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

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2002-388**

**JANUARY TERM, 2003**

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| Deanna Dahlgren<br><br>v.<br><br>Peter Dahlgren | } | APPEALED FROM:<br><br>Chittenden Family Court<br><br>DOCKET NO. 499-6-01 Cndm<br><br>Trial Judge: Linda Levitt |

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 in setting the amount of maintenance and establishing parent-child contact. We affirm.

The parties were married in 1989 and separated in 2000. They have six children who were from two to twelve years of age at the time of the final divorce hearing. Husband worked for International Business Machines (IBM) in Essex Junction during the marriage, while wife stayed at home to care for the parties' children. Husband was earning approximately $90,000 in annual salary at IBM in 2000 when he decided to accept a position with a company in Texas that had a business relationship with IBM. Husband relocated to Texas, where he continued to earn upwards of $90,000 per year and also had much of his living expenses paid for by IBM. Wife eventually sought a divorce. In June 2002, shortly before the final hearing took place, husband was laid off and given $26,000 in severance pay.

Following the July 11-12 hearing, the court allowed the record to remain open to give husband an opportunity to respond to wife' s requests for relief and to submit his own proposals. On July 18, husband wrote a letter informing the court that he had accepted a three-month contractual position in Texas providing him with a salary similar to his previous job, but without benefits. In its final order issued later that month, the family court awarded wife $3000 per month in rehabilitative maintenance for four years, and $2000 per month for the following four years. The court also awarded wife sole parental rights and responsibilities, but granted husband parent-child contact at reasonable times as arranged by the parties. On appeal, husband argues that the family court abused its discretion by awarding wife excessive maintenance despite his unemployed status, and by accepting a proposal for parent-child contact that is inconsistent with his ability to establish a positive relationship with his children.

Husband first argues that the court abused its discretion by requiring him to pay $3000 per month in maintenance even though he was unemployed. According to husband, by doing so, the court failed to consider his ability to meet his own reasonable needs while meeting those of wife. We find no merit to this argument. See Chaker v. Chaker, 155 Vt. 20, 25 (1990) (once trial court finds grounds for awarding maintenance, it has broad discretion in determining amount and duration of award). The record supports the court' s finding that husband had sufficient income to meet his needs while providing wife $3000 per month in maintenance. Cf. Kohut v. Kohut, 164 Vt. 40, 44 (1995) (court did not abuse discretion in considering party' s past earnings to predict future income). Although husband was not employed on the dates the final hearing was held, he worked for IBM until shortly before the hearing, received a severance package, and

then began a temporary position at a similar salary shortly after the final hearing. The court awarded wife $15,000 of husband' s severance pay to cover three months of his support obligations, but husband still had $11,000 in severance pay and a temporary position with a comparable income to sustain him until he could obtain further employment. Aside from his argument that he was unemployed at the time of the final hearing, husband has made no showing that he is incapable of satisfying the maintenance obligation imposed by the court. Cf. Scott v. Scott, 155 Vt. 465, 470 (1990) (defendant' s argument that record did not demonstrate that his job would remain available throughout period of maintenance obligation was nothing more than argument that future is uncertain). If defendant is unable to maintain his income, he can return to the court for modification; we understand from the argument that this has already occurred.

We find unavailing husband' s contentions that the family court has effectively forced him to reside in Texas, and that the court erred in granting wife $15,000 of his severance package tax-free. Husband himself chose to leave his family and move to Texas, and he has failed to demonstrate that he is incapable of paying the expenses involved in visiting with his children. Further, the court acted well within its discretion in granting wife part of husband' s severance package tax-free to cover husband' s support obligations for a three-month period.

Next, husband argues that the court' s order regarding parent-child contact is unsupported by the evidence, oppressive, and internally inconsistent. Again, we find no abuse of discretion. See Payrits v. Payrits, 171 Vt. 50, 52-53 (2000) (trial court has broad discretion with respect to custody matters). Husband complains about the court ordering contact at reasonable times and places as arranged by the parties, and yet he himself requested liberal parent-child contact as arranged by the parties, with no restrictions on the locations of visitations. Both he and wife sought a flexible visitation order, and that is what the court gave them. We are unable to evaluate husband' s argument that the visitation provision has proved unworkable in practice, even if it is reasonable in theory. This argument requires evidentiary development and, therefore, must be presented in the first instance to the family court.

Husband also complains about the court' s provision requiring that he take all of the children when he exercises his visitation rights. He contends that the provision effectively prevents him from engaging in activities that only some of the children would be able to participate in, and that it also precludes overnight visitations because of the expenses involved in getting multiple hotel rooms. Without doubt, the logistics involved in arranging visitation between six children and an out-of-state parent are daunting. But husband created the situation in which he now finds himself. Apparently, the trial court was persuaded by wife' s testimony that when husband had taken only some of the children in the past, it had caused significant turmoil, with some of the children feeling rejected. None of the arguments husband raises on appeal persuade us to substitute our judgment for that of the trial court.

At argument husband argued that the property distribution was unfair. We do not reach this argument. Husband briefed only that the property determination needed to be reconsidered if the maintenance award were reversed. Since we have affirmed the maintenance award, we do not consider the property distribution.

Finally, the family court did not abuse its discretion in requiring husband to assume responsibility for the parties' tax liability and in denying his motion for reconsideration without holding a hearing.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice