

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-465

JULY TERM, 2010

Michael Bashaw	}	APPEALED FROM:
	}	
v.	}	Windham Family Court
	}	
Betty Ann (Jones) Bashaw	}	DOCKET NO. 207-6-08 Wmdm

Trial Judge: Katherine A. Hayes

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

Mother appeals a final divorce order, challenging the court’s rulings on property division, maintenance, and parental rights. Mother argues that the court’s findings are not supported by the evidence. We affirm.

The court found the following facts. The parties married in September 1999 and separated in April 2008. They have three minor children, who were seven, nine, and ten at the time of the final hearing. Mother has an older daughter from a prior relationship. Father is a high school graduate and works seasonally as a concrete cutter. He is in good health. Mother has some college education, but did not graduate due to a serious car accident. Mother has long-term disabilities from the car accident and receives social security income benefits. She has worked as a school-based paraprofessional. At the time of the final hearing, mother was not working but expected to return to work. The marital home is father’s childhood house. In 2002, father’s parents sold the house to the parties for \$50,000 less than fair market value. The residence includes a second-floor apartment where father’s parents live, and a third-floor apartment that is an income-producing rental unit.

In May 2008, mother accused father of physical abuse and received an ex parte temporary relief-from-abuse (RFA) order. She alleged that she had been repeatedly physically abused during the marriage. During the pendency of the temporary order, father vacated the home. After a hearing, the family court concluded there was insufficient evidence to support granting a final RFA order. In the summer of 2008, when the parties were separated, but mother was still living in the house, mother became convinced that there was a centipede infestation in the house. On one occasion, she sprayed insecticide in the children’s room where the children were sleeping. Father was concerned for the children’s health and the police were called to help deal with the ensuing conflict between the parties regarding whether the spray was harmful to the children. The trial court found that mother’s fears of an infestation were unfounded.

Father was awarded temporary parental rights and responsibilities in July 2008. Father stayed in the marital home with the children. Mother and her older daughter moved into a two-bedroom mobile home with mother's mother where mother lives rent-free. The children had liberal contact with mother, initially on an alternating weekly schedule, but then on alternating weekends and one weekday overnight. All of the children are healthy and good-natured. They have a very close relationship with their paternal grandparents.

Following a hearing, the court granted father legal and primary physical rights and responsibilities. Mother was awarded parent-child contact on alternating weekends. As to property division, the court granted father the marital home, but ordered father to pay mother one-half of the equity in the house by monthly installment payments over fifteen years. The court did not award maintenance, explaining that mother had not requested it.

Mother appeals pro se. On appeal, mother raises several arguments related to the trial court's orders on parental rights, property division and maintenance. Related to each, mother argues that several of the trial court's findings are inaccurate or unsupported by the evidence. In several cases, mother contends that there was insufficient evidence because the findings rested solely on the testimony of father or father's witnesses without further support from documentary evidence. As to the sufficiency of the testimony, we find no error. We defer to the family court's assessment of the evidence because of the court's unique position to judge the credibility of witnesses and weigh the evidence. Payrits v. Payrits, 171 Vt. 50, 53 (2000). The trial court was entitled to credit the testimony of father or his witnesses over the evidence presented by mother. Further, the court was not required to base its findings on additional forms of evidence beyond the testimony presented at the final hearing.

To the extent that mother argues there was no evidence to support the court's findings, our standard of review is narrow. We "will not set aside the family court's findings if supported by the evidence, nor its conclusions if supported by the findings." Id. (quotation omitted). Because mother has failed to properly order and pay for a transcript of the final hearing, we are unable to assess whether adequate evidence was presented at the hearing.* See State v. Gadreault, 171 Vt. 534, 538 (2000) (mem.) (appellant's failure to file a transcript precludes review of claims); In re S.B.L., 150 Vt. at 307 ("[A]ppellant must bear the consequence of the lack of a transcript of the evidence."). As we have explained, "[i]t is the burden of the party challenging a ruling to furnish the reviewing court a transcript of the proceeding involved." In re S.B.L., 150 Vt. at 307 (quotation omitted). Absent a record of the hearing, we must assume the court's findings are supported by the evidence. Id. at 307-08. Thus, we do not address mother's arguments concerning the adequacy of the court's findings and turn to mother's other claims of error.

* Although mother made a deposit on the transcript, the transcriber did not receive full payment and the transcript was not provided to her or to father. In error, the transcriber sent an electronic copy of the transcript to this Court. We have not examined it or relied on it, however, because it is the burden of the party claiming error on appeal to demonstrate how the lower court erred and to provide the Court with adequate citations to the record to demonstrate the claimed error. See In re S.B.L., 150 Vt. 294, 297 (1988); Quazzo v. Quazzo, 136 Vt. 107, 111 (1978). At this point, we would be required to search the transcript for any evidence that might support mother's arguments, a function we will not assume.

Mother argues that the court erred in granting father parental rights and responsibilities. “The family court has broad discretion in awarding custody, and its findings will not be overturned unless clearly erroneous.” Payrits, 171 Vt. at 52-53. Mother asserts that the court awarded father parental rights because her house is smaller than father’s and this was an improper basis for the decision.

In reviewing the court’s decision, it is evident that the court considered the entire situation of the parties and did not base its custody decision on mother’s smaller house. The court considered the statutory best interest factors set out in 15 V.S.A. § 665(b) and concluded that most factors favored father. While the court acknowledged that mother had been the children’s primary care provider for most of the marriage, see id. § 665(b)(6), the court found the other factors favored awarding custody to father. The court found that father had a superior ability to provide the children with appropriate guidance, keep them safe, and meet their developmental needs. Id. § 665(b)(1)-(3). The court expressed concern about mother’s ability to provide appropriate guidance and meet the children’s developmental needs given her misguided belief of an insect infestation, her exaggerated claims of physical abuse, and her inability to control her older daughter’s behavior. The court also found that father was better able to foster a positive relationship with mother and maintain the children’s close relationship with their paternal grandparents. Id. § 665(b)(5). As related to the parties’ housing situations, the court noted that the children are well adjusted to the primary residence and enjoy visiting mother. This was a valid consideration, see id. § 665(b)(4), and did not result in an award of custody to father for improper reasons. Given these findings, we conclude there was ample ground to support the court’s award of custody to father. See Kasper v. Kasper, 2007 VT 2, ¶ 5, 181 Vt. 562 (mem.) (“Where the family court’s award of custody reflects its reasoned judgment in light of the record evidence, its decision may not be disturbed.”).

Mother next argues the trial court erred in failing to award her maintenance because without it she is unable to meet her monthly expenses and maintain the same standard of living as during the marriage. See 15 V.S.A. § 752. In the final order, the court stated that mother did not request maintenance, noting that such an award might disqualify her from receiving social security benefits. Again, due to the lack of a proper transcript, we are unable to review her claim that she properly requested maintenance. See Gadreault, 171 Vt. at 538. We therefore must assume the court’s statement is correct and mother did not request maintenance at the final hearing. In re S.B.L., 150 Vt. at 307-08.

Mother also challenges the court’s division of property and requests that her half of the home equity be paid immediately and not in installments over fifteen years. “As we have often noted, property division is not an exact science, and the trial court has broad discretion in considering the statutory factors and fashioning an appropriate order.” Cabot v. Cabot, 166 Vt. 485, 500 (1997). The trial court has authority to order that a property division be made by installment payments, and we find no reason to disturb the court’s decision. See Potter v. Potter, 170 Vt. 540, 541 (1999) (mem.) (“Installment payments have long been employed in Vermont.”).

Finally, mother argues that the court’s division of personal property was unfair and not equal. The trial court’s decision indicates that the parties stipulated to a division of personal property. Given that the court awarded personal property pursuant to the parties’ stipulation, we

find no grounds to disturb the court's decision. See Sochin v. Sochin, 2004 VT 85, ¶ 13, 177 Vt. 540 (mem.) (holding that trial court did not err in awarding marital home to father where distribution was made pursuant to parties' stipulation).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice