

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-139

NOVEMBER TERM, 2007

Anthony P. Cote

v.

Candy Sue Cote

} APPEALED FROM:
}
}
} Lamoille Family Court
}
}
} DOCKET NO. 51-4-06 Ledm

Trial Judge: Dennis R. Pearson

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

Husband appeals the family court's order granting wife rehabilitative maintenance as part of the final divorce order. Husband contends that wife was not truthful in her testimony regarding her medical condition and therefore the court's findings are not supported by credible evidence. We affirm.

Husband and wife were married in June 2001, and separated in March 2006. In April 2006, the parties both signed a hand-written final stipulation, granting husband the house, where the parties had primarily resided during the marriage, and his pension fund, and allowing each party to retain personal property they currently held. Wife also waived any claim for spousal maintenance. Thereafter, both parties filed numerous motions seeking to modify the divorce agreement. The court held a final contested hearing on December 14, 2006 at which husband was represented by counsel and wife appeared pro se. In March 2007, the court issued its findings of fact and conclusions of law, granting a property division consistent with the terms of the stipulation, but granting wife maintenance for two years. Husband filed a motion to reconsider the award of rehabilitative maintenance, arguing that wife had misrepresented facts pertaining to her medical condition during her testimony. The court denied the motion, noting that the maintenance award was intended not just for out-of-pocket medical expenses, but also "for temporary rehabilitative maintenance generally, in light of all facts and circumstances discussed, and award of property otherwise stated." Husband appeals the maintenance award.

Husband contends that the court's decision to grant wife maintenance was based on an incorrect understanding of wife's medical condition. Based on wife's testimony, the court found wife has cervical cancer and described her health situation as follows:

Her prognosis as of the date of this decree is unknown; at the final hearing [wife] stated that it was "not good," and at the very least she would be facing extended chemotherapy and/or radiation post-surgery, as well as an extended period of monitoring and testing if that initial round of treatment was successful.

The court also found that wife does not have health insurance, and will incur significant out-of-pocket expenses. Based on these findings, the court awarded wife \$300 of maintenance a month for two years. Husband asserts that wife was not truthful in her testimony because she does not have cancer or out-of-pocket medical expenses.

The court's award of maintenance is discretionary and we will affirm unless the party challenging the award demonstrates that there is no reasonable basis to support the award. Sochin v. Sochin, 2004 VT 85, ¶ 10, 177 Vt. 540. Regarding spousal maintenance, the court considered the statutory factors and concluded that maintenance was appropriate, given wife's income and reasonable expenses, in particular the expenses related to her health condition. 15 V.S.A. § 752(a) (directing court to consider whether spouse seeking maintenance can provide for her reasonable needs in deciding whether to award maintenance).^{*} Upon that analysis, the court set wife's maintenance award at \$300 per month for two years. Id. § 752(b)(5) (listing relative factors for amount and duration of maintenance to include physical condition of each spouse).

We conclude the court did not err in awarding wife maintenance. The court's findings regarding wife's medical condition were based on wife's uncontested testimony, and are not clearly erroneous. See Sochin, 2004 VT 85, ¶ 10 (affirming court's factual findings unless there is no credible evidence to support them). Husband's attempt to discredit wife's testimony, by contesting her claimed cancer and anticipated treatment, in a post-hearing motion, must fail. The trial court may set aside judgment if the moving party demonstrates that the evidence could not have been discovered prior to trial. V.R.C.P. 60(b)(2). In this case, husband makes no showing about why whatever evidence he has to dispute or disprove wife's medical condition was not available and presented at trial. Moreover, the family court has broad discretion in acting on a Rule 60(b) motion, and is in the best position to ascertain the motion's significance to the final conclusions and judgment. Stalb v. Stalb, 168 Vt. 235,

^{*} The court concluded that the parties' agreement was unfair in denying wife any maintenance. See Pouech v. Pouech, 2006 VT 40, ¶¶ 22-23, 180 Vt. 1 (holding that the family court may reject a stipulation executed in anticipation of divorce if the agreement is inequitable in light of the relevant statutory factors). Husband does not appeal this conclusion.

248 (1998). As the trial court noted, its maintenance award was based on all of evidence, not just wife's medical condition. The court did not abuse its discretion in denying father's motion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice