

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-389

JUNE TERM, 2020

Maarit Madden v. William A. Madden*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 148-6-18 Frdm
Trial Judge: Thomas Carlson		

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

Husband appeals pro se from the trial court's final divorce order. He challenges the court's property division as inequitable. We affirm.

Wife filed for divorce in June 2018 after an approximately eighteen-year marriage. Both parties were represented by counsel at trial. The court made numerous findings, including the following. The parties met in Finland, wife's home country. They lived in Boston, Massachusetts for most of their marriage. They moved to Vermont in August 2017. They have two children, a daughter born in May 2004 and a son born in August 2006.

The parties are both in their mid-forties and in good health. Before the children were born, wife worked as an assistant teacher and care provider. She was the primary and nearly exclusive caretaker for the children after that point and remains so for the parties' daughter. The parties' son has lived with husband since May 2019. Wife resumed working outside the home in 2016 and currently works as a paraeducator at a high school earning \$27,500 a year. Wife also works as a seasonal ski ambassador at Jay Peak for minimal pay and discounted ski passes. Given her work experience and current employment, the court did not anticipate wife earning more than \$40,000 per year in the future.

Husband worked for a police department between 2002 and 2019, when he retired as a detective and local police prosecutor. During that time, he also built and ran a landscaping company and devoted significant time to fixing up the family's homes. Husband currently works full-time in an entry-level position for the Department of Homeland Security, earning \$34,000 per year. He also receives pension payments from his former job as a police officer and benefits from his military service. Given husband's work experience and current employment, the court anticipated that his earnings would grow substantially over time.

Both parties engaged in extra-marital relationships and both are now in relationships with new partners. The parties' son has struggled with wife's new relationship and has expressed anger toward wife, including name calling. The court found that the son's behavior was most likely

learned from husband, who had sent venomous texts to wife and had berated her in the children's presence. The parties' son had essentially refused to see wife since May 2019.

The court found that wife had occasionally consumed an excessive amount of alcohol and found it likely that husband had as well. The court also found it likely that husband had an anger-management problem, which had worsened during the last two years of the marriage. He called wife awful names, tracked her via her phone, and appeared to be preoccupied with wife's new relationship. Ultimately, however, the court found that both parties clearly loved their children, wanted the best for them, and were generally disposed to meet the children's needs. Husband, however, had apparently played a substantial role in alienating the parties' son from wife. At the same time, husband had been and remained able to acknowledge that wife had been a great mother and wonderful person. Wife for her part did not question that husband had been an extremely hard worker in providing for the family and renovating their homes.

Turning to the marital estate, the court relied on essentially undisputed values regarding real property in Vermont and the parties' various bank and retirement accounts. The parties owned two homes in Vermont. Wife also held interests in real estate in Finland, which the court valued at \$119,500. It found that wife held fractional interests in this real estate that had been accumulated by her father and given to wife and her siblings. The court determined that the Finnish real estate did not appear to be producing income to wife in any significant amount; instead, the interests were in her name in part to insulate it from her father's liabilities and perhaps for estate-planning purposes. While husband suggested that wife's interests might be worth much more, he offered no evidence along those lines. The court also determined the value of the parties' tangible personal property and the value of their debts. It made detailed findings that we do not repeat here. The court found that the parties each had reasonable expenses around \$3600 per month.

The court reviewed the statutory factors related to property division, explaining that this was an eighteen-year marriage between individuals who were still relatively young, healthy, and capable of working full-time. Husband had a greater earning capacity than wife. Both parties had contributed to the acquisition and preservation of the marital assets. The relative merits of the parties were essentially equal. The court explained its intent to accomplish a very approximate equalization of the marital property after carving out wife's interest in Finnish real estate. The court intended for wife to keep this property given its source and the lack of significant evidence as to how and when it would actually benefit her. Excluding the Finnish property interests, the court awarded approximately \$240,000 worth of property to wife and about \$170,000 worth of property to husband. To make up the difference, the court ordered wife to execute a no-interest promissory note to husband for \$35,000, secured by a mortgage, and payable upon sale of her home but no later than 2029.

The court held the parties responsible for debts in their own names with two exceptions. It held husband responsible for a \$10,000 debt to a particular individual, which was borrowed as part of the purchase price for one of the marital properties, and for a large line of credit at the bank that he had unilaterally borrowed and spent. The court recognized that this made husband responsible for a substantially disproportionate share of the debt. It allocated the debts in this manner after considering husband's greater income potential and the fact that he had incurred most of the debt unilaterally, albeit to some extent for apparent good reason. The court was also mindful that the individual who had loaned \$10,000 did not appear impatient about repayment. It awarded wife spousal maintenance of \$1 per year for ten years.

The court also assigned parental rights and responsibilities (PRR). It reviewed the statutory best-interest factors and concluded that while the parties were in many ways equally disposed to

provide care, love, and support for the children, two factors weighed heavily in wife's favor: (1) she was the children's primary caretaker for most of their lives and by all accounts did a great job; and (2) husband did not appear disposed to support wife's relationship with their son. The court found that husband had fanned the flames of the son's hard feelings about the demise of the marriage and encouraged him to blame wife for it. The court expressed concern about husband's capacity for uncontrolled anger in considering his disposition and ability to meet the children's developmental needs and support their relationship with wife. It was also concerned by husband's inclination to allow the son to decide when he would visit wife, as this put the son in the impossible position of choosing between his parents. Wife, meanwhile, supported husband's relationship with the children. She proposed an equal schedule and there was no evidence that she denigrated husband in front of the children. Based on these and other considerations, the court awarded wife sole legal rights and responsibilities for both children and it awarded the parties shared physical rights and responsibilities for both children, with a 50-50 contact schedule. This appeal followed.

Husband argues for the first time on appeal that the court was biased against him. He questions why the court dismissed a relief-from-abuse order against him but then found in its final order that he had probably had anger management problems. Husband also takes issue with wife's attorney, a former trial judge, suggesting that counsel's involvement led the court to make adverse rulings against him. On the merits, husband argues that the property division was inequitable, largely challenging the court's evaluation of the weight of the evidence. He contends that the award is overly favorable to wife. He challenges various findings, such as: the value of wife's Finnish real estate interests; the parties' use of alcohol; husband's emotional state; and the court's recitation of the testimony of one of his witnesses. Husband also complains that the court did not consider the fact that he found, purchased, and renovated one of the marital properties. Additionally, he appears to challenge the court's finding that he was responsible for a line of credit he had taken out. Husband appears to challenge the trial court's award of parental rights and responsibilities to wife on the ground that the court failed to credit allegations of two years of alcohol abuse and neglect by wife. He also argues that the court's award "created a situation that has worsened the relationship with both children." We do not consider this latter argument, as it relies on alleged events that post-date the trial court's decision.

Having reviewed the record and the trial court's decision, we reject as meritless husband's bias claims. See Ball v. Melsur Corp., 161 Vt. 35, 45 (1993) (stating that "bias or prejudice must be clearly established by the record," and "that contrary rulings alone, no matter how numerous or erroneous, do not suffice to show prejudice or bias"), abrogated on other grounds by Demag v. Better Power Equip., Inc., 2014 VT 78, 197 Vt. 176. We also reject husband's suggestion that there was something improper about a former trial judge representing wife or that this somehow contributed to a biased decision.

We thus turn to the court's division of the marital estate. The trial court has broad discretion in dividing marital property, and we will uphold its decision unless its discretion was abused, withheld, or exercised on untenable grounds. Chilkott v. Chilkott, 158 Vt. 193, 198 (1992). The party claiming an abuse of discretion bears the burden of showing that the trial court failed to carry out its duties. Field v. Field, 139 Vt. 242, 244 (1981). We emphasize that the distribution of property is not an exact science and, therefore, all that is required is that the distribution be equitable. Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988), superseded in part by statute, 15 V.S.A. § 751, as recognized in Casavant v. Allen, 2016 VT 89, 202 Vt. 606.

The court's award was equitable here. After excluding the Finnish real estate, the trial court started its analysis by dividing the marital assets roughly equally.¹ It explained the basis for its decision. It explained why it awarded wife the Finnish real estate and it found that husband failed to present evidence to establish a value higher than the one it found. Husband asserts that he showed the court a Finnish Multiple Listing Service (MLS) sheet that showed a higher value for one Finnish property. He provides no cite to the record where such evidence was introduced, nor is any such evidence listed as admitted in the transcript. The record shows that husband testified that he thought the property was worth more. The court obviously found this testimony unpersuasive. We do not reweigh the evidence on appeal. See Mullin v. Phelps, 162 Vt. 250, 261 (1994) (explaining that role of Supreme Court in reviewing findings of fact "is not to reweigh evidence or to make findings of credibility de novo").

In dividing these assets, the court recognized husband's contributions to purchasing and renovating marital property. It specifically found that he had "obviously contributed a great deal of sweat equity to the parties' real estate as they have purchased troubled property at bargain prices and improved it." It recognized that each party had contributed to the acquisition and preservation of assets on hand, acknowledging wife's contribution as a homemaker and husband's contribution as a hardworking breadwinner and do-it-yourself contractor. The court did not overlook husband's contributions, as he suggests.

The court also explained why it allocated the parties' debts in the way that it did, ultimately resulting in a total property division award that is tipped in favor of wife. With respect to the line of credit, it found that husband first borrowed about \$25,000 to fund living expenses starting in 2017. He also used the line of credit to pay installments due on a loan for a tractor, as allowed by a temporary order of the court in October 2018. He paid off the original line of credit after selling the parties' Massachusetts home in November 2018 but soon borrowed the same amount again for the same purposes. When it became clear that wife was not going to accept a buyout of one of the Vermont properties, husband used a new line of credit to borrow \$75,000, which he used to pay down the original line of credit of \$25,000 and to continue funding his living expenses so far in the amount of \$20,000 and legal fees of \$10,000. He had the remaining \$20,000 in cash in the bank. The court concluded that, given husband's greater earning capacity and the origin of this line of credit, it was fair to allocate this debt to him. The court's reliance on these factors in assigning a greater total share of the marital property to wife is supported by statute. See 15 V.S.A. § 751(b)(8) (identifying the parties' respective opportunities for future acquisition of capital assets and income as a factor in property division). Moreover, the court provided reasoned grounds for its decision. See Jenike v. Jenike, 2004 VT 83, ¶ 8, 177 Vt. 502 (mem.) ("On appeal, the party claiming error in a property . . . award must show that no reasonable basis exists to support the award."). While husband disagrees with the result, he fails to show an abuse of discretion. See Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion). We emphasize that it is the sole province of the trial court, as factfinder, "to determine the credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997). As previously noted, we do not reweigh the evidence on appeal.

¹ We recognize that once the debt side of the ledger and the deferred, no-interest marital settlement payment is taken into account, the trial court's property division was not equal. As noted below, the trial court's ultimate unequal property distribution was supported by its findings and the evidence.

Husband's challenges to the remaining findings are unavailing. The findings regarding anger management and husband's emotional state are supported by the evidence—even if the trial court did not weigh the evidence the way husband would have liked. Wife testified to husband's angry outbursts toward her, including calling her degrading names in front of the children. She also described husband's focus on her new boyfriend. Husband testified to tracking wife's movements through her phone. Assuming that there is no evidence to support the court's finding that court's statement that "it appears the parties likely share the issue" of occasionally drinking to excess, any error was harmless. The court found the parties equal on the merits and husband's consumption of alcohol played no role in the court's division of the marital estate or custody award. It is not clear why husband challenges the court's finding regarding the testimony of his witness. The witness testified that she observed husband with the children and saw that he had a good relationship with them. The witness also had positive comments about wife. Citing the testimony of this witness, the court found that husband had the capacity to be a good parent and co-parent, assuming he could keep his anger in check. This finding is supported by the evidence.

Given that the above findings are supported by the evidence, and husband makes no other challenges to the court's PRR award, we affirm the court's decision concerning PRR. The court has broad discretion in this area, and it provided a reasoned basis for its decision. See Kasper v. Kasper, 2007 VT 2, ¶ 5, 181 Vt. 562 (recognizing trial court's "broad discretion in awarding custody," and explaining that where "court's award of custody reflects its reasoned judgment in light of the record evidence, its decision may not be disturbed"). The two factors that drove the court's decision—wife's role as the primary caretaker and her better disposition to fostering a positive relationship between the children and husband—are supported by the evidence. We have considered all the arguments in husband's brief and find them all without merit.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice