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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-458

SEPTEMBER TERM, 2006

Laura Ladd	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Eugene Ladd	}	
	}	DOCKET NO. 1-1-05 Cndm

Trial Judge: Brian J. Grearson

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

Husband challenges the family court=s final order and judgment of divorce. Wife has not filed an appellate brief in this appeal. We affirm.

Wife filed a complaint for divorce in family court. Husband was incarcerated at the time and is still incarcerated at the time of this appeal. The family court file shows that wife=s summons and complaint were signed by wife as well as the clerk of the court on January 3, 2005. Wife sent the summons and complaint to

husband by certified mail but the mailing was refused. Similarly, husband refused service via the family court=s acceptance of service form. Husband then moved to dismiss the divorce action, arguing that wife had not accomplished proper service. The court acknowledged that service was not complete but denied the motion, instead extending the time in which wife was permitted to accomplish service and requiring her to accomplish service through the sheriff. The sheriff served the summons and complaint, as well as the initial temporary order in the divorce and a copy of the family court docket entries on husband on August 9, 2005. At the final divorce hearing on September 30, 2005, wife stated that she did not believe resumption of marital relations was probable. Husband disagreed. The family court granted the divorce.

Husband now appeals, presenting three arguments that nonetheless address only two issues: (1) whether there was sufficient evidence that it was not reasonably probably that the parties would resume their marriage; and (2) whether the action should have been dismissed for failure of service.

Under 15 V.S.A. ' 551(7), grounds for a divorce exist where the parties have lived separately for at least six months and the Aresumption of marital relations is not reasonably probable.@ Here, this first element (six months= separation) was uncontested, and the family court found that wife=s testimony supported the second element. It is this finding that husband challenges on appeal. AWe review the family court=s factual findings for clear error and will uphold its conclusions if supported by the findings.@ Mason v. Mason, 2006 VT 58, & 9. Upon reviewing the videotape of the September 30, 2005 final divorce hearing, we conclude that wife=s testimony provided ample and unequivocal evidence that she did not believe that marital relations could be resumed. This was sufficient for the family court to grant the divorce. See 15 V.S.A. ' 551(7).

Husband also argues that the action should have been dismissed for failure to achieve proper service. Specifically, husband asserts that the summons served on him by the sheriff was not signed by the clerk or judge as required by V.R.C.P. 4(b). Husband further argues that there is no proper return of service. The family court file, however, indicates both that the summons and complaint were signed by the clerk of the court and that the sheriff filed a proper return of service. This is adequate to establish service. See Smith v. Brattleboro Reformer, Inc., 147 Vt. 303, 305 (1986) (return of service from sheriff sufficient to establish

service).

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice