

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-053

NOVEMBER TERM, 2005

Patricia Richards	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Family Court
	}	
Donald Richards	}	DOCKET NO. 50-2-03 Frdm
	}	

Trial Judge: James R. Crucitti

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

Husband appeals the family court=s final divorce order, arguing that the court improperly divided the marital assets based, in part, on its speculative assumption that husband would inherit the marital home and the family farm from his mother. We affirm.

The parties married in November 1980 and separated in December 2002. During those twenty-two years, they lived and worked on a dairy farm owned by husband=s parents. In 1994, husband, his parents, and his brother formed a partnership to run the farm. The partnership was dissolved in 1999 and replaced by a corporation in which husband, his father, and his brother each owned one-third shares. The corporation owned the cattle and farm machinery, but not the real estate, the farm buildings, or the parties= home, which were owned by husband=s parents. For his work on the farm, husband drew \$500 a week from the corporation, which also paid the expenses of the marital home. After husband=s father died in 2002, husband=s mother, who was seventy-four years old at the time of the final hearing, inherited the farm and became a nonactive shareholder in the corporation. During the marriage, while husband operated the farm with his brother, wife helped out with farm chores, worked full-time at a manufacturing plant, and served as the primary care giver for husband=s son.

Following a one-day hearing, the family court determined that an approximately equal division of the marital assets, other than wife=s retirement account, was appropriate. The court ordered husband to pay wife \$95,398C\$25,000 within three months of the final order and a minimum of \$15,000 each year thereafter, with the unpaid amount accumulating interest at a rate of six percent per year. The court arrived at the \$95,398 figure by first dividing in half the sum of husband=s one-third share of the value of the corporation (its assets minus its debts), the funds used to renovate the marital home during the marriage, the value of the maple sugaring building and equipment, and the value of the parties= campCand then subtracting one-half of the value of certain assets (vehicles and personal property) awarded to wife. The court allowed wife to keep her entire retirement account, valued at \$75,000 to \$80,000, reasoning that husband will have a greater opportunity to acquire assets and income in the future because he and his brother will take over the farm after their mother dies. See 15 V.S.A. ' 751(b)(8). The other factor noted by the court in dividing the marital assets was wife=s role as primary care giver for husband=s son during the marriage. See id. ' 751(b)(11).

On appeal, husband raises two related claims of error. Husband first argues that the family court improperly awarded wife one-half of the value of improvements to the marital homeCa house that the parties did not even own. According to husband, this \$20,000 award cannot stand because: (1) it ignores the fact that \$10,000 of the \$40,000 in improvements came from the corporation; (2) there was no appraisal demonstrating how much the fair market value of the property had increased as the result of the improvements; and (3) the court improperly assumed that husband would get title to the house. We find no abuse of discretion with regard to this aspect of the court=s award. See Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988) (family court has wide discretion in equitably dividing marital property, which is not an exact science@ (internal quotations omitted)). There was undisputed evidence that, in addition to their own labor, the parties directly contributed at least \$30,000 of their income to renovate the marital home, \$5000 of which was borrowed against wife=s retirement account and paid off through payroll deductions from her wages. Another \$10,000 came from husband=s mother. The evidence showed that the parties gutted and renovated the entire house, replacing sheetrock, wiring, windows, paneling, and carpeting. They also replaced the roof, built a fireplace, and installed a new bathroom and kitchen cabinetry.

As the family court stated, it is safe to assume that renovations of this magnitude increased the value of the property by more than \$40,000. The trial court conservatively presumed that the increase of the fair market value of the home attributable to these significant renovations equaled at least the dollar value of the renovations, particularly in light of the considerable sweat equity associated with the renovations. While appreciation does not necessarily follow home improvement, absent any evidence to the contrary from husband, common experience would dictate that substantial improvements of this nature are reasonably expected to return at least equal market value.

Further, although husband did not own the marital home, wife testified that both husband and husband=s parents had assured her that the house would be theirs, and that they had made the renovations and lived in the house during the course of the marriage under the assumption that the house would be theirs. Husband did not dispute this testimony. Thus, although husband did not have a vested interest in the marital home, the evidence supported the court=s conclusion that husband would eventually own the property. Notwithstanding the possibility that circumstances could arise that would prevent husband from owning the home, we find no error in the court=s reasoning that it would be unfair for husband to retain the full benefit of the home=s improvements made through the parties= mutual efforts during the course of their twenty-two-year marriage.

Nor do we find availing husband=s second claim of error. Husband contends that the family court abused its discretion by allowing wife to retain her entire retirement account based on its speculative assumption that husband would have a greater opportunity to acquire assets in the future because of the likelihood that he would inherit a portion of the family farm from his mother. The court made it clear that it was not awarding any of the farm land as marital property, but rather it was allowing wife to keep her entire retirement account because of husband=s greater opportunities to acquire future assets due to his position with respect to the family farm. The evidence indicated that, through first a partnership and later a corporation, husband operated the family farm with his brother and owned a one-third share of the business that ran the farm and owned the farm equipment. For his work on the farm, husband drew approximately \$26,000 per year from the corporation, which also paid for his housing and transportation expenses. On the other hand, wife was earning roughly \$32,000 annually at a manufacturing plant. There was also evidence that wife had been the primary care giver for husband=s son, and that husband and his parents had told wife throughout the marriage that she and husband would inherit a portion of the family farm.

By allowing wife to keep her entire retirement account, the court essentially concluded that husband=s position at the farm provided him an opportunity to acquire over the remainder of the parties= lives roughly \$75,000-\$80,000 more in future assets than wife. The court also cited wife=s care for husband=s son during the marriage as a factor in its division of marital property. Given the evidence of husband=s longstanding operation of the farm with his brother and his one-third share of the farm corporation, the court did not abuse its discretion in allowing wife to keep her entire \$80,000 retirement account based on husband=s greater opportunity to obtain future assets through the farm. Cf. Williams v. Massa, 728 N.E.2d 932, 940-41 (Mass. 2000) (husband=s contingent remainder interests in trusts were mere expectancies, comparable to future inheritance, and thus were not sufficient to be considered part of estate; however, trial court correctly considered these expectancies under factor allowing court to weigh opportunity for each spouse to acquire future assets).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice