

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-061

JUNE TERM, 2017

Katherine Roberts	}	APPEALED FROM:
	}	
	}	Superior Court, Lamoille Unit,
v.	}	Family Division
	}	
	}	
Mark Roberts	}	DOCKET NO. 132-7-14 Ledm

Trial Judge: Thomas Z. Carlson

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

Ex-wife appeals the superior court’s order denying her motion seeking to reopen the parties’ divorce order following the death of ex-husband’s* father. We affirm.

The parties were divorced by final order issued on February 22, 2016 following a long-term marriage. This Court affirmed the superior court’s order on November 4, 2016, Roberts v. Roberts, No. 16-154, 2016 WL 6562362 (Vt. Nov. 4, 2016) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo16-154.pdf> [<https://perma.cc/X2E4-B6DA>]. Two days earlier, plaintiff filed a motion for relief from judgment seeking to reopen the divorce action. In the motion, wife stated that husband’s father had died on October 19, 2016, that a party’s inheritance may be considered as part of a marital property division, that the matter was not yet final, and that she wished to seek information regarding father’s estate by way of discovery. Wife cited Vermont Rule of Civil Procedure 60(b) in her motion, but did not indicate which of its provisions she was relying on. On the same day, wife also filed a request for discovery involving the estate of husband’s father.

On January 9, 2017, following the parties’ exchange of brief responses to wife’s motions, the superior court denied the motions for relief from judgment and to compel discovery, stating that nothing in wife’s Rule 60(b) motion suggested that any newly discovered evidence regarding the estate of husband’s father would impact the factors it relied on in dividing the marital property. The superior court decision acknowledged that the final divorce order made “passing mention” of the parties’ respective retirement and inheritance expectations. The court explained that it had not quantified those expectations

* For simplicity’s sake, hereinafter the parties in this post-divorce action will be referred to as wife and husband, respectively.

in any specific way beyond noting that wife had more favorable prospects, given that she had worked for various businesses owned by her parents and that she therefore could expect to inherit some of her father's estate.

On appeal, wife argues that the court abused its discretion by not reopening the divorce case and allowing her to obtain discovery regarding the estate of husband's father. Wife states that she "is seeking at least to find out if the extraordinary circumstance of [husband] obtaining unanticipated financial gain by his father's death is sufficient to obtain relief from judgment." Wife faults the court for not weighing equitable considerations under Rule 60(b)(6), even though in the trial court proceedings she did not rely on any particular subsection of the rule in seeking relief from judgment. Rather she relied upon her assertions that an inheritance can be considered in allocating marital property and that the matter was not final because her appeal had not been decided. On appeal, wife now states for the first time that the property division cannot be considered final until it is reviewed in her bankruptcy proceedings.

We find no merit to wife's arguments. One of the statutory factors for the superior court to consider in allocating marital property is each party's opportunity for the future acquisition of income and assets. 15 V.S.A. § 751(b)(8). Pursuant to that subsection, the court may consider competent evidence related to the parties' expectations of an inheritance, but the court may not speculate as to the value of an inheritance without competent evidence, and an unvested interest in an inheritance that is capable of modification or divestment may not be included in the marital estate. *Id.* § 751(b)(8)(A)-(B). In its divorce decision, the court briefly stated that although wife's expectation of some benefit from her father's estate was greater husband's expectation of any opportunity for future acquisition of income or assets, wife's expectation was too speculative to allocate in the property division.

Wife now wants to reopen the divorce and engage in discovery based on the sole fact that husband's father died eight months after the final divorce order issued. "It is well settled that relief from a final judgment should be granted only in extraordinary situations to prevent hardship or injustice." *Spencer v. Spencer*, 2014 VT 63, ¶ 8, 197 Vt. 1 (quotation omitted). "[T]he burden is on the party seeking relief under Rule 60(b) to plead facts with sufficient particularity to warrant a hearing and potential relief." *Id.* ¶ 13 (quotation omitted). We review a decision to grant or deny a motion under Rule 60(b), applicable in divorce actions through Vermont Rule of Family Proceedings 4(a)(1), for an abuse of discretion. *Pierce v. Vaughan*, 2012 VT 5, ¶ 9, 191 Vt. 607 (mem.). Here, the superior court explained that the parties' expectations as to any future inheritance was not a significant factor in its divorce decision and that father's death months after the divorce did not undermine its statement in that decision that wife may have a more favorable expectation of assets from inheritance. The court acted well within its discretion in concluding that the death of husband's father months after the divorce was not an extraordinary circumstance warranting reopening the divorce. This case is distinguishable from *Spencer*, in which a majority of this Court reversed the superior court's denial of a

Rule 60(b) motion because although the parties shared an expectation about their opportunities for future asset acquisition, the divorce decree did not reflect that expectation and one of the parties sought a modification to prevent hardship or injustice. 2014 VT 63, ¶¶ 11-13. Wife has not argued that failure to grant her Rule 60(b) motion was necessary to prevent hardship or injustice.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice