

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-416

MAY TERM, 2003

	}	APPEALED FROM:
	}	
Teena Reed	}	Rutland Family Court
	}	
v.	}	DOCKET No. 70-2-01 Rddm
	}	
Michael Reed	}	Trial Judge: Hon. M. Patricia Zimmerman
	}	
	}	
	}	

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

In this appeal from a final judgment of divorce, husband claims the trial court's finding on the value of the parties' personal property is clearly erroneous. We affirm.

The parties married in April 1986 and separated in November 1998. While they were married, the parties owned a construction business together. The evidence submitted at trial included corporate tax returns for the business for the years 1997 through 1999. The tax returns for 1997 and 1998 showed the corporation's depreciable assets were valued at approximately \$79,000. The 1999 tax return for the parties' business indicated that the depreciable corporate assets were worth approximately \$83,000. The court found that husband valued the business's assets at \$10,000-\$15,000 at the time of the final divorce hearing. As to the parties' personal property, wife testified that she valued the personal property at \$80,000-\$90,000. In addition, husband owned an annuity with Transamerica from which he received \$11,700 payments subject to equitable distribution in the divorce.

Ultimately, the court found that the parties owned personal property with \$90,000 in value, business property worth \$46,000, and \$11,700 worth of annuity payments. The court divided the property in half, and ordered husband to pay wife her share (\$73,850) in cash through yearly payments of \$8,000, plus interest, until he satisfies the judgment. Husband moved for reconsideration, which the court denied. This appeal followed.

On appeal, husband claims the court clearly erred by finding that the parties' personal property was worth \$90,000. He asserts that the only evidence in the record on the parties' personal property was an exhibit plaintiff submitted listing the property, and that the highest estimated value of that property was \$89,000. He contends that the only property subject to distribution was on wife's list, and the list included all personal and business property. Husband argues that the court's order essentially double counts property, thus giving wife more than her fair share. We disagree.

The family court is given wide discretion in fashioning an equitable distribution of property in divorce. Milligan v. Milligan, 158 Vt. 436, 439 (1992). The court's factual findings will stand on appeal unless, viewing the evidence in the light most favorable to the prevailing party, and without considering modifying evidence, the findings are clearly erroneous. Gilbert v. Davis, 144 Vt. 459, 461 (1984). "When the evidence is conflicting, the credibility of witnesses, weight of the evidence and its persuasive effect are matters for the exclusive determination of the trier of fact." Id. at 461. We will uphold the court's decision if the credible evidence in the record supports it even though substantial evidence to the contrary exists. Id.

In this case, we find no clear error because credible evidence supports the court's findings. The conflicting evidence

before the court showed business assets ranging in value from a low of \$10,000 to \$15,000 to a high of \$79,000 to \$83,000, and personal property that wife testified was worth approximately \$80,000 to \$90,000. The court found the business property to be worth \$46,000, a figure within the range of the evidence. Based on wife' s testimony, the court found the parties' personal property was worth \$90,000. Although it appears that some business assets were included on wife' s property list, husband fails to identify specific items the court allegedly " double counted" in valuing the parties' personal property. Moreover, husband' s own testimony identified additional items of property he testified were not in fact on wife' s list despite his contrary claim on appeal. We note that in reaching its decision, the court found incredible " virtually all" of husband' s testimony on the value of the parties' property and their business. In sum, husband has not shown clear error in the court' s findings, and we therefore find no reason to disturb the property division.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned