

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-284

MARCH TERM, 2007

Katharine Furney	}	APPEALED FROM:
	}	
v.	}	Addison Family Court
	}	
David Furney	}	DOCKET NO. 85-5-04 Andm
	}	
		Trial Judge: Thomas J. Devine

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

Husband appeals from a final divorce judgment of the Addison Family Court. He contends that, in dividing the marital property, the court erroneously: (1) found that husband had contributed to the family as a homemaker but failed to assign a value to the contribution; (2) found that husband had designed and supervised the construction of the marital residence but failed to assign a value to his efforts; (3) failed to recognize that a significant portion of wife’s trust came from husband’s financial contribution; (4) failed to account for inflation in valuing the marital residence; and (5) inconsistently treated wife’s family gifts. We affirm.

The material facts, as found by the trial court, may be summarized as follows. The parties were married in 1992 and separated in 2004 after twelve years of marriage. Although the parties had no children together, each had two children from a former marriage. Both parties hold professional degrees. Wife, a college professor, held a master’s degree before the marriage and earned her doctorate in education during the marriage. Husband has graduate degrees in business and public administration. Wife worked throughout the marriage, her income increasing consistently to the point where she earned approximately \$70,000 per year at the time of the divorce hearing. Husband’s income as a private real estate consultant and developer was sporadic, depending upon the real estate market. The court found that his last major financial contribution to the marriage occurred in 1993, when he earned over \$380,000 from the closing on a Blue Cross/Blue Shield building. Thereafter, his business generally earned little or lost money, although a post office development that closed in 2000 earned him approximately \$98,000 and principal ownership in a building worth \$200,000.

The parties derived substantial income from a trust established by wife’s father for her benefit. The court found that the trust had a value at the time of the hearing of about \$830,000, and that the parties had withdrawn about \$308,000 from the trust during the marriage for construction of a home in Lincoln, family expenses, and other needs. The court found, in addition, that wife’s family had made generous gifts to the parties throughout the marriage, totaling approximately \$440,000 in cash, land, and other property. Most of their income, the court noted, was spent on the

parties' children, for boarding school, horses, and trips abroad.

The court also found that husband had made substantial contributions to the family in caring for the home and the children when they were not away at school, particularly during the several years that wife was both working and pursuing her doctoral degree. In addition, the court found that husband was actively involved in designing and supervising the construction of the marital home in Lincoln. The house was built on 27 acres that wife's family had gifted to her; the court found that much of the construction cost of approximately \$468,000 was funded with cash gifts from wife's parents, as well as from the proceeds of the sale of the parties's former Richmond home, which wife had purchased.

In dividing the marital estate, the court reviewed each of the non-exclusive factors set forth in 15 V.S.A. § 751. The court noted that neither party was seeking maintenance; both were middle-aged and in good health, both had advanced degrees, and both earned good, consistent incomes, husband having recently taken a job as the director of the Frog Hollow Craft Center, earning \$56,000 per year. The court found that the total value of the estate was about \$2.4 million, and that the parties' liabilities were minimal. Each had similar earning ability, would receive substantial assets from the marital estate, and would enjoy the opportunity to acquire future capital assets. The court placed substantial emphasis on the assets that each party had contributed to the marriage, noting that the marital home was built on land gifted from wife's family, and that wife's family had also funded a significant portion of the construction costs and made other significant gifts of cash, cars, and other property. The court recognized that husband had made significant non-monetary contributions to the marriage through the design and construction of the marital home and as a homemaker, although it found that these were "overshadowed" by the financial contributions of wife and her family.

Based on these findings, the court awarded husband half of the \$951,000 equity in the marital home (or approximately \$475,000), as well as his entire \$200,000 interest in the post office, his retirement accounts, an "IMA" account consisting of \$100,000 in funds repaid by wife's father on a prior loan, and \$50,000 of funds distributed from the trust account for a total of approximately \$950,000, or almost 40% of the total estate. The court awarded wife the entirety of her family trust, noting that it was established prior to the marriage and that wife's family had made gifts to the parties during the marriage that were roughly equal to half the value of the trust. With the addition of her share of the equity in the marital home, a retirement account, and a life insurance trust wife's award totaled approximately \$1.5 million, or slightly more than 60% of the estate. This appeal by husband followed.

Husband first contends the court erred in failing to attribute any value to husband's non-monetary contributions to the marital estate through his efforts in caring for the home and children and designing and supervising the construction of the marital home. As noted above, however, the court expressly recognized husband's contributions. Moreover, while finding that husband's contributions were not as significant as the substantial financial contributions of wife's family—without which, as the court found, the home would not have been built, the children would not have been enrolled in private boarding schools, and the family would not have enjoyed their comfortable lifestyle—the court nevertheless effectively compensated husband through an award of half the equity in the family home, or \$475,000.

As we have frequently explained, the trial court enjoys broad discretion in the division of marital property and we will not disturb its judgment in this regard unless that discretion “was abused, withheld, or exercised on clearly untenable grounds.” Gamache v. Smurro, 2006 VT 67, ¶ 21, 904 A.2d 91. As we have also explained, distribution of the marital estate is not an exact science, and therefore all that is required is that the distribution be equitable. Id. The record shows that the court here carefully considered and balanced all of the pertinent statutory factors, including husband and wife’s respective non-monetary and monetary contributions, and we find no basis to conclude that its division of the assets was inequitable or a patent abuse of discretion. See, e.g., Kasser v. Kasser, 2006 VT 2, ¶ 31, 179 Vt. 259 (upholding award of approximately 20% of marital estate to wife where court recognized wife’s contributions to family but found it to be more “significant that all of the parties’ financial assets had been acquired through husband”); Wade v. Wade, 2005 VT 72, ¶ 23, 178 Vt. 189 (affirming award of 90% of assets to wife where court explained that principal marital assets had come from her family and that she had used income and inheritance to finance household needs). We thus find no abuse of discretion.

Husband next contends that the evidence fails to support the court’s finding that the value of wife’s trust account came solely from the contributions of wife’s family; he claims, rather, that he contributed over \$220,000 from the profit he realized on the sale of the Blue Cross/Blue Shield building. The trial court is in the best position to assess the credibility of witnesses and weigh the evidence, and we will not disturb its factual findings unless, taking the evidence in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence to support them. Kasser, 2006 VT 2, ¶ 16; Begins v. Begins, 168 Vt. 298, 301, 721 A.2d 469, 471 (1998). Wife’s evidence here showed that her parents had funded the trust account through the deposit of stock, which the court found had dramatically appreciated, plus cash of about \$150,000. Husband offered no evidence to support his claim that he had made contributions to the trust, and wife disputed the claim, testifying that she could not recall any deposits to the account other than those from her parents. The record evidence does not, therefore, demonstrate that the court’s finding was unsupported by credible evidence, or was clearly erroneous. Accordingly, it may not be disturbed.

Husband’s final two claims require no extended discussion. He contends that the court erred in failing to increase the value of the marital home for any appreciation in value that occurred during the ten months between the final divorce hearing and the court’s decision. The court properly based its finding, however, on the evidence of value adduced at the final hearing. See Hayden v. Hayden, 2003 VT 97, ¶ 8, 176 Vt. 52 (explaining that “assets are valued for distribution purposes as of the date of the final hearing”). Contrary to husband’s claim, moreover, there was no clear evidence from the hearing to support a percentage increase over the values adduced by the experts.

Finally, husband contends the court “was inconsistent” in its treatment of wife’s family assets, finding that this factor favored husband under 15 V.S.A. § 751(b)(3) (the “occupation, source and amount of income” of the parties) because he lacked a comparable source of income, while failing to consider it when determining the parties’ respective abilities to acquire future capital assets and income under § 751(b)(8). The court had concluded that, given the parties’ comparable incomes and the award of substantial assets to each, their ability to acquire future income and capital assets was comparable. As noted, the distribution of marital assets is not an exact science, and the goal is not mathematical equality, but equity. Gamache, 2006 VT 67, ¶ 21. Under this standard, we cannot

find that the court abused its discretion in finding that neither party enjoyed a substantial advantage over the other in their ability to acquire future income or assets.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice