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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-209

NOVEMBER TERM, 2008

Melissa Gray	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Family Court
	}	
	}	
Douglas Gray	}	DOCKET NO. 204-6-07 Wrdm
		Trial Judge: Cortland T. Corsones

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

Husband appeals the family court's divorce order, arguing that the court made erroneous findings concerning the parties' credit card debt and abused its discretion by denying him an equal share of a tax refund check, by denying him one dependent tax deduction, by incorrectly imputing his annual income, and by awarding wife the marital home without making findings demonstrating that she could afford the home and that his interest in the home equity would be protected. We affirm in all respects, except that we remand the matter for the family court to either supplement its order with a provision protecting husband's interest in the home equity or strike the provision requiring husband to quitclaim title of the home to wife.

For the most part, husband's arguments are foreclosed by his failure to order a transcript of the final hearing. See V.R.A.P. 10(b)(1)-(2) (providing that "the appellant shall order . . . a transcript of all parts of the proceedings as are relevant to any issues being raised by the appellant on appeal," and that "[i]f the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion"). Notwithstanding the existence in the record of motions and exhibits filed by the parties, the absence of a transcript of the final hearing makes informed appellate review impossible with respect to nearly all of husband's arguments, which are fact-based and challenge the court's findings or conclusions. Thus, we cannot review the claims of error stated in husband's first four arguments and some of the claims made in his fifth argument. See In re S.B.L., 150 Vt. 294, 297 (1988) ("It is the burden of the appellant to demonstrate how the lower court erred warranting reversal."); State v. Dolley, 124 Vt. 376, 377 (1964) ("An appealing party is required, at his peril, to bring forth a record to affirmatively establish that prejudicial error was committed in the tribunal whose action is sought to be reviewed.").

Notwithstanding husband's failure to order a transcript of the final hearing, there is one aspect of the family court's division of equity in the marital home that we can consider. The court indicated its intent to divide the parties' assets equally, including their principal asset, the marital home, which had a fair market value of $310,000 and an outstanding mortgage of approximately $150,000. Recognizing that wife would have four children living with her and would have a difficult time replacing the home, the court allowed wife to remain in the home with the children for an additional six years, rather than the ten years she wanted, before requiring her to pay off husband's fifty-percent interest in the home equity. The court ordered husband to sign over to wife a quitclaim deed to the home. Although the order made wife solely responsible for any debts and expenses associated with the home, there was no provision for removing husband from the current mortgage or for securing husband's interest in the home's equity. The order gave wife until June 1, 2014 to pay husband one-half of the equity in the home, to be calculated as one-half of the fair market value at the time of the payment, less the current outstanding mortgage of $150,000. If wife did not do so by that time, she would have to sell the home and give husband one-half of the sale price, less the current outstanding mortgage.

Because the court's order entitles husband to fifty percent of the net equity in the home at the time he receives it, his argument that the court abused its discretion by not providing for the payment of interest on his deferred award is unavailing. Cf. Johnson v. Johnson, 163 Vt. 491, 497 (1995) (reversing award that gave wife "half the current equity in the marital home, to be paid approximately ten or eleven years later without any provision for interest" (emphasis added)). Nevertheless, we are troubled by the fact that the court ordered husband to sign a quitclaim deed for the home over to wife, but, at the same did not require wife either to refinance the property to remove his obligation on the current mortgage or to secure husband's interest in the home's equity by giving him a lien on the home payable upon sale of the home. Cf. Slade v. Slade, 2005 VT 39, ¶ 11, 178 Vt. 540 (mem.) (upholding order requiring wife to refinance mortgage to eliminate husband's liability before compelling husband to quitclaim his interest in property to her); Scott v. Scott, 155 Vt. 465, 471-72 (1990) (finding court did not abuse its discretion in awarding marital home to wife "subject to a mortgage interest to [husband] payable upon the sale of the house, the death of [wife] or at the end of five years, whichever should first occur"). Accordingly, we remand the case for the family court to either strike the provision requiring husband to sign a quitclaim deed to the marital home over to wife or amend the order by requiring wife to provide security for husband's share in the home equity.

Remanded for the family court to alter the final divorce order to provide for husband's security in his share of the home equity, consistent with this entry order; in all other respects, the court's April 28, 2008 order is affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice