

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-431

MAY TERM, 2008

Deborah Fleischman	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Family Court
	}	
	}	
John Pandolfo	}	DOCKET NO. 152-4-06 Wndm

Trial Judge: James R. Crucitti

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

Husband appeals from a final divorce order. On appeal, husband contends that the court erred in: (1) concluding that the parties' stipulation, which provided that wife would receive no spousal maintenance, was inequitable and unenforceable, and (2) assessing the factors in 15 V.S.A. § 752 and awarding wife maintenance. Wife cross-appeals and claims that the trial court erred in declining to award her the marital home and in failing to address her claim for temporary spousal maintenance.

The court found the following facts. The parties were married in July 1999 and separated in January 2006. The parties have a child together, born in 1998. Husband is forty-three and in good health. He is a school teacher and earns approximately \$48,000 per year. Wife is forty-seven and in generally good health, but has a history of suffering from serious migraine headaches. She has a bachelor's degree and experience working in marketing and publishing. She was the primary care provider for the parties' child and did not work full time during the parties' marriage. She had several part time jobs during the marriage, but was unable to find a position in marketing after being laid off in 2003. After an unsuccessful exhaustive job search, wife decided to return to school to improve her employment opportunities. She is currently enrolled in a graduate program, which she will complete in January 2009. She also has two part time jobs and expects to earn \$9,000 per year over the next two years.

On July 31, 2006, the parties, accompanied by their attorneys, met with a mediator in an attempt to settle the matter. At the close of the mediation session, the parties initialed a hand-written "term sheet," containing several stipulated resolutions pertaining to the division of property. Under the terms of the agreement, husband received the marital home and was required to pay wife \$125,000 in exchange for a quitclaim deed. This sum was greater than half the equity in the home. Husband was also required to pay off the parties' credit card debt. The

stipulation was silent as to spousal maintenance. The parties were never able to agree on the exact terms of a stipulation to sign and file with the trial court. The parties did, however, partially execute the terms of the agreement. On October 1, 2006, husband gained possession of the marital home. Wife executed a quit claim deed to the property, and husband paid her \$125,000. Following withdrawal of wife's attorney, wife asserted that she felt the stipulation was not fair and requested spousal maintenance.

The court held a hearing on enforcement of the agreement and on evidence for the final divorce at the same time.\* Wife argued that the document was not intended to be a final agreement. Alternatively, she contended that the agreement did not ensure an equitable division of the parties' assets and was thus unenforceable. Wife requested that the agreement be set aside and sought possession of the marital home, as well as maintenance. Husband argued that the agreement was enforceable and was meant to cover all aspects of the parties' divorce, including maintenance. Husband testified that wife received a larger portion of the equity in the house in lieu of maintenance.

In July 2007, the court issued a final written order granting the parties a divorce. The court concluded that, absent an award of maintenance, the settlement was not equitable. The court enforced the terms of the property division in the settlement agreement, but also granted wife spousal maintenance. The court concluded that wife required maintenance to meet her reasonable needs and granted wife rehabilitative maintenance in the amount of \$1100 per month from September 1, 2007 until January 1, 2009 and \$750 per month for two years thereafter. Husband filed this appeal, and wife cross-appealed.

Husband argues first that the court erred in awarding maintenance, because the written term sheet was a final settlement and intended to resolve all financial matters between the parties, including spousal maintenance. As evidence, husband points to email communication between the parties in advance of the mediation session discussing waiver of maintenance.

Recently, we explained that where the parties have negotiated a settlement and one party challenges it prior to a final divorce hearing, the family court may choose not to enforce the agreement if it determines that it is unfair or inequitable. Pouech v. Pouech, 2006 VT 40, ¶ 22-233, 180 Vt. 1. The question "of fairness and equity [is] viewed from the perspective of the standards and factors set forth in our divorce statutes." Id. ¶ 23. In addition, "the family court's determination that an agreement is unfair or inequitable is discretionary, and thus we review its decision to reject or accept a stipulation under an abuse-of-discretion standard." Id.

We recognize that the trial court's decision was not a model of clarity and that the court did not explicitly address some of the parties' arguments. However, we interpret the decision as ruling that the stipulation did not address maintenance and that the property disposition in the stipulation was equitable. Thus, we do not conclude that the court set aside the agreement.

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\* The parties submitted a stipulation at the final hearing wherein they agreed to share parental rights and responsibilities and set out a parent-child-contact schedule.

We conclude that the court did not abuse its discretion in enforcing the agreement's property division while also granting spousal maintenance. The court examined the agreement's division of property in light of the statutory factors and concluded that it was equitable. As to the marital home, the court noted that wife's family had made contributions toward the residence totaling \$136,837. Given that both parties contributed to the improvement of the house, the court concluded that granting husband possession was not inequitable. The court found that wife's award of \$125,000, which represented a greater share of equity in the house, was equitable in light of her family's large financial contribution to the residence. Thus, the court chose to enforce these terms of the parties' agreement.

As to maintenance, the trial court considered the fairness of the agreement in light of the statutory factors and concluded that given the length of the marriage, wife's role as primary care giver for the parties' child during the marriage, and the disparity in the parties' income and earning capacity, the final order would be inequitable absent an award of maintenance. See 15 V.S.A. § 751(b) (setting out factors for court to consider in property division). As the court explained, wife anticipates earning \$9000 per year over the next two years from working two part time jobs. At the same time, she will be looking after the parties' child half of the time and attending graduate school full time, for which she must pay tuition of \$30,000. Thus, the court concluded that wife cannot meet her reasonable needs without maintenance. See 15 V.S.A. § 752(a) (maintenance is appropriate if a spouse lacks sufficient income to meet her reasonable needs). The court's decision took account of the statutory factors and did not constitute an abuse of discretion.

Husband next argues that the court erred in assessing the statutory factors, because the court did not consider the property settlement in calculating wife's ability to meet her needs and in setting the amount of maintenance because the court did not consider his ability to pay. The statute allows the court to award maintenance if the court finds that "(1) the spouse lacks sufficient income and /or property to 'provide for his or her reasonable needs' and (2) the spouse is unable to support himself or herself 'through appropriate employment at the standard of living established during the marriage.'" Chaker v. Chaker, 155 Vt. 20, 24 (1990) (quoting 15 V.S.A. § 752(a)). Once the court determines that maintenance is appropriate, the amount and duration of maintenance are based on consideration of seven nonexclusive factors enumerated in 15 V.S.A. § 752(b). The court has broad discretion in considering these factors and we will reverse only where there is "no reasonable basis" to support the court's decision. Chaker, 155 Vt. at 25.

We conclude that the court acted within its discretion in awarding wife maintenance in the amount it did. The court found that maintenance was appropriate given "the length of the marriage, . . . the disparity in income between the parties," and wife's role as the primary care provider for the parties' child during most of the marriage. See 15 V.S.A. § 752(a) (court may order maintenance if it finds that that spouse does not have sufficient income to meet her reasonable needs or is unable to support herself through employment at the standard of living established during the marriage). The court's decision is supported by the evidence. As noted, wife's income is \$9,000 a year, whereas husband's is \$48,000. That wife also received cash as a property settlement from husband does not alter the disparity in the parties' income and their prospective ability to earn income. While husband has the marital home, wife needs the property settlement to establish a new home for her and the parties' child. Furthermore, the court did not

abuse its discretion in setting the amount and duration of maintenance. The court found that wife's education plan was reasonable and required additional income. See *id.* § 752(b)(2) (including as a factor in determining the amount of maintenance "the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment"). The court considered husband's ability to pay, finding that he had the ability to supplement his income through renting out rooms in his house or through additional employment during the summer. See *Watson v. Watson*, 2003 VT 80, ¶ 6, 175 Vt. 622 (mem.) (explaining that even though the husband argued that he had to incur additional debt to meet his maintenance obligation, the court considered his ability to pay and that other factors weighed more heavily in favor of granting maintenance). The court did not find, as husband suggests, that he was required to take on summer work to meet his maintenance obligations; rather, the court explained that if husband desired to increase his income he had opportunities to do so, whereas wife did not.

We now turn to wife's cross-appeal. Wife argues that the family court erred in dividing the marital property by not awarding her the marital home, or, in the alternative, by failing to give her a larger portion of equity in the home. Wife contends that the short duration of the marriage, wife's age, wife's lack of stable employment, wife's attachment to the property and her larger financial contribution to the property all favor granting her the property. Wife sees it as providing her with long-term stability as a place where she could farm, garden, teach or operate a bed and breakfast.

Wife's argument depends on a presumption that the court chose to set aside the parties' entire written agreement. As already noted, we do not interpret the court's decision as rejecting the parties' agreement in its entirety. Indeed, the court chose to enforce the property division, finding, as explained above, that the division of assets was equitable in light of the statutory factors. The court concluded that "[i]n light of the similar equities of the parties," it was reasonable to maintain the status quo pertaining to husband's possession of the marital home. We conclude the family court did not abuse its discretion in choosing to enforce the parties' agreement as to husband's possession of the marital home and payment to wife for her equity in the property.

Finally, we address wife's argument that the family court erred in not addressing her request for temporary spousal maintenance. In April 2006, at the time she petitioned for divorce, wife filed a motion for temporary relief. This motion requested possession of the marital home, allocation of parental rights and responsibilities, and temporary spousal maintenance. The court held a hearing on July 17, 2006 and resolved the issues of temporary rights and responsibilities and parent-child contact. The court scheduled a second hearing for August 1, 2006. Following the parties mediation session on July 31, 2006, the parties agreed to cancel the temporary hearing for the next day. Wife made no further request for maintenance until the final hearing, at which she testified that she needed temporary maintenance because she was living off of the property settlement. Wife argues that the court's failure to address her claim for temporary maintenance violates the statutory directive that "[a] prompt hearing will be held" on requests for temporary relief and that "[t]he court or judge shall issue an order within 10 days from the date of the hearing." 15 V.S.A. § 594a (emphasis added). Husband counters that wife waived her claim for temporary maintenance.

We conclude that the court fully complied with the statute and that wife's failure to obtain an adjudication on her claim for temporary maintenance resulted from her own waiver of the issue. First, we consider the trial court's obligation under the statute. The full language of the statute governing temporary relief during the pendency of a divorce proceeding provides:

Either party or both parties to a marriage may apply for temporary relief at any time following the separation of the parties to the marriage coincidental with, or subsequent to the filing of complaint for absolute divorce or legal separation. The court to which the cause is returnable, or a superior judge, on such notice to the adverse party as the court or judge directs, may make such orders pending final hearing and further order of the court as the court would be authorized to make upon final hearing. A prompt hearing will be held, and the evidence shall be recorded by a court reporter. The court or judge shall issue an order within 10 days from the date of the hearing. Failure of the court or judge to issue an order within 10 days shall not affect the validity of any order issued after the 10-day period.

15 V.S.A. § 594a. When interpreting a statute, we look to the plain meaning of the language to best implement the Legislature's intent. DeKoeper v. DeKoeper, 146 Vt. 493, 497 (1986) (explaining that the plain meaning of the statute controls). Here, as wife points out, the statute contains two directives: the court is to hold a prompt hearing, and the court is to issue an order thereafter. The trial court complied with both of these requirements. The court held a hearing on wife's motion and issued an order the same day, partly resolving the requests made in wife's motion and setting a further hearing date. Wife agreed to cancel the second hearing following the mediation session and never renewed her request for temporary maintenance. Thus, we conclude that she waived the issue.

We are not persuaded that wife's testimony at the final hearing regarding her need for temporary maintenance was sufficient to preserve her request. The purpose of temporary maintenance is to maintain the status quo between the parties while the dissolution proceeding is pending. Temporary maintenance terminates with the entry of the final divorce order. See Chaker, 155 Vt. at 29 (temporary maintenance orders are superseded by the final order). Therefore, the trial court had no ability to grant temporary maintenance at the final hearing, since any award would be superseded by the final order.

The trial court does have discretion to determine the effective date of a final maintenance award, and can choose to make maintenance retroactive to at least the date of the initial hearing. Chaker, 155 Vt. at 30-32 & n.2. We conclude that here the trial court did not abuse its discretion in setting the effective date for wife's maintenance. In its final order, entered July 20, 2007, the trial court granted wife rehabilitative maintenance in the amount of \$1100 per month from September 1, 2007 until January 1, 2009 and \$750 per month for two years thereafter. The timing of the maintenance is reasonable in that it appears to run concurrent to the time period for which wife will be attending graduate school. Thus, the effective date is consistent with the purpose of the award—to provide wife with support while she pursues her graduate education.

See Miller v. Miller, 2005 VT 122, ¶ 32, 179 Vt. 147 (explaining that the purpose of rehabilitative maintenance is to give the recipient spouse the opportunity to develop employment skills to achieve economic self-sufficiency).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Brian L. Burgess, Associate Justice