

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-418

MAY TERM, 2007

Donelle A. Morin	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Family Court
	}	
Pene Morin	}	DOCKET NO. 150-5-04 Frdm
	}	

Trial Judge: James R. Crucitti

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

Plaintiff and defendant* both challenge the family court’s order granting the parties a divorce and dividing the marital property between them. We affirm.

The family court relied on the following factual findings in its final order of divorce. The parties were married in July 2003, and separated in April 2004. Following their separation, plaintiff requested a relief from abuse order and filed for divorce. Shortly after plaintiff filed for divorce, she was issued a final relief from abuse order requiring defendant to stay one hundred feet away from her. The order also provided for plaintiff to retrieve her personal property held by defendant. Defendant then obtained a relief from abuse order herself, requiring plaintiff to remain one hundred feet away from her. This order gave defendant temporary possession of the marital residence, and listed personal property that plaintiff was permitted to retrieve from the residence. Defendant filed a cross-claim for divorce and requested an annulment based on plaintiff’s alleged “fraudulent concealment” of her sexual identity.

The family court found that, at the time of the hearing, plaintiff was in poor health and had no current income other than borrowed money, food stamps and fuel assistance. Plaintiff, however, was a beneficiary of her father’s estate, and has received and will continue to receive disbursements from the estate. Plaintiff did not disclose this fact during discovery. Defendant was in good health with the exception of a shoulder injury. Defendant had received both worker’s compensation benefits and a malpractice settlement in connection with her shoulder injury, and these were the

* Plaintiff identified as male at the time the parties met, but now identifies as female and, at the time of the proceedings below, was undergoing medical treatment to change her gender. Therefore, for the sake of clarity, the parties are referred to as plaintiff and defendant.

sources of her income at the time of the hearing. The court found that when defendant resumed work, she would be able to earn an income comparable to that which she earned in previous years. Regarding the marital residence, the court noted that defendant purchased the property on June 6, 2001, when the parties were dating but not yet married. Plaintiff moved into the residence after her business closed in 2002. Before that date and after, plaintiff moved a number of business and personal items to the property. Some improvements were made to the property, to which both parties contributed.

The court considered the evidence against the criteria of 15 V.S.A. § 751, providing for the division of marital property. The court emphasized that the marriage was extremely short. The court further found that both parties suffered from health problems to some degree, although plaintiff's problems were more severe and longer-lasting. On the other hand, plaintiff—when healthy—had a greater ability to earn income. In light of these considerations, the court determined “that the parties should be placed in positions as close as possible [] to that prior to the marriage.” Accordingly, the court also considered the source of the property when dividing the property. The court awarded the marital residence to defendant, while awarding the home that plaintiff acquired as part of her inheritance to plaintiff.

Regarding the continued dispute over plaintiff's personal property located at the residence, the court noted that orders had been issued to allow plaintiff to retrieve her property. In the interim, defendant placed these items in an outside tent that was intended for storage, but which nonetheless exposed the property to moisture, such that some of the property was damaged. The court also noted, however, that plaintiff knew where the items were being stored and had delayed in retrieving them. Accordingly, the court denied plaintiff's request for reimbursement for certain items, but awarded plaintiff certain additional items of personal property in defendant's possession as an offset for damage to other items.

Regarding certain vehicles that the parties allegedly purchased for resale, but which defendant disposed of without plaintiff's permission, the court ultimately determined that it would issue no order because the parties had compromised any evidence of ownership or value in an effort to avoid transfer taxes on the vehicles.

In light of strongly conflicting evidence, the court decided to award each party the wedding ring currently in her possession.

In considering defendant's request for annulment pursuant to 15 V.S.A. § 516, the court noted that the parties' testimony differed regarding whether defendant was aware of plaintiff's transgender identity at the time of their marriage. The court found credibility determinations to be difficult in light of the dramatically conflicting testimony. Ultimately, the court concluded that defendant had failed to meet the high standard for proving fraud.

Both parties sought attorney's fees. The court awarded defendant \$3,000 of her almost \$32,000 in requested fees because plaintiff's untruthfulness in the discovery process prolonged that stage of the litigation.

Finally, plaintiff’s request for spousal maintenance was denied due to “the extremely short duration of the marriage and the inability of either party to pay spousal maintenance and meet their own living expenses.”

Although the parties appear pro se, they are nonetheless obligated to make comprehensible arguments demonstrating error. See V.R.A.P. 28(a)(4) & (b) (a party’s brief on appeal must present an argument that identifies the issues on appeal and the party’s contentions relative to those issues, with citations to authority and relevant portions of the record); see also Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (Supreme Court will not consider arguments not adequately briefed). To the extent the parties’ arguments on appeal are discernable, they have not demonstrated that the family court abused its discretion or otherwise erred in dividing the marital property between them. Guiel v. Guiel, 165 Vt. 584, 584-85 (1996) (mem.) (holding that family court has broad discretion in ordering property division and decision will be upheld unless court “fails to exercise its discretion or exercises it for clearly untenable reasons or to an untenable extent”). Here, the family court carefully evaluated the evidence, made credibility determinations, and crafted an order based on those considerations. There was no abuse of discretion.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice