

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-069

NOVEMBER TERM, 2003

	}	APPEALED FROM:
	}	
Mark Pfenning	}	Franklin Family Court
	}	
v.	}	DOCKET NO. 247-8-00 Frdm
	}	
Vaughn Pfenning	}	Trial Judge: Jane G. Dimotsis
	}	
	}	
	}	
	}	

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

Appellant Vaughn Pfenning appeals from a final divorce order. She claims that the family court erred by denying her maintenance. We find no abuse of the trial court's discretion, and affirm the family court's decision.

Vaughn and appellee Mark Pfenning were married for approximately nine years before they separated in July 2000. Their only child, Brooke, is now twelve years old and resides with Vaughn in the St. Albans condominium in which the parties lived while they were married. The family court awarded Vaughn legal and physical rights and responsibilities with respect to Brooke and set a parent-child contact schedule so Brooke could spend time with Mark. Neither party contests the order as it relates to their child.

Before her marriage to Mark, Vaughn, who holds a bachelor's degree, was a salesperson for Handy Pontiac. She worked there for sixteen years before deciding to take time off to care for Brooke. Although the parties agreed that Vaughn would take only one year off to spend time with Brooke, Vaughn chose not to return to her sales job and instead became a teacher's aide at Brooke's school. The teacher's aide position pays Vaughn a little under ten dollars per hour, without benefits. In her position at Handy Pontiac Vaughn earned an average of \$40,000 per year, and she often earned more than Mark. In addition to her employment income, Vaughn receives \$400 per month from her parents to help cover her mortgage payment on the condominium.\*

Vaughn owned the condominium, which her father built, at the time the parties married. The condominium has lake shore frontage, marble floors, a Jacuzzi, hot tub, cathedral ceilings, and a two-car garage. In addition to the condominium, the parties owned a time-share in North Conway, New Hampshire, vehicles worth approximately \$48,000, a pontoon boat, a \$4,500 diamond ring, \$10,000 worth of fire arms, and a piece of real property in Granby. Two months before Mark and Vaughn separated, Mark's father died and Mark inherited his father's home in Fairfield. The family court found the home had an equity value of \$52,000. Mark also inherited a tractor and a trailer from his father.

At the time of the final divorce hearing, Mark was earning \$52,000 per year at PRECAST Concrete. Mark has worked for his present employer for many years, and his compensation has increased steadily over time. In the last few years, the company has paid Mark a bonus of roughly \$1,000 in addition to his regular pay. Mark also receives monthly income from his father's estate in the amount of \$416. He was paid \$23,000 in cash from the estate as well, but loaned \$13,000 of that to his sister, of which she has paid back about half.

After the parties separated, the family court entered a temporary order requiring Mark to pay \$579 towards the condominium mortgage payment, property taxes on the condominium, certain household bills of Vaughn's, insurance on Vaughn's vehicle, and the car payment for Mark's truck. Mark was also responsible for paying the mortgage on the home he inherited from his father. By the time of the final divorce hearing, Mark was behind in his payments related to the condominium and the mortgage on his father's former residence. In addition, the parties incurred \$13,000 in credit card debt.

Taking into account the statutory factors under 15 V.S.A. § 751, the court awarded Vaughn the condominium and Mark the Fairfield home he inherited from his father. It ordered Mark to pay the outstanding amounts he owed on the condominium, and bills related thereto, before Vaughn had to sign over her interest in the Fairfield property. It also awarded Mark the time share, his vehicle, the firearms, the tractor and trailer, and the property in Granby. Vaughn received her vehicle and the diamond ring which the court ordered Vaughn to hold in trust for Brooke. To equalize the property division, the court ordered Mark to pay Vaughn \$12,000 within three months of the court's order. It also granted Vaughn a portion of Mark's retirement income, and ordered the parties to split the credit card debt.

As to Vaughn's request for maintenance, the court reasoned that maintenance was not warranted because Vaughn could work full time in a job that would meet her needs. Although without maintenance, Vaughn will have a monthly shortfall of approximately \$1,000, the court pointed out that her decision to work as a teacher's aide rather than a full-time salesperson with pay commensurate with Mark's was her choice. It found that Vaughn and Mark have equal ability to acquire future assets and income. Claiming that the court abused its discretion by denying her temporary maintenance, Vaughn appealed to this Court.

The family court has wide discretion in deciding whether to award maintenance. Stickney v. Stickney, 170 Vt. 547, 548-49 (1999) (mem.). We review the family court's decision on maintenance to determine if the court abused its discretion. Bell v. Bell, 162 Vt. 192, 198 (1994). Section 752 of Title 15 permits the family court to award maintenance if it finds that the requesting spouse " lacks sufficient income, property, or both . . . to provide for his or her reasonable needs," and " is unable to support himself or herself through appropriate employment at the standard of living established during the marriage." 15 V.S.A. § 752(a); Stickney, 170 Vt. at 548. Maintenance is " intended to both correct the vast inequity of income resulting from divorce, and equalize the standard of living of the parties for an appropriate period of time." Stickney, 170 Vt. at 549 (internal citations omitted).

In this case, Vaughn argues that the court has left her to survive on an annual income that is less than half of her ex-husband's and which prevents her from enjoying the standard of living she enjoyed while the parties were married. The family court found, however, that Vaughn could maintain her marital living standard with appropriate employment, but Vaughn instead chose to work at a job that does not allow her to cover her reasonable expenses. In other words, the parties' disparate incomes result not from their divorce, but, rather, from Vaughn's own employment decision. This is not a case where the spouse seeking maintenance requires additional education and training to obtain suitable employment. Vaughn has a college degree and sixteen years experience as a successful salesperson. The decision to deny maintenance was within the court's broad discretion, and Vaughn has failed to demonstrate that that discretion was abused.

Affirmed.

BY THE COURT:

---

Jeffrey L. Amestoy, Chief Justice

---

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice

---

### **Footnote**

\* In addition to cash gifts from her parents, Vaughn is a beneficiary of a sizeable family trust. The court found that it was too speculative to determine what her future income from the trust, if any, will be and it did not consider the trust in reaching its decision. The court did note, however, that it was possible that Vaughn would inherit a great deal of money from the trust after her parents pass away.