

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-206

JANUARY TERM, 2005

Douglas Hoffman	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
v.	}	
	}	DOCKET NO. F5-1-03 Cndm
Christine Hoffman	}	
	}	Trial Judge: Mark Keller
	}	
	}	

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

Husband appeals from a divorce judgment of the Chittenden Family Court. He contends: (1) the court's findings were inadequate to support the division of marital property and the award of spousal maintenance; (2) the evidence was insufficient to support the findings; (3) the court abused its discretion in ordering the sale of the parties' gun collection; and (4) the court's findings and decision demonstrate that it was prejudiced against husband. We affirm.

The parties were married in 1978 and separated in January 2003. They had three children, all of whom were grown at the time of these proceedings. Wife has an associate's degree in nursing but worked for the family business, Pioneer Motors and Drives, since 1980, when husband purchased it from his former employer. The court valued the company, which makes special drives and motors, as conservatively worth \$250,000. Wife received a salary from the company of approximately \$41,000 per year until 2000, when the marriage deteriorated and she left the company. She then went to work as a nurse, earning about \$38,000 per year. Husband earned an average income from the business of approximately \$123,000 per year between 1998 and 2000, but saw his income drop with a downturn in business in 2001 and 2002.

The court awarded the family home, valued at \$275,000 (with a \$95,000 mortgage), to wife, and awarded sole ownership of the business to husband. The court also awarded wife spousal maintenance of \$1500 per month until the age of 65 (wife was 52 years old at the time of the divorce), citing the parties' unequal earning power, the disparity of the health of the parties, and wife's contributions to the family and business. In addition, the court ordered the parties' gun collection be sold and the proceeds used to pay down arrears on property taxes in excess of \$6000, and further ordered husband to pay \$5000 toward wife's legal fees. This appeal by husband followed.

Husband first contends the property division and spousal maintenance award were based on inadequate findings. Apart from the allegation, husband offers nothing to demonstrate that the findings are inadequate. Although the findings are not separately numbered, the court's decision clearly and cogently explains the reasons for the property and maintenance awards, and that is all we require. See Hayden v. Hayden, 2003 VT 97, ¶ 9, 176 Vt. 52, 838 A.2d 59. (findings that are basis for property division must provide clear statement as to what was decided and why).

Husband next contends the evidence was insufficient to support several findings underlying the property division and maintenance award. " On appeal, the party claiming error in a property and maintenance award must show that no reasonable basis exists to support the award." Jenike v. Jenike, 2004 VT 83, ¶ 8, 15 Vt. L. Wk. 249, 857 A.2d 799. We will not disturb the trial court's findings " unless, viewing the evidence in the light most favorable to the prevailing party and excluding the effect of modifying evidence, a finding is clearly erroneous." Cabot v. Cabot, 166 Vt. 485, 497 (1997)(quotations omitted). Husband first challenges the court's finding that the business is worth \$250,000. Although

husband offered a different opinion, there was expert testimony that the business is conservatively worth between \$200,000 and \$250,000. Thus, the court's finding was supported by the evidence, and will not be disturbed. See Mansfield v. Mansfield, 167 Vt. 606, 607 (1998) (mem.) (court is free to choose a value for property within the range of evidence presented).

Husband also claims that the evidence was insufficient to support the court's finding that "Pioneer Motors is a substantial business and if run in the manner in which [husband] ran it in the past the business will earn a substantial profit generating [husband] an income in excess of \$100,000." The evidence showed that the business had generated revenues of over \$1 million annually for several years, resulting in income to husband of well over \$100,000, as well as wife's salary of \$41,000, plus a number of fringe benefits. Although husband cites evidence that revenues had declined in 2001 and 2002, resulting in income in the \$40,000 to \$45,000 range, the court rejected husband's claim that the business was failing, finding that the divorce had interfered with the sustained marketing effort required to maintain the business. There was also evidence that the business had rebounded during the 2003 fiscal year, and would again generate revenue in excess of \$1 million and income to husband of about \$100,000. Accordingly, the record evidence supports the court's finding that husband could reasonably expect to earn income in excess of \$100,000.

Husband also contends the court erred in citing the disparity in the parties' health as one of several factors underlying its property and maintenance award. Husband contends that this was inconsistent with the court's earlier findings that suggested the parties' health concerns were "symmetrical[]." A review of the findings reveals, however, that wife's physical and mental health problems were substantially more significant than those of husband. Husband also asserts that the court's reliance on the parties' health was inconsistent with its finding that there was no medical testimony suggesting that wife could not remain fully employed at her current level. The court's concern, however, was clearly with the medical and related expenses associated with wife's health issues, not with her ability to remain employed. Accordingly, we discern no inconsistency.

Husband next contends the court abused its discretion by declining to credit the testimony of the parties' two daughters, who contradicted wife's allegations that she had been abused by husband. The trial court is uniquely situated to assess the credibility of witnesses and weigh the persuasiveness of the evidence. Cabot, 165 Vt. at 497. The court here found that the daughters were biased against their mother, and thus chose not to rely upon their testimony. As the trier of fact, it was within the province of the trial court to make this decision, and we discern no manifest abuse of discretion that would support overturning the court's finding.

Husband contends the court's finding that wife had suffered years of emotional, physical, and sexual abuse was clearly erroneous. Wife testified graphically and in detail to ongoing and severe emotional, physical, and sexual abuse, and wife's therapist testified that wife suffered from post-traumatic stress disorder and depression symptomatic of having been battered and of having experienced an abusive relationship. The court found this evidence to be credible and persuasive. Although husband challenges the court's finding of abuse as not "corroborated," as undermined by testimony that wife had also been abused as a child, and as contradicted by other testimony, the record evidence amply supports the court's finding, and therefore must be upheld on appeal. See id. at 497-98 (findings must be upheld if supported by credible evidence, even if inconsistencies or contrary evidence exist).

Husband next contends the court abused its discretion in ordering the sale of the parties' gun collection to pay arrears on property taxes. It is well within the court's discretion to order that property held by one or both parties be liquidated and reduced to cash when the court finds it necessary to meet other, more immediate needs. Milligan v Milligan, 158 Vt. 436, 440 (1992). Although husband asserts that his guns were "dear" to him, he has not demonstrated that the court abused its discretion in ordering the sale.

Finally, husband asserts that, viewed in its totality, the court's decision demonstrates clear prejudice against him. The trial court is presumed to be impartial, and an allegation of judicial prejudice requires an affirmative demonstration. Ball v. Melsur Corp., 161 Vt. 35, 40 (1993). Husband's claim is based essentially on the court's adverse rulings, which in and of themselves are not sufficient to demonstrate judicial bias, State v. Maunsell, 170 Vt. 543, 546-47 (1999) (mem.), and which we have upheld as within the court's discretion in any event. Accordingly, there is no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned