

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-249

NOVEMBER TERM, 2017

Irene F. Kim	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
v.	}	Family Division
	}	
	}	
John G. Kim	}	DOCKET NO. 211-7-16 Rddm

Trial Judge: Nancy Corsones

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

Husband appeals the court’s order denying his motion to reopen the parties’ final divorce order that was based on the parties’ stipulation. Husband argues that before the divorce was final wife sold a vehicle jointly owned by the parties in violation of an interim order and that this provided a basis to reopen the property settlement in the final divorce order. We affirm.

The parties were married in 1991. Wife filed for divorce in July 2016. The parties executed an interim stipulation. The court also issued an interim domestic order, delineating, among other things, that “[n]either party may sell, transfer, hide, remove, loan, damage or mortgage any real property, personal property or assets . . . owned by the parties in their joint names.” They then entered a temporary stipulation, which was approved by the court in August 2016. Under the temporary stipulation, wife was awarded possession of the marital home. The parties negotiated a final stipulation, which was signed in December 2016. The court subsequently signed an order incorporating the parties’ stipulation. The final order provided that wife was to move out of the marital home and that it would be awarded to husband. The order gave each party the bank accounts in her or his name and stated that “[e]ach party is awarded the vehicle in her/his possession.” The parties waived the nisi period and the divorce became final on December 16, 2016.

Three days later, husband filed a motion to set aside the final settlement. The court held a hearing on the motion. At the hearing, husband raised several complaints, one related to a Toyota, which wife had physical possession of during the separation period. He alleged that his attorney had pressured him to allow wife to sell the Toyota prior to the divorce becoming final, and he had not agreed. He claimed that wife’s attempt to trade in the Toyota violated the interim order’s prohibition on selling property held in the parties’ joint names. Wife’s attorney represented that wife had thought that she held sole title, had attempted to trade in the Toyota, and had later discovered that it was jointly owned. The dealership could not finalize the transaction until husband signed over the title. The court found that given that wife had physical possession of the Toyota during the separation, husband was not harmed, and husband had not met his burden of demonstrating that there were grounds to invalidate the final order.

In May 2017, wife filed a motion for clarification or to enforce the final order. Wife alleged that the dealership was unable to sell the Toyota because husband would not sign documents to transfer title. Wife requested that the court order amend the final order to either specifically award her the Toyota or order husband to sign the documents to release the vehicle. The court amended the final order to clarify that the Toyota was awarded to wife free and clear of any claim by husband.

Husband then moved to reopen the amended order. He claimed that the Toyota was not in wife's possession at the time of the final order so it could not be awarded to her. The court denied the motion, explaining that the facts were undisputed that during the separation wife had use and possession of the Toyota. Wife started the trade-in process on the vehicle before the final divorce hearing, but because husband's name was on the title to the vehicle, the transaction was not completed until after the divorce was final. The court ruled that either wife still had equitable possession of the vehicle at the time of the final order or she had possession of her new vehicle. Either way, she received the vehicle in her possession at the time of the final order, and there was no error. Husband appeals.

On appeal, husband argues that the court should reopen the divorce settlement because wife sold the Toyota prior to the divorce becoming final. He contends that wife knew she was not the sole owner and acted contrary to the interim order by selling it before the divorce was final.

“A court-approved, property distribution agreement can be set aside if there is a showing of fraud, unconscionable advantage, impossibility of performance, hampering circumstances beyond the expectation of the parties, collusion, or duress.” Putnam v. Putnam, 166 Vt. 108, 113 (1996) (quotation omitted). “We review the family court’s decision to grant the motion to reopen for abuse of discretion.” LeClair v. Reed ex rel. Reed, 2007 VT 89, ¶ 4, 182 Vt. 594 (mem.).

The court acted within its discretion in this case. As the court recounted, there was no dispute that during the separation period wife had physical possession of the Toyota and that she would receive the Toyota under the final order, based on the parties’ stipulation. Although she began the trade-in process of the vehicle before the divorce was finalized, husband has failed to demonstrate that her actions amounted to fraud or duress or any other ground to set aside a stipulated final divorce settlement. In addition, husband has not shown that he was harmed by wife’s action. Therefore, the court did not abuse its discretion in denying husband’s motion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Karen R. Carroll, Associate Justice