

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-554

MAY TERM, 2004

	}	APPEALED FROM:
	}	
Laurette Laroche-Woolhouse	}	Franklin Family Court
	}	
v.	}	DOCKET No. 43-2-03 Frdm
	}	
Patrick Woolhouse	}	Trial Judge: Hon. Jane Dimotsis
	}	
	}	

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

Husband appeals from a final divorce judgment, arguing that the family court' s decision was error. We affirm.

On February 21, 2003, wife filed for divorce. The parties have no children together, and had no real estate, pension, or retirement benefits to divide as part of the proceeding. The court was asked to divide personal property and the parties' cell phone debt only. The court scheduled a contested hearing for November 17, 2003. On November 14, husband moved to appear at the hearing by telephone. The court granted the motion, but husband did not telephone the court on November 17 as required. The court proceeded to take evidence from wife, and issued a final decree that same day. The final order sets forth the personal property granted to wife, and orders the parties to evenly split the \$1000 cell phone debt. On December 10, 2003, husband filed this appeal.

Husband first challenges the court' s decision to conduct the final hearing and hear evidence in his absence. This claim must fail. The family court has authority under V.R.F.P. 4(d) to conduct a final divorce hearing and issue a judgment if the defendant does not appear at the hearing. See V.R.F.P. 4(d) (A No final judgment . . . shall be entered in an action for divorce except after hearing, which may be ex parte if the defendant does not appear.@ ). Defendant did not appear by telephone and has not explained why he failed to do so. Accordingly, we find no basis to disturb the judgment on grounds that the court held the final hearing without defendant' s participation.

Husband next takes issue with portions of wife' s testimony. Husband had an opportunity to challenge wife' s testimony by presenting evidence at the hearing, which he failed to do because he did not participate at the hearing. Whether wife' s testimony was believable was a matter solely for the trial court' s consideration. Kasnowski v. Dep' t of Employ., 137 Vt. 380, 381 (1979). Husband' s disagreement with wife' s testimony does not, therefore, provide a basis for reversal.

Finally, husband disagrees with the terms of the divorce. The family court has discretion when equitably dividing property in a divorce proceeding. Weaver v. Weaver, 173 Vt. 512, 513 (2001) (mem.). To reverse the award here, husband must show that the court abused that discretion. Id. Husband' s brief states that he disagrees with the order, but he does not present us with any legal basis to overturn the decision below, and there is nothing patently inequitable about the final order. The court' s property award was within its discretion and must be affirmed.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Denise R. Johnson, Associate Justice