

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

**ENTRY ORDER**

VT. SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 97-538

FEB 3 1999

FEBRUARY TERM, 1999

Suzanne Estabrook

APPEALED FROM:

v.

Chittenden Family Court

T. Barry Estabrook

DOCKET NO. 333-04-96 CnDm

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

Husband appeals the family court's final divorce order, arguing that the court abused its discretion by awarding wife the majority of the marital property and permanent maintenance. We affirm.

The parties were married in June 1984. Wife has a master's degree in social work and was employed when the marriage began, but she stopped working after the birth of the parties' first child in the spring of 1988. The parties had two more children, one born in the fall of 1989 and the other born in the summer of 1992. Shortly before the birth of the parties' third child, husband began a romantic relationship that eventually led to the breakup of the marriage. Husband moved out of the marital home in August 1995.

Husband was forty-five years old and wife thirty-nine years old at the time the family court issued the final divorce order in September 1997. Husband was employed with a publishing company at an annual salary of \$80,000. He possessed a contingency interest in a trust created by his father's estate for the benefit of his mother, with the remainder to be divided between husband and his two siblings. He received a variable annual payment between \$6,000 and \$11,000 for serving as a trustee of his father's estate. Wife had not worked outside the home since the birth of the parties' first child. She hoped to become recertified as a social worker and to continue her education so that she could eventually become a certified guidance counselor. These goals would require two to four years of additional schooling.

Following two days of hearings, the family court granted wife sole physical and legal parental rights and responsibilities over the children, with husband retaining specified rights of visitation. In addition to requiring husband to pay child support, the court ordered, as a means of providing rehabilitative maintenance to wife, that the parties equalize their incomes for eight years. The court also ordered permanent maintenance to continue thereafter at \$1 per year unless modified under applicable law. As for distribution of the marital property, the court awarded wife the marital home, one of the parties' vehicles, and all of the parties' cash assets and accounts. The total award to wife was approximately \$600,000. Husband was awarded the parties' other vehicle and his future interest in the trust set up by his father's estate. Husband was also made responsible for repaying \$131,000 to his mother, who had loaned the money to the parties during their marriage.

The value of husband's interest in the trust became a major issue in the case. Wife

testified that early in their marriage, husband had told her that the trust was worth six to ten million dollars. Notwithstanding his status as a family member, a beneficiary, and one of the administrators of the trust, husband claimed that he did not know the value of the trust, and that he could not produce documentation of its value. The court concluded that the lack of hard evidence on the trust's value was the result of the trustees' ostensible refusal to release information to husband and husband's unwillingness to effectively pursue the matter. The court found credible wife's testimony regarding the value of the trust. Given that testimony, husband's inability or unwillingness to divulge the value of trust, the strong investment market during the preceding decade, and the considerable wealth enjoyed by husband's mother, even apart from the trust fund, the court presumed that the trust was worth nine million dollars.

Between the time the court gave the parties a draft final order for their comments or objections and its filing of the final order, husband presented the court with a schedule of trustee fees as evidence from which to estimate the value of the trust. The court rejected this evidence as too indeterminate of the trust's value. Then, less than two weeks after the court issued its final divorce order, husband filed a motion to reopen the evidence, including with his motion affidavits claiming that the trust was worth approximately three and one-half million dollars, and that the present value of husband's interest in the trust was approximately \$400,000. The court denied husband's motion, ruling that the "newly discovered evidence" was available at the time of trial, and that even if the court were to consider the evidence, it would not change the final divorce order.

On appeal, husband argues that the court abused its discretion in valuing the trust without sufficient evidence, awarding wife an excessive proportion of the marital property, and denying his motion to reopen the evidence. We find no abuse of discretion. Without question, husband's interest in the trust was marital property subject to distribution under 15 V.S.A. § 751(a), see Chilkott v. Chilkott, 158 Vt. 193, 195 (1992), and the offset method employed by the court was an appropriate means of distributing the value of the trust without entangling the parties in future litigation, see McDermott v. McDermott, 150 Vt. 258, 260 (1988). Further, given the circumstances of this case, the court acted within its discretion and its role as trier of fact in giving credibility to wife's testimony regarding the value of the trust and in questioning husband's alleged inability to produce evidence of the trust's value. Indeed, within two weeks of the final order, which husband perceived as unfavorable, he was able to produce information purporting to document the value of the trust. The record supports the court's refusal to reopen the case to accept evidence that could have been produced at trial.

In any event, the court stated that even if it considered and accepted husband's evidence of the value of the trust, its order would remain the same. The evidence and the findings support the court's position. The court expressly stated that the marriage failed because of husband's extramarital affair. Wife had given up advancement of her own career to raise the parties' children while husband increased his future earning capacity. Wife would continue to be responsible for raising three children, two of whom had special needs. In light of these factors, even assuming that husband's valuation of the trust was correct and recognizing that husband was required to repay his mother \$131,000, the court did not abuse its discretion in awarding husband \$400,000 and wife \$600,000. We reject husband's argument that the court failed to consider each of the factors enumerated in § 751. The court touched upon each of these factors and plainly stated the basis of its decision. See Jakab v. Jakab, 163 Vt. 575, 585 (1995) (court need not specify weight given to each factor, but is required only to provide clear statement as to what was decided and why). We also reject husband's one-sentence argument that the court failed to factor in what percentage of the trust was acquired during the marriage. See McDermott, 150 Vt. at 261 (court must factor in "coverture fraction" in distributing present value of pension funds attributable to marriage). Husband fails to explain why or how the "coverture fraction" should be applied to a trust fund under the facts of this case. Further,


husband did not ask the court to apply the "coverture fraction" in either its proposed findings or its objections to the court's draft decision. We find no abuse of discretion in the court's distribution of property. See Chilkott, 158 Vt. at 198 (family court has broad discretion in distributing marital property; uneven distribution of marital property was warranted where husband had opportunity to receive future trust income, wife had relatively low earning capacity, and court's assessment of respective merits of parties favored wife).

Husband also briefly argues that the court abused its discretion by equalizing the parties income for eight years and by awarding permanent maintenance in the amount of \$1 thereafter. Again, we find no abuse of discretion. See Bancroft v. Bancroft, 154 Vt. 442, 445 (1990) (party challenging maintenance award must show that there is no reasonable basis to support it). "[S]pousal maintenance is intended to correct the vast inequality of income resulting from the divorce, and to equalize the standard of living of the parties for an appropriate period of time." Strauss v. Strauss, 160 Vt. 335, 338 (1993) (citation omitted); see Downs v. Downs, 154 Vt. 161, 166-67 (1990). Given the circumstances of this case, including the parties' relatively high standard of living during the thirteen-year marriage, wife's homemaker role during the marriage, her continuing parental responsibilities and simultaneous need to rejoin the work force, and husband's vastly greater earning power gained, in part, from wife's support at home, the court's decision to equalize the parties' incomes for eight years was well within its discretion. See Delozier v. Delozier, 161 Vt. 377, 384, 385 (1994); Bancroft, 154 Vt. at 446. Further, for the reasons stated above, and considering wife's uncertain future employment, the court did not abuse its discretion in awarding permanent maintenance in the amount of \$1 per year. See Delozier, 161 Vt. at 383 (most critical factors in determining appropriateness of permanent maintenance are length of marriage, role recipient spouse played during marriage, and income that spouse is likely to achieve in relation to standard of living established during marriage). Should wife seek to modify maintenance in the future to increase the \$1 per year award, she will have to demonstrate a substantial change of circumstances warranting modification. See Henry v. Henry, 162 Vt. 613, 613 (1994) (mem.).

Affirmed.

BY THE COURT:

  
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Jeffrey L. Amestoy, Chief Justice

  
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Denise R. Johnson, Associate Justice

  
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Marilyn S. Skoglund, Associate Justice

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