

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-027

AUGUST TERM, 2002

Kurt Christiansen

v.

Terry Christiansen

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| } | APPEALED FROM:               |
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| } | Orleans Family Court         |
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| } | DOCKET NO. DOCKET NO. 2-1-00 |
| } | Osdm                         |
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| } | Trial Judge: John P. Meaker  |
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In the above-entitled cause, the Clerk will enter:

Wife appeals the family court' s divorce order awarding her between \$650 and \$450 in monthly maintenance for a five-year period following the parties' twenty-three-year marriage. We reverse the order and remand the matter for further consideration.

The parties were married in July 1978 and separated in late 1999. They have an adopted daughter, who was sixteen years old at the time of the final divorce hearing in September 2001, and a son, who was seven years old at the time of the final hearing. Wife also has a two-year-old son by another man. Both husband and wife have a high school education. They struggled to make ends meet in the early years of the marriage, but by the mid-1990s husband started to earn more money. He made approximately \$70,000 per year as a car salesman between 1998 and 2000, and was earning \$60,000 per year at the time of the final hearing while working sixty to seventy hours per week as the business manager of a car dealership in Arizona, where he moved with the parties' daughter following the parties' separation. Wife remained in Vermont with the parties' son. She was unemployed at the time of the final hearing, and had not worked outside the home since the parties adopted their daughter in 1985.

The only real disputed issue at the parties' divorce hearing was the amount and duration of spousal maintenance. Pursuant to a temporary order, husband was paying wife \$800 per month in maintenance and \$600 per month in child support. Husband asked the court to reduce the amount of maintenance and to limit its duration so that he could work less hours and spend more time with his daughter. Wife wanted an increase in maintenance so that she could continue to stay home with her children and not work. Following the final hearing, the family court ordered husband to pay wife rehabilitative maintenance for a five-year period starting at \$650 per month for the remainder of 2001 and decreasing each calendar year by \$50 per month until it reached \$450 per month in January 2005. Wife appeals the maintenance award, arguing that she is entitled to permanent maintenance as a matter of law, and that the court effectively made her a public charge by requiring her to pay two-thirds of a \$7800 credit card debt incurred by husband.

Wife' s principal argument is that the court erred in failing to award her permanent maintenance, given the length of the marriage, her homemaker role during the marriage, her reduced standard of living following the marriage, and the absence of any marital property to compensate her for her efforts during the marriage. See Strauss v. Strauss, 160 Vt. 335, 338-40 (1993) (explaining factors for determining whether permanent maintenance is appropriate); Klein v. Klein, 150 Vt. 466, 474 (1988) (noting that in long-term marriage maintenance serves to compensate homemaker for

contributions to family well-being not otherwise recognized in property distribution). Husband counters that the parties had a relatively poor standard of living until late in the marriage, that they lived beyond their means and now have no marital property to speak of, and that wife failed to adduce sufficient evidence relating to her role during the marriage. In our view, the amount and duration of the court's maintenance award is suspect, considering the most relevant factors such as the length of the marriage, the respective roles the parties played during the marriage, the discrepancy in the parties' earning capacity, and the minimal amount of marital property. See Delozier v. Delozier, 161 Vt. 377, 382-83 (1994)

In any event, upon reviewing the transcript, including the findings of the court stated on the record at the conclusion of the hearing, we remand the matter for further consideration because the court failed to make findings and conclusions concerning issues critical to determining the appropriate maintenance award. See Naumann v. Kurz, 152 Vt. 355, 362 (1989) (trial court erred by not making findings regarding marital standard of living and wife's reasonable needs); DeGrace v. DeGrace, 147 Vt. 466, 470 (1986) (maintenance award must be reversed because of trial court's failure to make findings concerning husband's expenses). After finding that wife had met the threshold showing that she lacked sufficient income or property to meet her reasonable needs and could not support herself through appropriate employment at the standard of living established during the marriage, see 15 V.S.A. § 752(a), the court determined that rehabilitative maintenance was appropriate. In doing so, the court indicated that its decision was based on the long hours father was working and the recognition that there are other things in life besides working sixty to seventy hours per week. The court also noted that wife was healthy and capable of working, and that it would be unreasonable for husband to be the sole bread winner for the family. But we are still left without findings or conclusions that allow us to determine how the court arrived at its particular maintenance award. There are no findings examining the parties' expenses and comparing their available or potential income. There is no consideration of what impact, if any, factors such as the length of the marriage, wife's role during the marriage, the discrepancy in earning power, or the lack of marital income had on the court's maintenance award. In short, we cannot tell how the court arrived at its decision, which, as noted, is suspect under the circumstances presented here.

Notwithstanding husband's arguments to the contrary, wife presented adequate evidence upon which the court could have made sufficient findings and conclusions. Hence, no new hearing is required on remand, but the court may seek additional evidence from the parties updating their respective financial circumstances. The court must reconsider the appropriate amount and duration of the maintenance award, and must make adequate findings and conclusions to support its award. The court must also reconsider the property award, including the allocation of marital debt, because of the interplay between the maintenance award and the property distribution. See DeGrace 147 Vt. at 470. Given our disposition of this case, we need not consider wife's argument concerning the credit card debt.

Reversed and remanded.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice