

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-184

MARCH TERM, 2019

Samantha A. Loch** v. Brett Loch*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	
	}	DOCKET NO. 29-2-15 Wmdm
		Trial Judge: Katherine A. Hayes

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

Both parties appeal the trial court’s final divorce order. On appeal, husband argues that with the expenses and debt assigned to husband, he lacked the ability to pay the maintenance ordered. Wife cross appeals, arguing that the court abused its discretion by (1) ordering maintenance for an insufficient amount and duration, (2) not ordering that child support and maintenance be paid through the Office of Child Support, (3) assigning husband the responsibility of paying for health insurance for the children, and (4) awarding wife an insufficient cash award for her equity in the home. We affirm the property-division and maintenance provisions of the order and reverse and remand the child-support order.

The court found the following. The parties were married in 2008 and separated in 2014. They have two children. Both parties are in their thirties and in good health. Husband was the primary wage earner during the marriage. He is a consultant for companies in the oil-drilling business and travels for work, sometimes being out of the country for long periods of time. Between 2010 and 2016, husband’s average yearly income was \$121,000. Because of a slump in the oil industry, husband was not fully employed and his income in 2015 was only \$20,000. By the time of the final hearing, husband was again fully employed, but the parties incurred debt during his period of unemployment. Husband’s monthly income was \$14,386 and his expenses were \$5045, not including debt, credit card payments and taxes. The court found husband could earn a minimum of \$120,000 annually. Wife worked intermittently outside the home during the marriage, was the primary caregiver for the children, and took care of the home. By the time of the final hearing, wife earned a monthly salary of \$2324 being a server. Wife intended to finish her degree and get employment in the environmental science or water resources field.

The court granted wife legal and physical parental rights and responsibilities and gave husband parent-child contact. In evaluating the marital estate for purposes of property division, the court acknowledged that the parties’ debts exceeded the value of their assets. The court awarded husband the marital home but ordered husband to pay wife \$10,000 for her equity in it. The court assigned wife responsibility for the debts for her car and her credit cards. The court assigned husband responsibility for the mortgage on the marital home, the car loans for his vehicles, his credit card debt, and the parties’ tax liabilities for federal and state taxes. The court

recognized “that this allocation results in [husband] being held responsible for far more than 50% of the parties’ total liabilities but concludes that this is nonetheless equitable in light of the parties’ respective earning capacities and real abilities to pay the marital debts, and his own choices about expenditures.” As to maintenance, the court found that wife was entitled to maintenance because she was unable to meet her needs without assistance. The court ordered that husband pay wife \$2500 a month for five years to allow wife to complete her education and gain work experience. The court acknowledged that husband still had a higher income but noted that he would have more expenses due to his responsibility for the parties’ significant debts. Wife filed a motion to reconsider. Wife asked the court to: (1) increase the maintenance award in amount and duration to allow her to care for the parties’ children and to complete her education to make a more reliable income; (2) order that spousal maintenance and child support be paid through the office of child support; (3) amend the order to require wife, instead of husband, to provide medical insurance for the children; (4) increase her property award; and (5) shorten the deadline for payment of the property award. The court summarily denied the motion.

Husband appeals and wife cross appeals.

Both husband’s appeal and wife’s cross appeal involve arguments about the court’s order regarding health insurance. As to child support, the court ordered husband to pay \$1588.59 in monthly child support and directed husband to “continue to pay for health insurance for the children,” and to pay for “75% of their uninsured medical, dental, and other healthcare related expenses” and 50% of the childcare expenses.

On appeal, husband argues that the maintenance award is in error because the court failed to consider that he is now required to pay for health insurance, 75% of the children’s uninsured medical expenses, and 50% of the childcare for the children. He asserts that he lacks the funds to pay maintenance after paying for those costs and making payments on the parties’ debt. Wife cross appeals, arguing that the court erred in requiring husband to pay for the children’s medical insurance and childcare costs without any evidence about the cost. Wife speculates that the parties would collectively save money if she was responsible for the children’s medical insurance.

We conclude that the evidence does not support the court’s finding that husband should “continue” to pay for health insurance for the children and for its assignment of this cost to husband.¹ The court’s finding implies that husband had been paying for health insurance, but the testimony does not support this finding. At the final hearing, wife testified that the family did not have health insurance for long periods of time during the marriage because it was too expensive while husband worked as a private contractor. She explained that they were receiving insurance through the state but would become ineligible because of husband’s increased income. There was no further testimony about which party carried health insurance. Moreover, there was no evidence about the amount of health-care costs for the children if paid by husband or wife. Because of this, both parties seek to reverse the maintenance portion of the final judgment. However, the order regarding health insurance was made in conjunction with the court’s decision about child support, not maintenance. We note that the statutes related to child support address when it is appropriate for the court to order a parent to provide a cash contribution towards, or to obtain, medical coverage for a child. See 15 V.S.A. § 658(f). In this case, without evidence of the cost of health insurance,

¹ The court’s findings also recite that husband’s expenses included costs for dental insurance but did not include any cost for health insurance.

there was no basis for the court to assign this cost to husband.² Therefore, the child-support portion of the final order is reversed and remanded. On remand, the court must consider the cost of health insurance prior to ordering that the cost be assigned to one party or the other.³

Therefore, we turn to the spousal maintenance award. The court may award maintenance when one spouse “lacks sufficient income or property . . . to provide for his or her reasonable needs” and “is unable to support himself or herself through appropriate employment at the standard of living established during the marriage.” 15 V.S.A. § 752(a). In assessing the amount and duration of maintenance, the court is directed to consider several factors including “the financial resources of the party seeking maintenance” and “the ability of the spouse from whom maintenance is sought to meet his or her reasonable needs while meeting those of the spouse seeking maintenance.” *Id.* § 752(b)(1), (6). “A court has broad discretion in determining the amount and duration of a maintenance award, and we will set it aside only when there is no reasonable basis to support it.” *Stickney v. Stickney*, 170 Vt. 547, 548-49 (1999) (mem.).

The court found that wife was entitled to maintenance because she was unable to meet her needs without some assistance. In assessing the amount and duration, the court found that wife’s income was \$2324 a month. Husband’s income was \$14,386 when he was employed. The court acknowledged that husband also earned \$885 a month in rental income. The court calculated his monthly expenses as \$5045 without debt payments, child support, spousal maintenance, or taxes. Given the nine-year length of the marriage and the difference in the parties’ incomes, the court calculated the suggested support guideline as between one-to-five years from \$1808 to \$4221 a month. The court explained that a five-year term for \$2500 a month was warranted given husband’s much higher income, wife’s need to gain education, and husband’s responsibility for the bulk of the parties’ debt.

On appeal, husband contends that the maintenance award is too high given his responsibility for other expenses and wife argues that the maintenance was insufficient in duration and amount given husband’s much higher income and her need for time to gain more stable employment while caring for the children. We conclude that the maintenance award was within the court’s discretion in this case. The court considered each of the statutory factors, recognizing that husband’s income far exceeded wife’s and wife needed time to complete her education. The court balanced this against husband’s responsibility for a large portion of the parties’ debts. Although each party alleges that the evidence warranted a more favorable judgment, the court acted within its discretion and there are no grounds to disturb the court’s judgment.

As to husband’s argument that the court ordered him to pay more spousal maintenance and other expenses than he had the capacity to pay pursuant to the court’s own findings, we have two responses. First, husband seizes on the trial court’s finding, for the purposes of property division, that husband is expected to continue to earn no less than \$120,000 per year for the next several years and measures his anticipated expenses against this sum. However, the court also found that husband currently makes about \$14,000 per month from his consulting business, and that is the finding the court relied on in determining spousal maintenance. This sum is sufficient to support

² In fact, the portion of the child-support order relating to health insurance availability and cost is blank.

³ Wife also argues that the court erred in requiring husband to pay for half of the reasonable childcare expenses when she is working or in class. Given that the child-support order is being reversed, we do not reach this argument. Wife may seek to modify this provision of the child-support order on remand.

all of husband's expenses, including payments toward debts allocated to husband. Second, husband ignores the fact that wife's monthly income of \$2324 falls well short of her own monthly expenses. This is a case in which both parties will struggle to meet their obligations.

Wife also argues that the court erred in failing to require husband to pay maintenance and child support through the office of child support. Wife did not make this request until her motion to reconsider. The court acted within its discretion in denying the request at that time. Rubin v. Sterling Enters., Inc., 164 Vt. 582, 588-89 (1996) (motion to reconsider committed to court's discretion and ruling will not be disturbed absent abuse of discretion).

As to the property division, wife argues that she received an insufficient amount for her share of the equity in the marital home. The trial court found that the total equity the home was \$40,000. During the pendency of the divorce, husband took an equity loan and paid wife \$10,000. Husband asserted that the parties had an agreement that this was intended as payment for half of her \$20,000 share of the equity in the marital residence. Wife disputed that there was an agreement. The court did not rely on the claimed agreement but concluded that based on all of the property division factors, husband should pay wife an additional \$10,000 for her share of the equity in the house. The court recognized that its overall allocation of property and debt awarded husband far more than 50% of the parties' total liabilities but concluded that this imbalance was warranted based on the parties' respective earning capacities. Within this overall property division that favored wife, and given the court's consideration of the property division factors, the court's failure to order husband to pay wife more than an additional \$10,000 was within the trial court's discretion.

The maintenance and property-division portions of the final divorce order are affirmed. The child-support order is reversed and remanded.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice