

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-091

OCTOBER TERM, 2005

Lesley Provencher (Bienvenue)	}	APPEALED FROM:
	}	
v.	}	Addison Family Court
	}	
Kimball A. Provencher	}	DOCKET NO. 18-2-04 Andm
	}	

Trial Judge: Christina Reiss

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

Both parties appeal a final divorce order distributing the marital property. We affirm.

The parties were married in September 1998 and separated in December 2003. No children were born of the marriage. At the time of the divorce, both parties were in their forties and in relatively good health, although wife suffered from depression. The family court found that the parties had about \$140,000 worth of marital property to divide after the debts were subtracted from the assets. Of that amount, the court awarded wife approximately \$80,000, which included her retirement accounts and half of the equity in the marital home. On appeal, in a one-page brief, wife argues that the family court erred by considering the money she expended to improve the marital home as maintenance and repair costs, thereby failing to compensate her for the increased value of the home. In making this argument, she claims that she spent approximately \$1500 for appliances, \$2500 to repair the front steps, \$1500 for new windows, and \$500 to replace a carpet.

We find this argument unavailing. The family court acknowledged that wife used funds from her investment accounts to pay for the home improvements she lists on appeal. In deciding to divide equally the equity in the marital home, the court expressly took this fact into account, along with other facts including that husband=s parents sold the marital home to the parties at a price \$30,000 below its fair market value as a gift to husband in recognition of the many years that he had worked on the family farm. Notwithstanding wife=s claim that the parties purchased the house at its full market value, there was evidence in the record from which the family court could have concluded that the house was a partial gift to repay husband for his work on the family farm. It is the province of the family court, not this Court, to determine the credibility of witnesses and to weigh the evidence. See Adams v. Adams, 2005 VT 4, & 10, 869 A.2d 124. The court acted well within its broad discretion in dividing the marital property after carefully considering each of the factors enumerated in 15 V.S.A. ' 751(b). See Wade v. Wade, 2005 VT 72, & 13, 878 A.2d 303 (stating that family court has broad discretion when analyzing and weighing the statutory factors in light of the record evidence@).

In his cross-appeal, husband argues that the family court erred (1) in determining the value of the marital home at the time the parties purchased it, and (2) in calculating the current equity in the home. Regarding the first issue, the court found that when husband=s parents sold the marital home to the parties in 2000 for \$70,000, they intended to give husband a gift of \$30,000 for his past work on the family farm. Thus, the presumed value of the home at that time was \$100,000. According to husband, subtracting wife=s home improvement expenses and the estimated general increase in real estate values over the previous four years (according to an expert witness at trial) from the current \$163,000 fair market value of the house found by the family court leaves at least \$114,000C\$14,000 more than what must be presumed from the court=s finding that husband=s parents intended to give husband a \$30,000 gift. We are not persuaded by this argument. In reducing the current fair market value by wife=s home improvement expenses, husband fails to list all of the improvements noted by the trial court and neglects to consider that wife contributed only part of the cost of putting new windows in the house. The division of marital property is not an exact science. See Dreves v. Dreves, 160 Vt. 330, 333 (1993) (recognizing that trial court need not exercise its discretion with mathematical precision@). Upon review of the record, we conclude that the court acted within its discretion in finding that the parties= purchase price of the home reflected a \$30,000 gift to husband.

Husband also argues that the family court erred in calculating the equity in the marital home, citing the court's finding that the home was encumbered by a mortgage of \$67,977. According to husband, when that figure is added to the other encumbrances on the home and subtracted from the home's fair market value as found by the court, the equity is \$52,000 rather than \$59,000. The flaw in husband's argument is that the court's finding of a \$67,977 mortgage on page three of its decision conflicts with its finding of a \$60,977 mortgage on page nine of its decision. Our review of the record demonstrates that the latter figure is correct. Wife testified that the mortgage was \$60,977 plus a couple of additional payments owed to defendant's parents, and that the equity was about \$59,000. Husband does not point to any evidence that conflicts with this testimony or supports the court's apparently mistaken finding that the mortgage was \$67,977. Accordingly, we conclude that the court committed a clerical error on page three of its decision in stating that the mortgage was \$67,977. Page nine of the court's decision, which is supported by the evidence, correctly lists the mortgage as \$60,977 in summing of the parties' assets and liabilities.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice