

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. 2018-301

MAY TERM, 2019

Jennifer Dasler v. Timothy Dasler*	}	APPEALED FROM:
	}	
	}	Superior Court, Orange Unit,
	}	Family Division
	}	
	}	DOCKET NO. 74-6-17 Oedm
		Trial Judge: Michael J. Harris

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

Husband appeals pro se from the trial court’s final divorce order. Both parties were represented by counsel below. Husband challenges the court’s award of primary legal and physical parental rights and responsibilities (PRR) to wife, its division of the marital estate, and its maintenance award. We affirm.

The parties were married for approximately five years and they have a child, T.D., born in August 2015. Both parties are young and in good health. Wife works in the clothing industry; husband currently works for a construction company and pursues a side business as a luthier, making and repairing musical instruments. The parties separated in May 2017 following several incidents that led wife to obtain a relief-from-abuse (RFA) order against husband; husband was also charged with domestic assault. After evaluating the statutory best-interest criteria, the court awarded primary legal and physical PRR to wife based primarily upon wife’s role as the child’s primary care provider, although two other statutory best-interest factors slightly favored wife as well. The court established a 50-50 parent-child contact schedule consistent with the parties’ stipulation. The court divided the marital estate and ordered wife to pay \$300 in monthly maintenance to husband for two years. The court made numerous additional findings and conclusions, discussed in additional detail below. Husband appealed.

In his brief, husband recounts his version of events. With respect to PRR, husband argues that the court ignored or mischaracterized wife’s behavior. He asserts that the court should not have found wife credible because she made contradictory statements. Husband further argues that the court made erroneous findings and abused its discretion in evaluating the statutory best-interest factors. He raises numerous claims of error within this overarching argument, including a suggestion that the court was biased against him.

“The trial court has broad discretion in a custody matter, and we must affirm unless the discretion is erroneously exercised, or was exercised upon unfounded considerations or to an extent clearly unreasonable in light of the evidence.” MacCormack v. MacCormack, 2015

VT 64, ¶ 4, 199 Vt. 233 (quotation omitted). “Given its unique position to assess the credibility of witnesses and weigh the evidence, we will not set aside the family court’s findings if supported by the evidence, nor its conclusions if supported by the findings.” Porcaro v. Drop, 175 Vt. 13, 15 (2002) (quotation and alteration omitted). In considering the court’s factual findings, we “view[] the evidence in the light most favorable to the prevailing party and exclud[e] the effect of modifying evidence.” Cabot v. Cabot, 166 Vt. 485, 497 (1997) (quotation omitted).

At the outset, we emphasize that husband essentially asks this Court to reweigh the evidence and reach conclusions in his favor. It is the exclusive role of the trial court to assess the credibility of witnesses and weigh the evidence. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995). We do not reweigh the evidence on appeal. The court applied the appropriate statutory standard in reaching its conclusion, its findings are supported by the record, and the findings support the court’s conclusion.

We begin by addressing husband’s challenges to specific factual findings, but we do not directly address all of husband’s challenges to the court’s assessment of the weight of the evidence. Husband asserts that the court erred in finding that after the parties’ child was born in August 2015, wife had “no overnight work travel” for the remainder of that year. This finding is supported by the evidence. Wife testified that in 2015, the parties traveled to Boston for a work/family trip, staying in an apartment next door to husband’s family. She stated that husband and the child visited with husband’s family during the day while she worked, and that she returned to the apartment in the evening. Even if this finding was not supported by the record, the error would be harmless. The court recognized that both parents played a significant caregiving role for the child prior to their separation in May 2017. The court noted, however, that wife spent considerable time attending to child-rearing activities despite working full-time and that she was more active in setting up childcare and transporting the child to and from childcare. To the extent that the parties presented conflicting testimony on this issue, the court credited wife’s testimony. The court also found that wife did more of the child-rearing tasks between May 2017 and February 2018. Looking over the child’s entire lifetime, the court found that wife had been her primary caregiver. While husband disagrees with the court’s conclusion, he fails to show error. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (explaining that arguments that amount to nothing more than disagreement with court’s reasoning and conclusion do not make out case for abuse of discretion).

Husband also argues that the court erred in making a finding about the temporary visitation schedule that was in place following the alleged domestic-violence incidents. The court found that “[a]lthough voluntary increased temporary visitation for [husband] did not occur, . . . the Parties generally abided by the temporary [parent-child contact] schedule.” Husband’s argument on this point is not clear but he appears to suggest that wife obstructed the “normalization” of contact during this period. In a similar vein, he argues that wife filed certain motions concerning visitation during this period in bad faith.

The trial court found otherwise. It explained that wife obtained a final RFA order against husband and filed motions through February 2018 seeking to limit husband’s visitation, citing safety concerns. While the court ultimately determined that supervised visitation was not required, it found that wife had not knowingly made false claims against husband and she had pursued supervised visitation based on her subjective belief that safety concerns required it. Since February 2018, wife had moderated her approach and tried to co-parent with husband. While the parties had strained communications with one another, the

court did not find that either parent had interacted with the child in ways to undercut her relationship with the other parent. The parties had also improved their communication with one another. Husband fails to show that the court erred either in its findings or its evaluation of the parties' "ability and disposition . . . to foster a positive relationship and frequent and continuing contact with the other parent." 15 V.S.A. § 665(b)(5).

To the extent husband suggests that the court was biased against him because it found wife's testimony credible or awarded primary PRR to wife, we reject that argument. The fact that husband disagrees with the result does not demonstrate bias. See Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994) (stating judicial bias cannot be demonstrated based on adverse rulings alone); Ball v. Melsur Corp., 161 Vt. 35, 45 (1993) (stating that "bias or prejudice must be clearly established by the record," and "contrary rulings alone, no matter how numerous or erroneous, do not suffice to show prejudice or bias"), overruled on other grounds by Demag v. Better Power Equip., Inc., 2014 VT 78, 197 Vt. 176. We also reject husband's varied challenges to wife's credibility as we leave credibility assessments to the trial court.

Additionally, we reject husband's attempt to relitigate the incident that led to the RFA order against him as well as a criminal domestic-assault charge. The court credited wife's version of events, about which she testified at the final divorce hearing, for purposes of the divorce order. It did not err in considering husband's conduct and the RFA order in evaluating the statutory best-interest factors. See § 665(b)(9) (in evaluating child's best interests, court must consider "evidence of abuse, as defined in [15 V.S.A. § 1101], and the impact of the abuse on the child and on the relationship between the child and the abusing parent"). The court explained that the child was present during both incidents at issue, including when husband twice lifted a heavy tabletop and slammed it down and when husband, who was angry and swearing, grabbed wife by the arms and threw her to the ground. The court found that the May 2017 incidents had secondary impacts on husband's relationship with the child as well, including limits on visitation for a nine-month period. These were relevant considerations.

We have considered all of the arguments that husband raises in connection with the PRR award, including that his due process rights were violated and his arguments challenging the court's findings that wife's mental-emotional condition is stable, and we find them all without merit. Husband fails to show that the court abused its discretion in awarding primary legal and physical PRR to wife.

We next consider husband's assertion that the court's division of the marital estate was inequitable. Again, husband focuses on weight-of-the-evidence issues. He challenges the court's valuation of various items, including vehicles, tools, and musical instruments. He also asserts, among other things, that the court erred in calculating the parties' income, determining the length of their relationship, considering contributions to earning power, and dividing the equity in the marital home.

The family court has broad discretion in dividing the marital property, and we will uphold its decision unless its discretion was abused, withheld, or exercised on clearly 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). "[T]he distribution of property is not an exact science and does not always lend itself to a precise mathematical formula; all that is required is that such distribution be equitable." Victor v. Victor, 142 Vt. 126, 130 (1982).

Husband fails to show that the court abused its discretion here. In making its property award, the court made the following findings. The parties had distributed all moveable personal property, including vehicles. They contested the values for some personal property items, particularly those involved with husband's luthier business. Apart from the parties' retirement accounts and wife's current bank accounts, the main asset was the marital home, which had equity of \$80,968.

In deciding how to divide the marital estate, the court considered the factors set forth in 15 V.S.A. § 751(b). It determined that the marriage was relatively short, lasting just under five years. It recognized that the parties had periods of cohabitation before the marriage but found that the parties separated for a time after their initial cohabitation and that there was no indication at that time that they would resume their relationship. The court determined that the parties' lives became intertwined as a couple when they got married and purchased a home. It noted that they kept separate bank accounts until this time. The court has discretion concerning the weight to be given to the period of cohabitation prior to marriage in considering the length of the relationship. See MacKenzie v. MacKenzie, 2017 VT 111, ¶ 13, 206 Vt. 244 ("The superior court has broad discretion in considering each of the statutory factors [in § 751(b)], including how to calculate the length of the marriage under the circumstances of the case.").

The court found that the parties were young, healthy, and able to work in their respective professions. Wife had maintained steady work in her field and she had specialized skills that she could continue to use. She currently earned about \$80,000 per year. Wife had a greater earning capacity than husband and she was more likely than husband to accumulate capital assets and income in the future. Husband had the skills and abilities to run his own luthier business but thus far, he had not been able to earn more than a modest income at this endeavor. Husband also had carpentry skills and was currently earning about \$33,500 per year doing carpentry work. The court explained that during the marriage, husband chose to work thirty hours per week, rather than the offered forty, and used the remaining workdays to conduct his luthier business. Husband thus earned less income for the household than he would had he worked full-time. Finances were tight for the parties and the luthier business earned no appreciable income between 2012 and 2017. Wife tolerated but did not like husband's choice. The court found that wife's forbearance in this regard allowed husband to further his luthier training skills while wife brought in the bulk of the household income. After the parties' child was born, husband chose to continue devoting his time to the luthier business, requiring the parties to pay for childcare on the days he was not working at his other job.

As indicated, the marital home had about \$81,000 in equity. Wife contributed about \$6000 to the purchase of the home. The court found that husband had contributed more "sweat equity" to the home than wife, but it could not track the impact of such labor on the home's fair market value in any reasonably accurate manner. The parties had approximately \$50,000 collectively in retirement accounts. Wife had about \$10,000 more in her retirement account than husband, but the court found that husband had cashed in an inherited IRA during the separation period.

Husband had physical business assets—specialized wood, tools, instruments, and accessories—that collectively had significant value. The court found that husband had valued his tools at \$4350, and it used that figure. Husband had also valued his instruments at \$43,660, which included three prized handmade violins worth \$20,000. Husband testified that the \$20,000 custom violin values were the full retail sale value for these custom instruments,

which would be difficult to obtain at any point in time. The court recognized that husband's musical instrument inventory was not an asset that was readily liquidated for its full (potential) retail market price. Mindful that husband had not been able to regularly sell his custom violins during the marriage, it adjusted the musical instrument figure from \$43,660 to \$33,660 for personal property valuation purposes. Taking the lower value into consideration, the court found that husband was receiving tangible personal property with a fair market value of approximately \$22,000 more in value than wife.

Based on these and other facts, the court awarded each party the personal property in his or her possession and awarded each their respective banking and retirement accounts. Each party received a piece of the child's artwork. Husband was awarded his tools, parts, wood, instruments and accessories, as well as any work-in-progress or billing invoices associated with his luthier or violin-selling business. Each party was awarded his or her respective vehicle and the court found that a third vehicle, a RAV4, had "minimal value to the extent it has not yet been junked or sold for any residual value." The court surmised that husband might have traded this car in to obtain his current vehicle. The court awarded wife the marital home and the obligations associated with the home. It awarded husband a cash payment of \$24,000, secured by the marital home and linked to its refinance and/or sale. Finally, the court ordered wife to pay husband \$300 in monthly maintenance for two years.

Husband fails to show that this division of assets was inequitable. He claims the right to "family heirlooms, family letters, objects made by family, and . . . the mutually agreed upon items" but there is no evidence before us that husband did not in fact receive those items nor is there an explanation as to why the failure to award such items to him renders the court's decision inequitable. Husband notes that wife had more money in her accounts than he did, but the court was mindful of this fact. He fails to show that he raised any arguments about digital property or "privacy of accounts" below, but even if he had, this would not show that the award is inequitable.

As to the valuation of the vehicles, husband asserts that wife's car has more equity than his car. In its decision, the court recognized that husband asserted that wife's car had a certain fair market value and no debt. The court instead accepted wife's assertion that there was a loan against the car and it accepted her valuation of the vehicle. It noted that the difference in the court valuation of her car had no appreciable weight in the property division and maintenance award. The court was simply letting each party keep his or her own vehicle and pay all debt associated with it. As to the RAV4, the fact that wife testified that she obtained \$800 for it does not undermine the court's finding that it had "minimal value" and the fact that the court's surmise was incorrect is immaterial.

The court did not err in valuing husband's musical instruments or considering the value of the instruments he acquired during the separation period. Husband offers no legal support for this latter argument. Cf. 15 V.S.A. § 751(a) ("All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court."). The court provided a reasonable explanation for why it reduced the value of these items. We note that husband was awarded his musical instruments.

Husband also argues that the court erred in valuing his tools. To the extent that the court made a mathematical error adding up the values provided by husband, we conclude that an \$800 difference does not render the court's division of the marital estate inequitable. As the trial court emphasized at the outset of its decision, "the distribution of property is not an exact science" and "all that is required is that such distribution be equitable." Victor, 142 Vt.

at 130. We note that husband was awarded his tools. We reject husband's remaining arguments in this vein, including his challenge to the court's recognition that wife made a \$6000 down payment on the home and the court's inability to value husband's sweat equity. Again, these are challenges to the court's evaluation of the weight of the evidence. We conclude that the court's division of the marital estate, including its division of the equity in the home, was equitable.

Husband next appears to challenge the court's maintenance award. He argues that the court erred in evaluating wife's ability to meet her reasonable needs while meeting his need for maintenance and determining the length of the relationship. Husband argues that wife should have been required to downsize and restructure her debts so that she could pay more maintenance. He questions why his child-support obligation was not included in the calculation and argues that he incurs unreimbursed travel and tool costs for his job. He argues that in the period that preceded the marriage, he sacrificed his own earning power by relocating to Vermont.

The court may award maintenance when it finds that a spouse lacks sufficient income and/or property to "provide for his or her reasonable needs" and the spouse is unable to support himself or herself "through appropriate employment at the standard of living established during the civil marriage." 15 V.S.A. § 752(a); Chaker v. Chaker, 155 Vt. 20, 24-25 (1990). The maintenance must be in the amount and for the duration the court deems just, based on the consideration of seven nonexclusive factors. See 15 V.S.A. § 752(b). Once the family court finds grounds for awarding maintenance, it has broad discretion in determining the duration and amount. Chaker, 155 Vt. at 25. A maintenance award will be set aside only if there is no reasonable basis to support it. Id.

The court explained the basis for its maintenance decision in detail. We do not recount all of the court's findings here. In material part, the court found that husband lacked sufficient income to pay his reasonable expenses and that he could not support himself at the standard of living established during the marriage. The court explained why it was not considering child-related expenses in trying to review husband's expenses and needs. It also explained how it determined the duration of the relationship, as reflected above, reaching a decision that was within its discretion. The court considered wife's income and expenses and concluded that she lacked available income to make large maintenance payments. The court looked at the maintenance guidelines provided by statute. It recognized that the parties had significant earning capacity differences and that husband would have more difficulty than wife in meeting his reasonable monthly expenses. The court determined that it was appropriate to have wife pay lower monthly payments than the guidelines and maintenance factors might otherwise suggest, but to continue those payments for a longer period than might be typical for a five-year marriage. It found wife was more likely to be able to afford moderate sums for a slightly longer period than higher monthly amounts for a shorter period.

Husband fails to show that the maintenance award lacks a reasonable basis. While husband would like wife to be forced to "downsize," the court reached a different conclusion. Husband would similarly like the court to have found that the parties' relationship was longer than five years. Again, the court reached a contrary conclusion that is grounded in the evidence. We find no error in the court's evaluation of the parties' incomes. We note, moreover, that the court used an income figure for wife that included her expected raise thus bringing her income above her current salary. The court considered all of the relevant statutory factors, including husband's reasonable expenses, and we find no abuse of discretion. Even if not explicitly rejected in this decision, we have reviewed all of husband's

arguments and find them all without merit. This includes husband's arguments as to contributions to earning power and his assertion that wife should pay his attorney's fees based on "abuse of process."

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice