

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-008

JULY TERM, 2017

Royce A. Dendler	}	APPEALED FROM:
	}	
	}	Superior Court, Addison Unit,
v.	}	Family Division
	}	
	}	
Olga B. Dendler	}	DOCKET NO. 177-9-10 Andm

Trial Judge: John W. Valente

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

Husband appeals pro se from the family court’s order directing him to sell the marital residence and use the proceeds to pay wife the amounts he owes under the parties’ 2011 divorce order. We affirm.

The history of this case is described in more detail in this Court’s prior decision in Dendler v. Dendler, No. 2011-399 (Vt. Aug. 29, 2012). The facts relevant to this appeal are as follows. The parties separated in 2010 after an eighteen-year marriage. At the time of the final hearing, husband was seventy years old and wife was forty-eight. Wife suffered from significant mental health issues and at the time of the hearing was residing in a community treatment center for patients with persistent psychiatric conditions. Wife was represented at the hearing by counsel and a guardian ad litem appointed to represent her interests. Husband did not appear.

The court issued a final order of divorce in November 2011. Consistent with wife’s proposal at the final hearing, the court awarded husband the marital residence as well as the vehicles and accounts in his name. Although wife requested only \$10,000 as a property settlement, the court awarded wife \$50,000: \$15,000 to be paid into a special-needs trust upon its establishment, and the balance to be paid into the trust by December 31, 2015. This would allow husband to remain in the marital home until the parties’ child turned eighteen in September 2014. The court ordered that if husband failed to make full payment by December 31, 2015, interest would accrue at the rate of twelve percent per year and wife could seek an order from the court requiring the house to be sold. The court also ordered husband to pay wife \$20 per month in permanent maintenance. Because husband had significantly more assets than wife, the court

ordered husband to pay wife's attorney's fees in the amount of \$2403.41 within thirty days of the order. In a subsequent order issued in April 2012, the court ordered husband to pay an additional \$699.30 in attorney's fees. Husband appealed the 2011 property division order to this Court; we found no abuse of discretion and affirmed the order. Dendler v. Dendler, No. 2011-399 (Vt. Aug. 29, 2012).

Husband subsequently failed to pay wife or her attorney. In October 2016, wife filed a motion requesting that the family court order husband to sell the marital residence and pay wife and her attorney the full amounts due under the 2011 and 2012 orders. The court scheduled a hearing on the motion for November 28, 2016. The court's docket sheet indicates that notice of the hearing was sent to husband by first-class mail on November 9, 2016. Husband did not appear at the hearing. Instead, on December 1, 2016, he filed a letter with the court stating simply: "My house cannot be sold because of the Homestead Exemption Act of state and federal law." Wife responded that the homestead exemption did not apply in the context of a divorce. On December 5, 2016, the court issued an entry order directing husband to sell the marital residence by May 1, 2017, and pay \$64,566 to wife's special needs trust and \$4946.41 to her attorney. Husband then filed this appeal.

Husband argues that it was unfair for the court to order him to sell the marital residence, which he owned prior to the marriage and is his art studio as well as his home. We find no abuse of discretion. The family court is authorized to distribute marital assets, including the family home, "in whatever manner it finds just and equitable, regardless of the prior owner." Condosta v. Condosta, 142 Vt. 117, 123 (1982). The court has the power to order that the marital home be sold to satisfy a property award to one party. Paine v. Buffa, 2014 VT 10, ¶ 25, 195 Vt. 596; see also Milligan v. Milligan, 158 Vt. 436, 440 (1992) (holding family court has discretion "to order that marital property held by one or both parties be liquidated and immediately reduced to cash when the court finds it necessary, as here, to meet immediate needs"). As we have previously made clear, the homestead exemption in 27 V.S.A. § 101, which exempts up to \$125,000 in value of a person's homestead from judicial attachment or execution, does not apply in the context of a divorce. Pearson v. Pearson, 169 Vt. 28, 36-37 (1999).

Here, husband did not pay wife as directed by the 2011 order despite having ample time to do so, thus depriving her of the only assets she was to receive from the marital estate. He failed to appear at the duly-noticed hearing at which he could have provided evidence on the issue. The court acted within its discretion in ordering husband to sell the marital home in order to satisfy his obligations to wife. The 2011 order made clear that wife could seek this remedy if husband failed to pay her in full.

Husband also argues that the 2011 property division order was unfair to him, repeating many of the arguments he raised in his prior appeal. As noted above, we affirmed the 2011 order

in August 2012. At that point, the order became final and not subject to modification, absent the circumstances listed in Vermont Rule of Civil Procedure 60. Tudhope v. Riehle, 167 Vt. 174, 177 (1997). Husband's attempt to attack the validity of that order in this appeal is barred by principles of res judicata. See id. at 177-78.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice