

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-065

JUNE TERM, 2002

Marilyn F. Letourneau

v.

James Letourneau

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APPEALED FROM:

Franklin Family Court

DOCKET NO. 210-7-99 Frdm

Trial Judge: Jane G. Dimotsis

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

Plaintiff sought a divorce from defendant, and appeals the Franklin Family Court's order dividing the parties' marital property. She contends that the court erroneously omitted consideration of the tax consequences flowing from the sale of property she claims is necessary to satisfy a \$50,000 cash payment the court ordered her to make to defendant. We affirm.

The parties were married in 1990 after living together for five years. Plaintiff was the parties' primary breadwinner, running a restaurant they owned jointly. At the time of the divorce, the marital estate's net value was approximately \$296,000. The estate consisted of the restaurant, which contained two apartments, one of which served as the marital residence; an apartment building; a home in Florida; various motor vehicles; a boat; and various items of personal property. The parties have no retirement savings or other cash reserves. The court awarded plaintiff all of the parties' real property, except the Florida home, as well as the restaurant business, one truck needed for plowing, and certain miscellaneous personal property. Defendant was awarded the Florida home, the remainder of the parties' motor vehicles, the boat, and other items of personal property. It also ordered plaintiff to pay defendant \$50,000 in cash, resulting in a total property award of \$166,000 to plaintiff and \$130,000 to defendant. Plaintiff appealed the matter to this Court.

The family court has broad discretion to equitably divide property in a divorce proceeding. Cabot v. Cabot, 166 Vt. 485, 500 (1997). We will not disturb the court's decision unless the court abused, withheld, or exercised its discretion on unreasonable or untenable grounds. Semprebon v. Semprebon, 157 Vt. 209, 215 (1991). That standard governs our review of plaintiff's claim here.

Plaintiff argues that the court should have taken into account the capital gains taxes resulting from the sale of the restaurant, which she alleges is necessary for her to make the \$50,000 cash payment to defendant in light of the modest income she earns from the restaurant and rental properties. Plaintiff relies on our decision in Cabot v. Cabot, which held that the family court did not abuse its discretion by considering the potential tax consequences from the sale of certain assets when valuing those assets in the course of dividing the parties' property. Cabot, 166 Vt. at 495-96. Cabot does not require the court to consider the possible tax implications in all cases, however. Thus, the only issue here is whether the court's award falls within the court's broad discretion. We conclude that it does.

The record is clear that the court considered plaintiff's arguments and evidence on this matter and rejected her position. The court's order does not require plaintiff to sell any assets to satisfy her obligation to defendant. Plaintiff contends that

it is doubtful she will be able to procure a loan secured by the various properties awarded to her to discharge the \$50,000 debt to defendant, but fails to point to any evidence in the record that supports her contention. The property plaintiff received was primarily income producing, and the court found that she has the ability to continue running the restaurant business and maintain the rental properties. The court also determined that plaintiff could sell the business because she made it profitable. Overall, the court's order reflects careful consideration of the factors relevant to distributing property upon divorce, see 15 V.S.A. 751(b) (enumerating factors court must consider when dividing property), and the final distribution appears entirely equitable. Accordingly, we find no abuse of the court's discretion.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice