce order, arguing that the court erred by granting her a deficient amount of marital property in lieu of a permanent maintenance award. We reverse the court's order and remand the matter for further proceedings.

The parties were married in 1973 and separated in early 2002. At the time of the final divorce hearing, husband was forty-nine years old and wife was forty-eight years old. The parties raised two children, who are now adults. Throughout the twenty-nine-year marriage, husband worked as a teacher and school administrator. At the time of the final hearing, he was earning approximately \$54,000 as a high school principal in a small rural town. In addition to volunteering at the schools where husband worked and helping husband with his summertime grave-digging business, wife was a homemaker during the marriage. During the last few years of the marriage, wife suffered from a chronic disabling mental disorder. At the time of the final divorce hearing, she was unemployed and unable to work. Her only income was \$420 per month- \$5040 annually- in disability and supplemental income from the Social Security Administration.

The parties' primary assets were the marital home, which was valued at \$85,000 and had an outstanding mortgage of \$13,300, and husband's retirement fund, which was valued at \$252,222. Following an evidentiary hearing, the family court awarded wife (1) the marital home, with husband responsible for paying the mortgage, and (2) one-third of husband's retirement fund, \$84,074, which husband is required to pay her when he retires, at a rate of \$490 per month. In dividing the marital property, the court noted that husband had made a persuasive case that wife's violent conduct toward him had caused the breakup of the marriage. The court acknowledged that some of her violence had arisen from her mental disorder, but that she bore the full responsibility for the breakup of the marriage. The court declined to award wife any maintenance, stating both that the division of marital property was in lieu of maintenance, and that wife had failed to make a threshold showing that she needed maintenance. Wife appeals, arguing that (1) the family court's statement that it was awarding wife property in lieu of maintenance was inconsistent with its statement that wife had failed to demonstrate a need for maintenance; (2) the court's findings regarding fault do not support its decision to give wife a small property award and no maintenance; and (3) the court erred by failing to award wife permanent maintenance, given the circumstances of this case.

For several reasons, the family court's property award and denial of maintenance must be reversed. First, we agree with wife that the court acted inconsistently by concluding that she had not demonstrated a need for maintenance, but awarding her property in lieu of maintenance. An award of property in lieu of maintenance implies that the recipient spouse is entitled to maintenance under the law but that circumstances warrant awarding that spouse, instead of maintenance, additional marital property equal to the maintenance award that the spouse otherwise would have received.

Here, the court concluded that wife was not entitled to maintenance, but then awarded her property in lieu of a maintenance award to which it had indicated she was not entitled.

Second, the family court's conclusion that wife failed to demonstrate a need for maintenance is directly contrary to the court's limited findings. Indeed, those findings suggest that a permanent maintenance award is warranted in this case. Because maintenance is intended to equalize the parties' standard of living for an appropriate period of time and to compensate homemakers in long-term marriages for contributions not otherwise recognized in the property distribution, the "critical factors" for determining whether permanent maintenance is appropriate are the length of the marriage, the recipient spouse's role during the marriage, and the recipient spouse's likely future income in relation to the standard of living established during the marriage. Strauss v. Strauss, 160 Vt. 335, 340 (1993). After examining those factors in Strauss, we held that a forty-eight-year old wife who had been a homemaker during the parties' thirty-year marriage and who had limited job prospects and earning capacity in contrast to her husband was entitled to some combination of rehabilitative and permanent maintenance. Id. at 340-42.

Here, the court found that (1) the parties had been in a long-term marriage of nearly thirty years, during which wife served primarily as a homemaker; (2) wife was unemployed at the time of the final divorce hearing, with an income of \$5040 per year in disability and SSI benefits and no current ability to obtain gainful employment because of her debilitating mental problems; and (3) husband was healthy and earning \$54,000 per year- ten times as much as wife- with good future earning potential. Notwithstanding the family court's finding that the parties did not have a luxurious lifestyle, the above findings suggest that wife would not be able to meet her reasonable needs in relation to the standard of living established during the marriage. See 15 V.S.A. § 752(a) (authorizing court to award maintenance when spouse lacks sufficient income and property to meet her reasonable needs and to support herself at level established during marriage). The court did not, however, make findings on wife's reasonable needs or the standard of living established during the marriage. See Strauss, 160 Vt. at 340-41 (recognizing that although trial court has wide discretion in fashioning maintenance award, award must be supported by sufficient findings); Naumann v. Kurz, 152 Vt. 355, 362 (1989) (holding that trial court erred by not making findings establishing parties' marital standard of living and wife's reasonable needs). Nor did the court explain how wife would be able to meet her reasonable needs on an income of \$420 per month. Rather, the court noted that wife had the house and one-third of husband's retirement fund. The house, however, is non-income producing property awarded to wife as part of her property award, the purpose of which, in part, is to compensate her for her contribution to the marriage. Moreover, husband is not required to pay wife installments on the retirement fund, which is also part of wife's property award, until he retires.

Third, to the extent that the family court actually intended to award wife maintenance but to give it to her through an additional property award in lieu of maintenance, its findings do not support the award given to wife. At the outset, we emphasize that fault is not a factor for the family court to consider in determining how much, if any, maintenance to award. Jenike v. Jenike, 2004 VT 19, ¶¶ 10-11; Naumann, 152 Vt. at 361. Further, the respective merits of the parties is only one of twelve factors to be considered in determining the appropriate property award. Here, as noted, the family court assigned wife full responsibility for the breakup of the marriage, but also acknowledged that at least part of her conduct that led to the breakup was the result of wife's debilitating mental illness. Specifically, the court found that wife had kept husband up late at night talking about her problems and then would slap him when she perceived that he was not paying her adequate attention. The court also found that she had unreasonably accused him of having an extramarital affair. Without diminishing the seriousness of these incidents or usurping the trial court's role in assessing the credibility of witnesses and weighing the facts, we emphasize that the family court was obligated to consider the weight of this one factor in relation to the other eleven factors to be considered in dividing marital property under 15 V.S.A. § 751. Wife's mental problems and her resulting abusive conduct toward husband must be weighed against the fact that the parties were married almost thirty years, and that, for a good portion of the marriage, wife helped raise the parties' children, assisted husband with his work, and otherwise contributed to the marriage. In short, the slapping incidents must be viewed within the context of this long-term marriage and all of the relevant factors set forth in § 751.

Here, assuming that the family court actually intended to award wife property in lieu of maintenance, the court did not make any findings or conclusions on the amount of maintenance to which wife was entitled under § 752 (indeed, the court found that she failed to show a need for maintenance), or exactly what amount of property was being awarded to wife in lieu of maintenance. See Jenike, 2004 VT 19, ¶¶ 10-11 (family court is required to devise equitable property settlement based on statutory factors, including fault, before considering whether financial circumstances of parties

justify maintenance award; court must indicate what part of its order was intended to remedy spouse's fault and what part was intended to ameliorate financial disparity between parties following divorce); Klein v. Klein, 150 Vt. 466, 475 (1988) (statutory provision allowing property distribution to be considered in deciding maintenance award was not intended to require use of non-income producing property" in lieu of maintenance unless it clearly appears that the property was above and beyond that awarded as an equitable distribution of the assets of the parties"). The court may not avoid the principle that maintenance is not fault-based by awarding property in lieu of maintenance and then awarding an insufficient amount of property.

Finally, we find no merit to husband's one-page argument that important considerations of public policy require us to uphold the trial court's award of property in lieu of maintenance. According to husband, requiring victims of abuse to pay their abusers permanent maintenance would undercut the public policy goal of encouraging those victims to leave their abusive spouses. We conclude that the specific facts and circumstances of this case do not trigger consideration of the public policy concerns alleged by husband. In any event, the Legislature has determined that maintenance should be awarded on a no-fault basis, and husband has not presented any grounds to challenge this legislative determination.

The Lamoille Family Court's August 21, 2003 order is affirmed only insofar as it grants the parties an absolute divorce and upholds their prior division of personal property; in all other respects, including its division of the remaining property and its denial of a maintenance award, the order is reversed, as are the court's judgments entered on December 23, 2003. The matter is remanded for the court to take new evidence if necessary and resolve issues concerning maintenance and the division of marital property in a manner consistent with this entry order.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned