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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-122

MAY TERM, 2007

Nane Rubaud	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Gerard Rubaud	}	
	}	DOCKET NO. 724-10-4 Cndm
		Trial Judge: Thomas J. Devine

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

Husband appeals an order of the family court granting the parties a divorce and dividing the marital property between them. We affirm.

The family court found the following facts. Husband and wife were married in France on December 22, 1967. Both are French citizens. They moved to Vermont in 1976, and remained in Vermont through the time of the divorce proceedings. The couple purchased a home in Westford, Vermont in 1979, where husband still lived at the time of the hearing.

Two days before their wedding date, husband and wife entered into a prenuptial agreement. The agreement provided that each would retain ownership of their separate assets acquired prior to and during the course of the marriage, and further provided that:

> The future spouses will contribute to household expenses in proportion to their respective abilities . . . .
>
> Each of them will be considered to have made his/her proper contribution as duly required, so that neither of them will be subject to any accounting between them or expect any receipt from each other.

Both parties conceded that the agreement was fair, binding, and should govern the division of marital

property, although they disagreed on some aspects of its interpretation.

In deciding the division of marital property, the court carefully examined the history of the marriage, in particular the assets and income each brought to the marriage, and the parties' changing roles over time. The evidence showed that while husband was the primary income-earner when the couple first moved to the United States, wife was the primary parent to the couple's children and also the homemaker. After the children left home for school, wife returned to school herself and embarked on an academic career, while husband left lucrative employment in the ski industry to pursue his own business opportunities. As a result of husband's career change, the couple's lifestyle "began to go rapidly downhill." The couple took out commercial loans and husband eventually went into bankruptcy. These difficulties contributed to the demise of the marriage.

The contested issues in the divorce proceeding were (1) whether the family court had jurisdiction over the matter and (2) how the value of the marital home should be divided. On the question of whether the Vermont family court had jurisdiction over the matter, the court cited 15 V.S.A. § 592, which provides that a party may bring an action for divorce in Vermont so long as either party to the marriage has resided in the state for a period of six months or more. The court concluded that "the credible evidence strongly establishes a finding [that] requisite residency requirements are met by either party," such that the court had jurisdiction over the matter. While the court recognized that there had perhaps been some proceedings initiated in France, there was no credible evidence on the issue and the court declined to make findings regarding the status of the French proceeding.

Regarding the division of marital property, the court noted that the prenuptial agreement "largely obviates the need for us to analyze this problem under the statutory factors for equitable distribution." The court carefully parsed the parties' testimony regarding their individual assets, which was facilitated by the fact that the parties had largely kept their financial affairs separate. But because husband refused to respond to discovery requests regarding his current income and assets—despite an order compelling him to do so— the court determined that it could not make any reliable findings on the issue.

The marital home in Westford was the only item of joint property. To determine how this asset should be divided, the family court applied the provision in the prenuptial agreement that required joint property to be split equally between the parties—specifically barring accounting for disparate contributions to joint property. Accordingly, the court refused to engage in such an accounting, despite husband's request to do so in light of the fact that he alone paid the mortgage between 1979 and 1986. Further, the court emphasized that it was limited in being able to assess the impact of the property division on husband because he had refused to answer discovery regarding the value of his business holdings (which would be required to determine, for example, whether the result of the property division would be unconscionable, thus voiding the terms of the parties' agreement).

In terms of establishing the value of the marital property, the family court was presented with

sparse evidence. While the home had been placed up for sale, there were difficulties in finding a buyer because (1) husband wanted to continue living and working in the guest cottage on the property and (2) he refused to acknowledge or address serious problems with the quality of the well water. The home remained unsold at the time of the hearing. A real estate agent testified that the home was worth $430,000, but the court discounted this testimony because the agent was not an appraiser and also because of the problems with the property mentioned above. The court ultimately valued the home at $400,000 based on an admission to that effect by husband, and this was the basis for the court's calculation of the division of equity in the home.

On appeal, husband first alleges that wife failed to disclose the existence of a prenuptial agreement to the family court. Husband does not indicate why he was not equally able to share this information with the court, as he was the other signatory of the agreement. Husband does not identify any prejudice that resulted from this alleged omission. In fact, the court acknowledged and applied the terms of the prenuptial agreement. Husband has not demonstrated reversible error.

Second, husband argues that, because the parties are French citizens who were married in France, the Vermont court lacked jurisdiction over the matter. He also asserts that, under French law, a marriage subject to a prenuptial agreement may only be dissolved in France. In addition, he claims that a French court asserted jurisdiction over the matter by letter addressed to the Vermont family court, but that the family court ignored this. A challenge to a court's jurisdiction is a question of law that we review de novo. Aither v. Estate of Aither, 2006 VT 111, ¶ 4 (reviewing family court's dismissal of matter for lack of jurisdiction de novo). As the family court concluded, the plain language of 15 V.S.A. § 592 confers jurisdiction on Vermont courts where at least one party is a resident of Vermont. Both husband and wife are residents of Vermont in this case, and husband does not contest this finding. Further, husband does not point to any item in the record supporting his contention that a French court made contact with the Vermont court to assert jurisdiction. There was no error in assuming jurisdiction over the matter.

Third, husband contends that, while wife acknowledged the agreement, her attorney misrepresented the translation of certain terms in the agreement to his detriment (specifically, the terms "fixed assets" and "living expenses"). Again, however, there is no indication of (1) in what manner those terms were misconstrued or (2) how a skewed construction affected the family court's decision. In connection with this argument, husband claims that certain documents in the file were lost when this matter was transferred from one family court judge to another. But he does not specify which documents were allegedly lost or how they affected the outcome of the proceedings. We cannot discern any error from husband's vague and unsupported allegations.

Fourth, husband argues that, contrary to her assertion, wife has recognized the jurisdiction of the French courts in that she has retained a French attorney and allegedly agreed to set a court date. The relevance of this contention is not apparent. Rather, in light of our conclusion that the family court properly exercised jurisdiction over this matter, any question of whether wife did or did

not hire an attorney in France is irrelevant.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice