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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-404

MAY TERM, 2017

Sherry Snyder	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
v.	}	Family Division
	}	
	}	
Timothy Snyder	}	DOCKET NO. 246-9-14 Bndm
		Trial Judge: William D. Cohen

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

In this divorce action, husband appeals the superior court's order concerning the distribution of marital property following remand from this Court in an earlier appeal. We affirm.

The parties were married twenty years and had no children together, but husband has a daughter from a prior relationship. The parties lived in a home that wife owned prior to the marriage. During the marriage, they acquired property adjacent to the marital home and built a garage in which husband operated an automotive-repair business. On remand, the court found that the value of the garage property was $33,800 with an existing mortgage balance of $7160.

Wife filed for divorce in September 2014 after husband was charged with aggravated sexual assault for acts involving his minor daughter. By the time of the divorce hearing, husband had pled guilty in the criminal matter and was sentenced to thirteen years to life imprisonment. Following the hearing, the superior court gave each party their personal property and awarded wife the two parcels of real property, making her solely responsible for the mortgages, property taxes, and other expenses related to the properties.

On appeal from that order, husband contested the award of the garage property to wife. A panel of this Court reversed and remanded the property distribution because the superior court failed to make findings based on the statutory factors and explain its decision. Snyder v. Snyder, No. 2015-240, 2016 WL 1551431, at *2-3 (Vt. April 14, 2016) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo15-240.pdf. We remanded the matter for the court, without the need to take additional evidence, to make findings to indicate the weight accorded to the various statutory factors. Id. at *3.

On remand, after making additional findings and considering the statutory factors set forth in 15 V.S.A. § 751(b), the superior court awarded the marital home to wife, as the parties had agreed, and ordered the parties to sell the garage property and divide the proceeds equally between them. In making its decision regarding the garage property, the court stated that: (1) factors § 751(b)(8)(A) and (12) involving life decisions affecting the marriage and the respective merits of the parties heavily favored wife, given husband's aggravated sexual assault of his minor

daughter, which led to the parties' divorce; (2) factor § 751(b)(10) concerning from whom the property was acquired favored wife because wife's mother and brother both assisted the parties financially in enabling them to purchase the property; and (3) the overall balance of factor § 751(b)(11) concerning the contribution of each spouse to the property favored husband because, although wife had been paying the property taxes and mortgage on the property since husband's incarceration, he had put a significant amount of time, labor, and money into creating the garage and had paid the property taxes and mortgage on the property for years before his incarceration. The court explained that considering these factors, as well as the fact that wife would likely not be able to refinance the property and husband would be unable to make the mortgage payments, the fairest outcome would be to require the parties to sell the property, with wife having an option of first refusal, and to split the proceeds evenly. The court ordered wife in the meantime to continue to make the mortgage payments on the property, with husband required to pay the property tax bill.

Husband argues that: (1) the court abused its discretion by stating that the close proximity of the garage to the marital home militated in favor of requiring the sale of the property, even though the court acknowledged that the parties could probably get along if husband were able to return to the garage; (2) dividing the equity in the garage evenly was grossly unfair because he borrowed and repaid the money provided by wife's family for the garage; (3) there is no mortgage on the property but rather an unsecured loan, which undercuts the court's rationale for requiring the sale of the property; (4) the court failed to consider the fact that once the garage is sold, he has no place to store $70,000 in equipment and tools now stored in the garage; and (5) the equity in the martial home increased from $28,000 to $86,000, mainly due to his sweat equity. Husband asks this Court, at minimum, to condition the sale of the garage on making wife responsible for protecting his personal property currently stored in the garage.

We conclude that the superior court acted within its broad discretion in considering the statutory factors and dividing the marital property. See Wade v. Wade, 2005 VT 72, ¶ 13, 178 Vt. 189 ("The family court has broad discretion when analyzing and weighing the statutory factors in light of the record evidence."). As required by this Court, the superior court on remand provided "a clear statement as to what was decided and why." See Molleur v. Molleur, 2012 VT 16, ¶ 15, 191 Vt. 202 (quotation omitted).

Husband notes that his sweat equity resulted in the increase in the value of the marital home, but the superior court stated on remand that the parties had agreed that wife would be awarded the marital home, which husband does not dispute, and in his first appeal husband challenged only the court's decision regarding the garage property. The court considered the close proximity of the garage to the marital home based on its belief that wife should have some control over what happens to property located within forty feet of her home. Husband claims that he repaid the loans from wife's family that enabled the parties to purchase the garage property, but, as we noted in his first appeal, he did not order a transcript of the divorce hearing and offers nothing but his own statement to support this claim. See State v. Synnott, 2005 VT 19, ¶ 25, 178 Vt. 66 (declining to consider argument because defendant failed to produce record showing alleged error).

Husband also argues that there is no mortgage on the garage property but rather only an unsecured personal loan that he took out to pay for the property. He asserts that this is a critical fact because part of the reasoning underlying the superior court's decision to require the sale of the property is the fact that wife would be unable to refinance the property and he would be unable to make the mortgage payments. Husband is essentially challenging the sufficiency of the evidence to support the superior court's finding that a mortgage existed on the property. Because

of the lack of a transcript, we cannot completely address this question. See V.R.A.P. 10(b)(1) ("By failing to order a transcript, the appellant waives the right to raise any issue for which a transcript is necessary for informed appellate review."). In support of his argument, husband attaches copies of two bank statements of an unsecured loan, the more recent of which indicates a balance that precisely matches the balance that the superior court noted with respect to the mortgage on the garage property. Moreover, the parties' financial affidavits submitted in the superior court proceeding indicate that that there was a personal unsecured loan taken to pay for the garage property. Finally, wife does not respond in her brief to husband's claim that there is a personal unsecured loan rather than a mortgage on the garage property. In any event, even assuming that a personal loan rather than a mortgage was obtained to pay for the garage property, we see no need to reverse and remand the court's property distribution a second time. The documents submitted by husband indicate that the loan was taken out jointly by the parties. Under the court's remand order, wife is required to make payments on the loan until the house is sold. Further, the court found that husband has income of $1700 per year in prison. Thus, the fact remains that husband would be unable to make payments on the loan, and if the parties defaulted on the loan, their assets, including the garage property, would be susceptible to attachment following a judgment. In short, the court's reasoning for its decision is essentially the same irrespective of whether the parties took out a mortgage or an unsecured loan to pay for the garage property.

Finally, husband complains that he will have no place to store his tools and equipment if the garage is sold. The short answer to this complaint is that husband may need to find an alternative way to store his tools and equipment or he may need to sell some or all of them. Husband's incarceration, in and of itself, does not demonstrate that he cannot have someone assist him in selling or storing his tools and equipment. An equitable property award to wife should not be compromised because husband is incarcerated, and the superior court was not obligated to make wife responsible for storing husband's personal property. Indeed, in its original order, the court made husband responsible for removing his personal property from the garage. The court acted within its discretion in requiring the parties to sell the garage property and evenly divide the proceeds from the sale of that property.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice