

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. 2020-171

JANUARY TERM, 2021

Holly Thurber* v. Douglas Thurber	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	
	}	DOCKET NO. 225-10-18 Wmdm
		Trial Judge: Michael R. Kainen

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

Wife appeals the family court’s final divorce order. On appeal, wife argues that the court erred by (1) failing to make necessary findings related to maintenance; (2) setting the amount of the property awarded in lieu of maintenance; and (3) awarding business inventory to wife where she had no ability to use it. We reverse and remand for further findings.¹

The court made the following findings. The parties married in 2000 and, in 2004, they purchased a property on the Connecticut River and opened Green Mountain Marina, a marina and boat-repair business. The parties built and lived in a 2500-square-foot living quarters on the second story of the marina showroom. The parties grew the business until they were both working solely at the marina. They tried to close the business from December to April and travel during the winter months. Wife sold boats, wrote repair orders, and kept the books. Husband repaired boats and installed and serviced docks. The parties did not declare all the revenue from the business. In the years prior to their separation, the couple earned about \$115,000 to \$135,000 in annual net income from the business. In 2016, the couple tried to sell the business and listed it at \$995,000. They did not get any offers.

In 2018, the parties separated, and wife moved to Florida. After their initial separation, they divided several assets equally between themselves. Husband continued to run the marina business under a new name. Husband’s income decreased to \$65,000 per year because he was unable to hire someone with wife’s skills at running the business and selling boats and, consequently, was less productive. The court did not credit wife’s assertion that husband was making a lot more money than what was reflected in the business’s records. Wife had not worked

¹ In her initial brief, wife challenged the trial court’s valuation of the business inventory; however, she withdrew that claim of error in her reply brief.

since moving to Florida. The court found that wife could earn \$30,000 per year.² The court further found that wife had not diligently sought work in Florida.

As to wife's request for spousal maintenance, the court found that wife could not meet her reasonable needs with an income of \$30,000 but that husband's income did not allow him to pay maintenance. The court granted wife additional property in lieu of maintenance. The court divided the marital assets other than the house and marina so that wife got \$158,845 and husband got \$87,450. The court provided each party with an opportunity to buy the house and marina and ordered that, if neither party elected to do so, the house and marina property would be sold and the proceeds split between the parties. Wife filed this appeal, challenging the court's decisions on spousal maintenance and property division.

This Court reviews the property division and spousal maintenance portions of a divorce order by examining whether the court "has adequately explained the underlying rationale for its decision, which we will not disturb absent a showing that the court abused its discretion." Jaro v. Jaro, 2018 VT 105, ¶ 13, 208 Vt. 391 (quotation omitted).

We first address wife's argument concerning the court's property division. Wife argues that the court's property division was in error because the court awarded her business inventory, which she did not request and could not use. The trial court has broad discretion in dividing marital property. Id. ¶ 15. Although wife did not request that this property be awarded to her, the majority of the marital assets were connected to the business and to equalize the parties' financial situation, it was reasonable for the court to assign some of these assets to wife. The court expressly noted that wife was free to sell the inventory and machines to a potential purchaser of the marina if she did not opt to buy it herself.

Wife next challenges the court's decision related to maintenance. Pursuant to statute, spousal maintenance is granted "when a spouse does not have the income or earning capacity to sustain the standard of living established during the marriage." Jaro, 2018 VT 105, ¶ 20 (citing 15 V.S.A. § 752(a)). If maintenance is warranted, the statute provides a list of factors for the court to consider in setting the amount and duration of maintenance, including a guideline range based on the length of the marriage and the disparity in the parties' incomes. 15 V.S.A. § 752(b)(9). The purpose of maintenance is to address income inequality between the parties and thus the focus of the statutory factors are "the parties' financial resources, needs, and their relative abilities to become or remain self-supporting following divorce." Jenike v. Jenike, 2004 VT 83, ¶ 9, 177 Vt. 502 (mem.). The court has discretion to award property in lieu of maintenance. Gravel v. Gravel, 2009 VT 77, ¶ 30, 186 Vt. 250.

Wife does not challenge the court's decision to give her property in lieu of maintenance but contends that the court abused its discretion because the court did not explain the amount and duration of maintenance to which she was entitled and because the amount she received was outside the statutory guideline and the court made no findings to justify the departure from the guideline. In dividing the marital assets other than the house and marina, the court awarded wife \$158,845 and husband \$87,450. Because the court expressly stated that the award to wife in excess of 50% of the value of the marital assets was in lieu of spousal maintenance, wife received around

² In evaluating wife's claim for spousal maintenance, the court stated that wife was capable of earning \$30,000 "initially." The court predicted that "given her education and work experience we believe she will earn more in the future once she is established in Florida," and predicted that she would ultimately achieve an income potential similar to the \$62,500 per year she earned in Vermont.

\$71,000 as property in lieu of maintenance. Wife argues that under the statutory guidelines, the disparity in the parties' income warranted annual maintenance of \$10,000 to \$13,000 for a period of eight to fourteen years or an amount between \$80,000 to \$182,000, and that the court did not provide an adequate explanation for its variance from this recommended amount.

The court has broad discretion in crafting an award of maintenance. Kohut v. Kohut, 164 Vt. 40, 43-44 (1995). The party challenging a maintenance award must show "that no reasonable basis exists to support the award." Jenike, 2004 VT 83, ¶ 8.

The court made the following findings relative to maintenance. The parties are of a similar age and are both in good health. Husband makes \$65,000 a year, roughly half of what the parties earned during the marriage, and his income is not sufficient for him to afford maintenance. Although wife is not employed, she is capable of earning \$30,000 initially in Florida and will eventually be able to work her way up to the \$62,500 she earned in Vermont. An income of \$30,000 would not allow wife to meet her reasonable needs or to live at the same standard of living as that established during the marriage.

These findings are insufficient to support the award of property valued at \$71,000. The purpose of a maintenance award is to equalize the parties' standard of living and correct inequalities in their income. Weaver v. Weaver, 2017 VT 58, ¶ 15, 205 Vt. 66. The maintenance statute allows an award of rehabilitative or permanent maintenance, and courts may award either or a blend of both. Id. Rehabilitative maintenance is transitional in nature and is intended to help the recipient spouse become self-supporting. Id. ¶ 16. Permanent maintenance is appropriate in long-term marriages where one spouse will not be able to become self-sufficient; the maintenance is aimed at equalizing the parties' standard of living in light of the standard established during the marriage. Id. ¶ 22. In this case, it is unclear whether the court made an award of property in lieu of an award of rehabilitative maintenance, permanent maintenance, or a combination.

Moreover, we cannot discern from the court's findings and conclusions whether the court concluded that wife's current earning capacity based on her education, background, and experience is \$30,000, such that the court's expressed expectation that she would in the future attain her pre-divorce earning level of over \$60,000 was a prediction of future economic circumstances rather than a finding of her present capabilities. Cf. DeKoeper v. DeKoeper, 146 Vt. 493, 495-96 (1986) (noting that in context of motion to modify maintenance speculation about a party's future economic condition is not relevant). Or, alternatively, whether the court concluded that based on her education and experience, wife's earning capacity was, in fact, closer to her pre-divorce earnings, such that the \$30,000 figure represented merely a short-term transitional earning capacity. If the latter, the findings do not explain how long of a transition the court intended to accommodate.

Finally, the court's findings do not show that it considered the applicable guidelines calculation in determining the spousal maintenance award which the court satisfied with an award of property. The guidelines calculation carries no presumptive weight, and the court is not required to justify an award outside of the guidelines range. Jaro, 2018 VT 105, ¶¶ 22-23. But, the court is required to consider the statutory spousal maintenance guidelines. Id. ¶ 24. We cannot discern from the court's analysis that it did so.

In short, the court's findings concerning spousal maintenance are insufficient to enable us to determine whether the amount awarded in lieu of maintenance was reasonable. Therefore, we remand for further findings on the amount and duration of maintenance to which wife is entitled.

Because the court awarded property in lieu of maintenance, the maintenance and property division decisions are interrelated and we therefore reverse and remand the court's entire order. See Downs v. Downs, 154 Vt. 161, 168 (1990) (remanding both property division and maintenance awards where one was unsupported and they were "closely related").

Reversed and remanded for further proceedings consistent with this decision.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice