VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 2021-071

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

JANUARY TERM, 2022

Mary Jane Miles** v. Randal Miles* } APPEALED FROM:
} Superior Court, Windsor Unit,
} Family Division
} CASE NO. 310-12-17 Wrdm
Trial Judge: Lisa A. Warren

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

Husband appeals, and wife cross appeals, the family division's allocation of marital property in its final divorce order. We affirm.

The parties married in 2005 and have two minor children. Prior to marrying, the parties signed an antenuptial agreement governing property division in the event of divorce, which included a provision regarding payment of income taxes. Wife filed this divorce proceeding in December 2017. She moved to set aside the antenuptial agreement or, in the alternative, to conclude that husband owed her for the tax liability she incurred on his behalf. After a hearing, the court denied wife's motion to set aside the agreement but reserved judgment on the issue of unpaid tax liability.

The court held a three-day final hearing in October and November 2020 and issued a written order with the following findings. Wife is a registered nurse and was the primary breadwinner for the family throughout the marriage, earning approximately $100,000 per year. She paid for the mortgage, taxes, and insurance for the marital home, as well as the utilities and other household expenses such as groceries. Husband was not employed between 2005 and 2010. He worked on the family home and cared for the children some of the time while wife was working. From 2010 to 2017, husband had a landscaping supply business. The business did not provide husband with income and the parties wrote off a loss on their income tax returns for a few years. The parties filed joint tax returns from 2007 to 2014.

Wife filed a previous action for divorce in 2014. Around that time, husband obtained a job at a local business, but he did not keep the job for very long and did not contribute substantially to household expenses. In 2015, the parties reconciled. After the parties separated again in 2017, husband obtained a new job at a manufacturing company, where he earned approximately $30,000 per year.

In 2015, wife obtained a master's degree in business administration (MBA), incurring debt of $67,000. The court found that this degree likely enhanced wife's earning potential and that the family benefited from wife's degree.

The parties maintained joint checking and savings accounts during the marriage. Wife's paychecks and the joint tax refunds were deposited into their joint checking account, which was used to pay for the mortgage, taxes, home repairs, and household expenses. The parties also used their tax refunds to take four family vacations that cost between $5000-7000.

Based on testimony and evidence presented by wife's certified public accountant, the court found that from 2007 to 2014, the total income tax liability attributable to wife was $136,146 and her total tax withheld was $176,812. The court found that the total income tax liability attributable to husband during the same period was $22,630.40; he did not have any withholding. Husband's liability was calculated by applying the effective tax rate for each year to special tax items attributable to husband, including his interest in a family trust, rental loss and income from a property he sold in Massachusetts, gain on the sale of two properties in Massachusetts and New Hampshire, dump truck rental, and his landscaping business. The court rejected the testimony of husband's certified public accountant, who prepared an estimate of what the parties hypothetically would have owed or received if they had filed separate tax returns. The court found this analysis to be unpersuasive and irrelevant, and concluded that wife's accountant's analysis was more compelling.

Under the parties' antenuptial agreement, the primary marital asset to be divided was the parties' equity in the marital residence, which amounted to $125,710. After assessing the factors set forth in 15 V.S.A. § 751(b), the court awarded 60% of the equity to wife and 40% to husband. The court deducted husband's unpaid tax liability of $22,630 from his share of the equity. It also ordered husband to pay $11,886 of wife's outstanding student loan debt, which it deducted from his share of the marital equity. The court held that husband was entitled to claim the children as dependents on his tax returns in 2020 and 2021, and that the parties were to alternate claiming the children in future years. Both parties appealed the court's order.

Husband claims that the court erred in determining that he owed $22,630 in unpaid tax liability to wife. He argues that the intent of the antenuptial agreement's income tax provision was to divide any liability due or any refund received if the parties filed joint returns. According to husband, because the parties received refunds every year, the court should only have looked at those amounts. He argues that the court assigned a liability that did not exist, pointing to his accountant's testimony that if he had filed returns separately, he would owe little or no tax.

An "antenuptial agreement is a contract." Stalb v. Stalb, 168 Vt. 235, 241 (1998). When the plain language of a contract "is unambiguous, we take the words to represent the parties' intent, and the plain meaning of the language governs our interpretation of the contract." Southwick v. City of Rutland, 2011 VT 105, ¶ 5, 190 Vt. 324 (citation omitted). The proper interpretation of a contract is a question of law that we review without deference to the trial court. B & C Mgmt. Vt., Inc. v. John, 2015 VT 61, ¶ 11, 199 Vt. 202.

The antenuptial agreement signed by the parties states:

> The parties shall file separate o[r] joint income tax returns, as they may agree. In the event of joint filing, each party shall pay such proportion of the total tax liability as his or her taxable income bears to the total taxable income of the parties, giving due credit to each party for all income tax withheld from or prepaid by each party. Income tax refunds, if shared, shall be shared in the same way as the tax liability.

The parties chose to file joint tax returns from 2007 to 2014. Under the plain language of the antenuptial agreement, each party was to pay his or her own share of the tax liability incurred. Husband does not dispute the mathematical analysis presented by wife's accountant, which determined that husband's proportion of the joint tax liability during these years totaled $22,630. However, it is undisputed that wife paid all of the joint income tax owed each year by the parties through amounts withheld from her paychecks. Husband did not pay any of the income tax, through withholding or otherwise. Accordingly, the court properly concluded that under the terms of the agreement, husband owed wife for the tax liability attributable to him.

Husband argues that because the parties received refunds, the court should not have examined the tax paid. We see no error in the court's interpretation or application of the agreement. The agreement clearly contemplates that the parties would each pay their share of tax, and that they would also share any refunds in the same proportion as the tax liability. The court found that refunds were deposited into the joint checking account and used to pay for shared household expenses including family vacations. In essence, husband enjoyed the benefit of the joint tax refunds while paying none of the taxes. The court properly interpreted the agreement to require repayment of the portion of tax attributable to husband's activities. As the trial court found, the evidence presented by husband showing that he likely would have owed less tax if the parties had filed separately is irrelevant, because they chose to file jointly.

Husband next argues that the court erred in finding that husband benefited from the master's degree obtained by wife during the marriage and in ordering him to pay a share of her student loan debt. "[W]e afford the family court wide discretion in distributing the marital estate and will uphold the court's distribution unless its 'discretion was abused, withheld, or exercised on untenable grounds.' " DeLeonardis v. Page, 2010 VT 52, ¶ 12, 188 Vt. 94 (citation omitted). We will affirm the court's findings if supported by the evidence, and its conclusions if supported by the findings. LeBlanc v. LeBlanc, 2014 VT 65, ¶ 21, 197 Vt. 17.

The court's award fell within its discretion. Wife's student loan debt was part of the marital estate to be divided. See 15 V.S.A. § 751(b)(6) (stating that in making property settlement, court may consider "[t]he value of all property interests, liabilities, and needs of each party"). The court found that husband benefited from wife's MBA and more generally from her financial support of the family during the marriage, and that it was equitable for him to pay part of her student loan debt. The evidence supports the court's conclusion. Wife testified that she obtained her MBA in 2015 to assist with the management responsibilities of her work. In 2016, wife started working at a nearby hospital as a nurse manager and director of inpatient services. Although wife earned somewhat less in this position than she did in her previous job at a hospital in Boston, the job provided greater flexibility to care for the parties' children and allowed her to

be home on weekends. This evidence, while limited in scope, supports the court's finding that husband benefited from wife's degree. Furthermore, the record amply supports the court's findings that wife exclusively supported the family throughout the parties' marriage and was also the primary caretaker of the children. The court had discretion under 15 V.S.A. § 751(b)(11) to adjust the property division in recognition of wife's significant contributions to the family's finances and wellbeing. See Casavant v. Allen, 2016 VT 89, ¶ 15, 202 Vt. 606 (explaining that family division has broad discretion in weighing § 751(b) factors, and that equitable division is not necessarily equal one).

On cross appeal, wife argues that the court erred in giving husband the right to claim the children as dependents on his income tax returns for 2020 and 2021 and in alternate years thereafter. Wife argues that she has the higher adjusted gross income and pays for all medical, dental, and extracurricular expenses for the children, and therefore is the "custodial parent" who is entitled to claim them as dependents pursuant to I.R.S. Publication 504. We decline to disturb the court's order, which was within its discretion. Our case law and Publication 504 both contemplate that dependent-child tax exemptions may be allocated to a noncustodial parent by stipulation or court order. See Adamson v. Dodge, 174 Vt. 311, 321 (2002) (holding that father, who was noncustodial parent, was entitled to claim all four children as dependents for income tax purposes under terms of final divorce order); I.R.S. Publication 504, Divorced or Separated Individuals, 8-10 (Feb. 16, 2021), https://www.irs.gov/pub/irs-pdf/p504.pdf [https://perma.cc/C728-LT75] (explaining that if divorce decree gives noncustodial parent right to claim dependent-child exemption, custodial parent must fill out written declaration releasing claim for exemption). Although wife is technically the custodial parent for purposes of the dependent-child exemption because she has a higher income than husband, both parents have equal physical custody of the children under the court's final order. It was therefore reasonable for the court to assign the dependent-child exemptions equally, including by allowing husband to claim the exemptions in 2020 and 2021 to account for the fact that wife claimed them on her 2018 and 2019 tax returns. See Merchant v. Merchant, 2015 VT 72, ¶ 15, 199 Vt. 406 (noting that assumption that parents who share custody will equally share dependent-child exemptions is "baked into" Vermont's child support statute).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice