

The parties agreed that wife would step away from assisting with the business, and they hired a bookkeeper to go through the accounts. Husband opened a new business entity with its own bank account. The bookkeeper found that the parties' personal and business finances were intermingled and began to separate personal charges from business ones.

In January 2020, the parties entered a temporary agreement giving husband use and possession of the marital home and requiring him to pay wife a lump sum of \$10,000 plus \$650 per week in support. Husband also paid for the mortgage, car insurance, car payment, and children's daycare. During the separation, the parties also agreed to share legal and physical parental rights and responsibilities.

The parties hired an accountant to prepare the business tax returns for 2018 and 2019. Wife failed to provide the accountant with all relevant financial information, such as her credit card statements. Based on the information available, the accountant determined that the company had gross earnings of \$974,267 in 2018 and \$1,267,693 in 2019. The accountant also concluded that the business had no value given the amount of debt.

A final divorce hearing was held over two days in August and October 2020. Husband was represented by counsel for the final hearing and wife represented herself.

The court issued a final order. As to property division, the court granted husband the marital home, boat, and business. The court ordered husband to pay wife a sum of \$120,000 for her share of the equity in the home. The court also allocated husband the unpaid property taxes, medical bills, business line of credit and balance of two company credit cards, and any credit balances on cards in his name. Wife was responsible for the credit cards in her name.

As to maintenance, the court concluded that wife was entitled to rehabilitative maintenance given her lack of income and inability to provide for her reasonable needs. The court determined that husband's annual income was \$81,000. Although the court acknowledged that this was a decrease from his prior income, the court found that the parties had been drawing an excessive amount of income from the business that was financially unsustainable. Therefore, the court concluded that husband's decrease in his income from the business was reasonable to ensure sufficient cash flow for the business. The court granted wife maintenance of \$1550 per month for eighteen months, followed by \$800 per month for a year. The court granted the parties shared physical rights and husband sole legal parental rights and responsibilities. Both parties appeal.

On appeal, mother first argues that she was denied the opportunity to be heard in violation of her procedural due process rights. Wife acknowledges that she raised no objection on these points below but asserts that there has been a fundamental miscarriage of justice that cannot be overlooked.

We do not reach the question of whether this argument is preserved for appeal because we conclude that there was no denial of due process that amounted to a "fundamental miscarriage of justice that we cannot overlook." Miller-Jenkins v. Miller-Jenkins, 2010 VT 98, ¶ 31, 189 Vt. 518 (mem.) (quotation omitted) (recognizing that "[i]n civil cases, this Court generally does not review unpreserved constitutional claims, except in limited circumstances, i.e., when an appellant raises a claim of deprivation of fundamental rights" and in those cases, "we ask only whether there has been a fundamental miscarriage of justice that we cannot overlook" (quotation omitted)). "[T]he fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaningful manner.” Brock v. Roadway Express, Inc., 481 U.S. 252, 261 (1987) (quotation omitted).

The record reflects that wife had a meaningful opportunity to be heard in this case. Wife was provided approximately half of the hearing time. On the first day of hearing, the court indicated that it would try to keep the time evenly divided. On that first hearing day, husband testified on his own behalf and presented testimony from the accountant hired to complete the company’s taxes. Wife chose to spend the bulk of her time extensively cross-examining husband’s witnesses. Partway through the cross-examination of husband, the court reminded wife of the limited time remaining. Again, during the accountant’s testimony, the court warned wife that the time for her to testify was dwindling. Wife offered direct testimony. She testified that the parties both worked on the business and that she deserved some financial benefit from the business. She asked for \$120,000 a year in maintenance. At the end of the hearing, the court indicated that it wanted to give wife more of an opportunity “to say what’s important.” Wife indicated that she was content with the record as it was. Husband asked for additional time to present testimony from the company bookkeeper. On the second day of hearing, wife again spent her time cross-examining the bookkeeper. The court inquired as to whether wife had anything else that she wanted the court to understand. The court offered to keep the record open to allow wife to get an updated income form. The court also allowed both parties file a post-hearing statement delineating their requests. At no time during the hearing did wife indicate that she needed more time or that she had additional testimony or evidence to provide.

As the record indicates, wife had a meaningful opportunity to present her case to the court. She participated in the hearing, conducted cross-examination, and provided direct testimony. She did not indicate that there was further information she wanted to provide the court, and at no time did she object to the manner of how the court conducted the hearing. Under these circumstances, she has failed to show that there was a fundamental miscarriage of justice.

Similarly, we conclude that there is no merit to wife’s argument that the court failed to ensure that she properly submitted her exhibits. Although wife may have desired to offer the exhibits into evidence, she did not communicate that below and cannot now fault the court for failing to admit the exhibits. Wife represented herself at the hearing and trial courts “should be cautious that the pro se litigant is not taken advantage of by strict application of rules of procedure.” In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 (quotation omitted). Nonetheless, parties that are self-represented must still follow the rules. If wife desired to submit the exhibits, she was still required to indicate that to the court and to provide a basis for the court to admit them.

Wife next asserts that the court erred in allowing expert testimony from husband’s bookkeeper and accountant in violation of Vermont Rule of Evidence 702. Rule 702 provides that “scientific, technical, or other specialized knowledge” may be presented to assist a trier of fact if, among other things, it is “based upon sufficient facts or data.” V.R.E. 702. Here, husband offered testimony from the accountant and bookkeeper regarding the business’s finances. From the hearing transcript, it does not appear that husband sought to have either qualified as an expert.

On appeal, wife argues that the testimony from the accountant and the bookkeeper was expert testimony and not “based upon sufficient facts or data” as required by Rule 702. Wife contends that she adequately preserved her objection because at the hearing she asserted that the valuations presented by the accountant and the bookkeeper were based on incomplete

information. We conclude that wife's appellate argument was not preserved for appeal. "To preserve an objection to testimony for appellate review, a party must lodge a timely, substantive objection at trial." In re Eastview at Middlebury, Inc., 2009 VT 98, ¶ 25, 187 Vt. 208. These witnesses were not offered as experts and at no time did wife assert that their testimony amounted to expert opinions that were not properly supported by sufficient facts or data. See In re Entergy Nuclear Vt. Yankee, LLC, 2007 VT 103, ¶ 12, 182 Vt. 340 (noting that while this Court affords pro se litigants procedural flexibility with regard to preservation issues, "this does not mean that they are not bound by the ordinary rules of civil procedure" (quotation and alterations omitted)). Having failed to object on that basis below, wife cannot now raise the argument on appeal.

Finally, wife argues that the court erred in determining husband's annual income was \$81,000. On review, "we will uphold the family court's findings of fact unless, taking the evidence in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence in the record to support them." Kasser v. Kasser, 2006 VT 2, ¶ 16, 179 Vt. 259. Although wife disputes the amount of income found by the court, there was credible evidence to support the court's determination of husband's income, including husband's testimony and report of his income on his financial disclosure form. Wife contends that the income is much too low given the parties' past withdrawals from the business and the business's gross receipts. The court explained that the parties previously withdrew far more from the business than the business could financially sustain and that husband's income was designed to ensure sufficient cash flow and payment of liabilities. It is up to the trial court to assess the weight and credibility of the evidence. Payrits v. Payrits, 171 Vt. 50, 53 (2000). Insofar as the income amount was based on evidence in the record, there are no grounds to disturb the court's determination of husband's income.

In his cross appeal, husband raises three challenges to the court's property division award. The family division has "wide discretion in the disposition of marital property upon divorce, and we will affirm its decision where we find reasonable evidence to support the court's findings and conclusions." Damone v. Damone, 172 Vt. 504, 510 (2001) (quotation omitted).

Husband argues that the court erred in not deducting the temporary support he paid to wife while the case was pending from the lump sum property settlement amount due to her under the final order. The temporary order does not contain any provision related to how those temporary payments might affect the final property settlement. Moreover, husband has not demonstrated that he raised this argument below. In any event, husband has not demonstrated that the court abused its wide discretion in not deducting these amounts from the lump sum due to wife.

Husband also contends that the court erred in assigning wife the responsibility of paying credit card debt that affects husband's credit rating without a directive or timeline to ensure payment. After the final order issued, husband filed a motion to amend, proposing that he pay off the balance of the parties' joint credit cards, instead of wife, and deduct the amount from the \$120,000 lump sum he is required to pay under the final order. The court denied the motion. The court's decision was reasonable and there are no grounds to reverse it. To the extent wife fails to make timely payments, enforcement proceedings are available to husband.

Husband's final objection to the property settlement is that the court failed to account for the fact that husband was assigned a large amount of the parties' debt, which he claims was caused by wife's failure to pay income and payroll taxes since 2017. The court carefully

explained its reasoning related to the property division, emphasizing that although husband was assigned a larger portion of the debt, he also received a larger portion of the marital assets. The court's decision was supported by the facts and did not amount to an abuse of discretion.

Husband's last argument relates to the court's award of maintenance to wife. Husband argues that wife is employable and has not presented a need for support. The court may award maintenance if one party lacks sufficient income to provide for the party's reasonable needs and is unable to provide sufficient support through employment. 15 V.S.A. § 752(a). In establishing maintenance, the court must consider several factors. 15 V.S.A. § 752(b). "The trial court has considerable discretion in ruling on maintenance, and the party seeking to overturn a maintenance award must show that there is no reasonable basis to support it." Johnson v. Johnson, 155 Vt. 36, 40 (1990). Here, the court found that wife had a need for maintenance given her lack of employment and insufficient income to provide for her needs. This finding is supported by the evidence. Moreover, the court carefully considered all the evidence regarding husband's current income and wife's ability to earn income in the future. The court explained that its award was designed to help support wife while she reestablishes herself financially. The court's decision was reasonable and well within its broad discretion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice