



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

JULY TERM, 2022

Lloyd J. Weinstein* v. Jennifer Weinstein	}	APPEALED FROM:
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 23-2-20 Bndm
		Trial Judge: Kerry Ann McDonald-Cady

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

Husband appeals from the trial court's final divorce order. He argues that the court erred in its spousal maintenance award and in dividing the marital estate. We affirm.

I. Facts and Procedural History

The parties married in 1995, and husband filed for divorce in February 2020. The parties are both 50 years old and in good health. Both are licensed attorneys. They have four children together, all of whom are now adults. During the marriage, husband first worked in his father's law firm and then started his own firm in 2003. He worked full-time at the firm and handled the parties' finances. Wife was responsible for all aspects of caring for the parties' children.

The court found it difficult to quantify husband's income due to his indiscriminate use of the law firm's funds to pay for both personal and business expenses. Based on calculations described in more detail below, the court found husband's current income to be \$418,105. Although wife's financial affidavit reflected an annual income of \$33,264, based on unemployment compensation, she agreed that the court could impute an annual income to her of \$40,000 based on the salary previously paid to her when she worked at husband's firm. The court found it fair and equitable to do so. At the time of the divorce hearing, wife had been offered a full-time job as a personal trainer in New York at a \$15 per hour wage with health insurance and benefits.

The parties had numerous marital assets, including the marital home, a ski condominium, an apartment in New York, investment accounts, life insurance, and personal property such as jewelry, silver and gold, and fur coats. Each presented expert testimony regarding the business valuation of husband's law firm. As discussed below, the court found the firm's business valuation to be at least \$195,000, relying on the opinion of husband's expert. The court also made numerous findings with respect to the parties' debts, finding that husband should be personally responsible for certain business debts and credit card debts.

In making its property award, the court considered the factors set forth in 15 V.S.A. § 751(b). It determined that the factors, on balance, supported a division of assets as equally as possible with husband responsible for the debt. The court explained that husband had substantially more income than wife due to the parties' agreement during their marriage that he would pursue his legal career while wife raised the children. Husband had much greater earning potential than wife; wife had no independent savings or pension to rely on in the future. The court found that wife's law degree was of limited value to her given the length of time that she had been out of the legal field. The evidence showed that wife lacked the financial means to pay the credit card debt. The court added that wife had no access to the parties' credit cards after March 2020 and husband could not distinguish what balance on the cards was due to expenses paid during the marriage and what had accrued since the parties' separation. The court also ordered husband to pay other debts. The marital home was sold prior to the issuance of the final divorce order and the proceeds from the sale were used to pay for expenses related to the use and maintenance of the home. Recognizing that each party needed a place to live, the court awarded the New York apartment to husband and the ski condo to wife. The court additionally awarded husband his law firm.

The court concluded that wife was entitled to an award of spousal maintenance. This was a long-term marriage where, by agreement, husband pursued his legal career while wife raised their children. As a result, husband could now financially support himself and meet his reasonable needs while wife could not. Husband benefitted financially from having wife care for their children. The court found that the parties enjoyed a very comfortable lifestyle during the marriage. They owned three homes, took lengthy vacations, owned or leased luxury cars, and owned jewelry. Husband could continue to enjoy the standard of living he experienced during the marriage due to his advanced legal career. Wife planned to move to New York City, where her estimated monthly rent for a studio apartment was \$3900. The court found that this expense alone would not be covered by wife's present income. It found that wife could not support herself through appropriate employment at the standard of living established by the marriage, even if she were to obtain a position in the legal field. The court found, moreover, that wife made diligent efforts to find a position in the legal field and was not "under-employed" by finding work as a personal trainer.

The guidelines set forth in 15 V.S.A. § 752(b)(9) suggested that a monthly maintenance award between \$7562.16 and \$12,919 for a duration of nine to twenty plus years was appropriate. The court awarded \$12,500 per month to wife for seventeen years (ending when the parties reached retirement age), finding this fair and equitable based on the facts and the factors set forth in § 752(b). The court explained that wife's voluntary decision to pursue a new career persuaded it not to grant wife's request for an award that exceeded the guidelines. The court found husband in contempt for failing to comply with the temporary order. Husband failed to pay many household expenses as ordered, such as the mortgage on the marital home, choosing instead to prioritize payments for expenses incurred by the parties' adult children. It found husband in contempt for this and for failing to timely comply with discovery obligations. The court awarded wife attorney's fees for the discovery sanction and awarded wife the total value of husband's life insurance policy (\$106,703) as a sanction for his failure to pay household expenses as ordered, removing this asset from the distribution of the marital estate. Husband appeals from the court's order.

II. Analysis

A. Spousal Maintenance Award

Husband first challenges the spousal maintenance award. He argues that the award bears no rational relationship to the economic realities of the parties' circumstances during the marriage. According to husband, the court failed to adequately justify its decision to make an award at the high end of the guideline range. He contends that the parties' standard of living during the marriage was unsustainable and financed by debt. He argues that the court based its decision solely on his income and failed to consider his debts, his ability to meet his reasonable needs, or wife's reasonable needs and her ability to meet those needs. Finally, he argues that the court's determination of his income was based on speculation and that the court should have imputed income to wife as she is an attorney.

The court may award maintenance to a spouse when it finds that the spouse lacks sufficient income or property to "provide for his or her reasonable needs" and the spouse cannot 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, 25 (1990). The maintenance must be in the amount and for the duration the court deems just, based on the consideration of several nonexclusive factors. See 15 V.S.A. § 752(b). "Findings are not required for each factor, as long as the court's decision reflects that the appropriate factors were taken into consideration" Kohut v. Kohut, 164 Vt. 40, 43 (1995). Once the 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. Our review of the court's factual findings is deferential; its findings will stand unless, "taking the evidence in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence in the record to support them." Kasser v. Kasser, 2006 VT 2, ¶ 16, 179 Vt. 259.

The court's decision reflects that it considered the statutory factors and exercised its discretion in making its award. Its decision did not rest solely on the guidelines, as husband asserts, nor was it based solely on husband's income. Husband fails to show that the court lacked a rational basis for its decision or that its findings were inadequate to allow this Court to understand "what was decided and why." Dreves v. Dreves, 160 Vt. 330, 333 (1993) (quotation omitted). He fails to show that the court's determination of his income or wife's income was clearly erroneous.

As set forth above, the court found that this was a long-term marriage where wife devoted many years of her time to raising their children while husband furthered his career. Husband's income was significantly greater than wife's income; because wife devoted her time to raising their children, wife had limited earning potential and no retirement savings. Her basic living expenses, including food and rent, would greatly exceed her anticipated income. Husband, by contrast, given his income, "profitable law practice," and earning potential, retained the ability to continue living at the standard established during the marriage. See Weaver v. Weaver, 2017 VT 58, ¶ 22, 205 Vt. 66 (explaining that maintenance award is "appropriate in long-term marriages where the court finds that one spouse will not be able to become self-sufficient and [it] is aimed at equalizing the parties' standards of living in reference to the standard of living established during the marriage").

Husband cites to cases upholding the trial court's discretionary determination not to award maintenance where the parties' lifestyle was unsustainable, and the parties lacked

sufficient income or assets to support such an award. See, e.g., Cabot v. Cabot, 166 Vt. 485, 501 (1997) (concluding that trial court did not err in rejecting wife’s argument that she was entitled to maintenance to allow her “to spend as she did during the marriage, even if that spending level was unreasonable given the parties’ income and assets,” and noting that property division allowed wife to continue “a very comfortable standard of living”); Kohut, 164 Vt. at 43 (concluding that trial court acted within its discretion in awarding maintenance that was not “based on the exact standard of living established during the marriage” where “parties agree[d] that they lived beyond their means and were constantly borrowing money and receiving substantial assistance from [husband]’s parents”). The court made no such finding here, and it was not compelled to do so as a matter of law. Its finding that the parties enjoyed a very comfortable lifestyle during the marriage, owned multiple homes, leased or owned expensive cars, took long vacations, and owned jewelry is supported by the record.

The court explained in detail why it held husband responsible for various debts, including that he had made the voluntary decision to pay the adult children’s educational and other expenses rather than paying expenses such as his office rent or the mortgage on the marital home. Husband fails to show that the court was unmindful of husband’s debts in reaching its conclusion as to maintenance. See Spaulding v. Butler, 172 Vt. 467, 487-88 (2001) (recognizing that this Court “must make all reasonable inferences in support of the [trial] court’s judgment” and “construe [findings] so as to support the judgment, if possible” (quotations omitted)). Husband does not identify specific evidence presented below regarding his monthly debt load as compared to his income. As wife notes, moreover, husband indicated in his financial affidavit that his monthly loan and debt payments were \$2000: a small portion of his monthly income. Husband also fails to show that the court committed clear error in determining his income or wife’s income. The court was not required to impute a certain level of income to wife because she had a law degree. The court explained why it declined to do so in its decision and why it used the value that it did.

With respect to husband’s salary, the court explained that his income from the firm consisted of two components: his annual salary and payment of his and his family’s personal expenses. His wages were around \$150,000 and up for various years; in 2019, his wages were \$99,530. His income from the firm also included full-time wages paid to wife, even though between 2016 and 2019 wife did little to no work for the firm. Adding this to husband’s wages resulted in an average of \$183,945 per year. Both parties confirmed that they paid household expenses using credit cards, and husband acknowledged that the firm paid all the credit cards, both business and personal. The court detailed charges on several of the cards for educational expenses, food, jewelry, clothing, and other items for the parties’ adult children. In 2019, the firm paid a total of \$271,897.17 to credit card companies. The firm also paid for the family’s automobile expenses, including monthly car payments and insurance for both the parties’ and their children’s cars. The firm paid for the adult children’s rent and college tuitions. In 2019, the firm directly paid for approximately \$124,537 in household expenses.

The court found that husband’s routine practice of having the firm pay for household and marital expenses was additional income not accounted for by him. Husband conceded that his personal finances with wife were commingled with the firm’s finances “in certain respects.” When referring to the firm’s 2019 general ledger, husband could not distinguish between professional and personal expenses. Husband provided no evidence to allow the court to understand what debt could be attributed to wife as having been accrued during the marriage. It found that wife was not responsible for the credit card debt.

The court found it very difficult to quantify husband's income due to his indiscriminate use of the firm's funds to pay for both business and personal expenses. Making a reasonable estimation, the court found that his average wage between 2016 and 2019 was approximately \$183,945, including the salary that the firm paid wife. For the current year, the court found that husband had projected wages of \$127,500. As indicated above, in 2019, the firm directly paid \$124,537 of the parties' personal expenses. It paid approximately \$206,039.17 in personal credit card expenses in 2019. Given husband's testimony that he routinely paid for personal expenses directly from the firm, including car payments, insurance, and education expenses, the court found it reasonable to infer that husband continued to do this between 2016 and 2018 as well.

The parties each offered expert testimony as to the value of the firm itself. Wife's expert reviewed the firm's income tax returns between 2014 and 2019 as well as the firm's 2019 business ledger. The expert determined husband's income using husband's 2019 salary, which was the lowest of the past five years, and discretionary expenses paid by the firm on behalf of husband and the family. Wife's expert testified that the total discretionary expenses paid by the firm for husband's benefit was \$329,970. Based on these factors, the expert opined that husband's present income was \$435,158.

Husband's expert expressed his belief that husband's present income was \$292,342. He reached this lower value because he did not believe the firm paid as many discretionary expenses as did wife's expert. He based his opinion on husband's own self-reporting. The court found that husband minimized his own discretionary spending to such an extent as to render the opinion of his expert flawed. The evidence showed that he consistently commingled his personal expenses with the firm's business expenses and paid all those expenses through the firm. This conclusion was also supported by the credit card statements, the 2019 business ledger, and husband's own testimony, particularly as to the salary paid to wife for little to no work. Husband's expert also did not believe that the credit card expenses could be used as an "add back" to determine husband's income, as he believed all the credit cards were used for business expenses. The court found that the evidence showed that the firm paid for all the personal credit cards used by the parties for their household expenses. Given this, wife's expert had appropriately considered the firm's payment of credit cards as a discretionary expense in determining husband's income.

Husband's expert also believed that the \$65,858 reported as the firm's expense for office supplies in 2019 was reasonable. This belief was based on a review of credit card statements that included purchases at Staples and website assistance for legal research. Wife's expert considered this figure very high considering this was a small litigation firm with only two employees. He also raised concern about checks drawn by husband, identified as reimbursement, totaling \$20,700. All of the checks were in round numbers and identified generally as court costs, service of process, and filing fees. He noted that round numbers were not typically reflective of a true cost reimbursement, thereby raising concern that they were payments directly to husband. Husband had also confirmed that he used a particular credit card for business expenses. In light of all these factors, the court credited wife's expert's approach over that used by husband's expert. Finally, the court noted that husband's expert disagreed with adding back attorney's fees that husband incurred in defending a lawsuit against him, totaling \$17,053. Husband's expert did not consider this a business expense. Wife confirmed, however, that it was in fact a business expense. Given this, the court deducted \$17,053 from the discretionary expenses used in wife's expert's analysis. Based on this analysis, the court found husband's current income to be \$418,105.

While husband disagrees with the court's conclusion, he fails to demonstrate clear error. He argues that wife's expert engaged in speculation as to which expenses paid by the firm were household expenses and which were business expenses and otherwise erred in his calculation. The court found that husband failed to distinguish household expenses from business expenses, and it discussed the credit card charges and other expenses, and the expert's methodology, in detail. The court credited the testimony of wife's expert whose valuation was grounded in the evidence. We reject husband's assertion that the court, or the expert, reached its decision based on speculation. We note that the court was not required to determine husband's income with mathematical precision. See Mills v. Mills, 167 Vt. 567, 568 (1997) (mem.) ("The court's ability to specify a value is limited by the evidence before it, and it sometimes must use approximations.").

With respect to debts, the court found that wife had approximately \$14,746.41 in uninsured medical debt that she agreed was her own responsibility. The court found that husband's mother gave the parties \$100,000 as a gift to enable them to purchase the marital home, and that this was not a loan as husband argued. It concluded that an additional \$25,000 provided to husband by his mother to defend against a lawsuit brought against his firm was also a gift rather than a loan. Further, even if it were considered a loan, the court found that it would not be a marital debt because it related exclusively to husband and his role as the sole partner of the firm. The court additionally found that husband chose to prioritize the payment of the adult children's expenses over other bills, leading to an arrearage of \$88,000 in rent for the office space leased by his firm. The court found that this was a business debt of the firm based solely on husband's sole decision-making; it was not a marital debt, and husband was solely responsible for it. The court also found husband solely responsible for a business debt associated with a settlement that husband reached in response to a lawsuit accusing him of defrauding creditors of a former client and solely responsible for the attorney's fees incurred in connection with the settlement of this suit. It further found husband solely responsible for his decision to borrow \$38,134 from his uncle to pay educational expenses for the parties' adult child and solely responsible for this debt.

Husband also signed a promissory note for \$425,000 as a business access line of credit, which was used to pay the children's educational expenses and business expenses. The court rejected husband's argument that this line of credit was used to fund the parties' lifestyle as unsupported by the evidence. The court found that husband failed to provide any evidence to show that the money was used for personal expenses and concluded that it would be inequitable to hold wife financially responsible for this debt given the uncertainty of the firm's financial records, which were solely within husband's control. The court determined that this was a business debt for which husband was solely responsible. Finally, the court found that there was significant credit card debt, which reflected expenses for the firm, husband individually, or the parties' adult children. Husband provided no evidence to allow the court to understand what debt could be attributed to wife as having been accrued during the marriage. It found that wife was not responsible for the credit card debt.

Husband essentially challenges the trial court's assessment of the evidence on appeal. He believes the court should have made the findings that he proposes and viewed the evidence as he does. The court's findings are supported by the record, and we do not reweigh the evidence on appeal. See Cabot, 166 Vt. at 497 ("As the trier of fact, it [is] the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence."); see also Gravel v. Gravel, 2009 VT 77, ¶ 25, 186 Vt. 250 (concluding that where "the court considered the length of the marriage, the role wife played during the marriage, and the income

wife is likely to obtain in relation to the standard of living set in the marriage, and designed an award to achieve the appropriate purposes of maintenance,” its “award was just in light of all the facts and circumstances of this case and within the court’s discretion”).

B. Division of the Marital Estate

Husband next argues that the court inequitably divided the marital estate. He contends that the court erred by requiring him to pay almost all the debts and failing to take this into account when dividing the parties’ assets. He also asserts that the court erred in its valuation of his law firm, which was awarded to him as a marital asset. He contends that the appropriate value of his firm is \$51,483, not \$195,00, because the value attributable to personal goodwill should have been excluded.

The trial 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). We have noted that the “distribution of property is not an exact science” and, therefore, “all that is required is that such distribution be equitable.” Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988) (quotation omitted).

Husband fails to show an abuse of discretion here. The court made numerous findings in support of its decision that husband was responsible for the debts described above, many of which it did not consider marital debt. While husband disagrees with the court’s decision, he fails to either show that the court erred in its treatment of the debt or establish that its allocation of these debts to him was inequitable. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than a disagreement with court’s reasoning and conclusion do not make out a case for an abuse of discretion).

The court also made numerous findings regarding the valuation of husband’s law firm. Husband’s expert valued the firm at \$195,000 while wife’s expert valued it at \$1,123,000. Both experts agreed that the tangible assets of the firm were \$51,483. The court recognized husband’s argument that the business valuation of the firm should be decreased further when considering its intangible asset of good will. Husband’s attorney argued that this good will was personal in nature, and thus, the firm was not valuable without husband. He estimated that \$143,686 of the firm’s value was attributable to personal good will. Wife’s expert did not include or exclude good will as a factor in his opinion as to the firm’s value. He believed that an attorney with similar drive and experience as husband could take over and still obtain value and profit from the firm even without husband.

Husband cited Mills, 167 Vt. 567, regarding whether or how to value good will in this case, but the court found his reliance on this case unpersuasive. It found that, unlike Mills, where the court was assessing the value of an attorney’s legal skills rather than her law practice, in this case, husband’s firm was a well-established small law firm in business for eighteen years with tangible assets of \$51,483, active cases, and one full-time employee besides husband. It found that the tangible assets and perhaps the knowledge and skills of the employee who might decide to continue with the firm had value. But, the court explained, the clients of the firm could not be sold. It found that the value of the firm must be separated from the value attributable to the sole professional who operated it.

It is not apparent that the court here included personal goodwill in determining the value of the firm. It found that the firm's value was "at least \$195,000." The court based this determination on the fact that husband's expert distinguished between tangible and intangible assets, namely the good will of the firm to be conveyed to a new owner. The court explained that it did not have the benefit of what wife's expert's opinion would be of the business valuation if he considered the intangible asset of good will, as wife's expert did not conduct this analysis. It credited husband's expert's opinion about the overall business valuation due to the issue of goodwill. It did not find it reasonable that a willing buyer would pay \$830,188 for the firm. It found that price was unreasonably high given that it reflected the expectation of income if another attorney stepped in and took over, not what the attorney would receive in tangible items when the attorney walked in the door of the firm to begin work. The court appears to have reached some sort of compromise on value between the experts' opinions, given its statement that the value of the firm must be separated from the value of husband's operation of the firm and then determining that its value was "at least \$195,000." The court noted that it still credited and favored the opinion of wife's expert about husband's income regardless of its reliance on the report of husband's expert on the issue of business valuation.

Notwithstanding this somewhat confusing analysis, we conclude that any error in including the value of goodwill in valuing husband's law firm is harmless. We are not persuaded that excluding the value of personal goodwill determined by husband's expert renders the court's distribution inequitable. See Cabot, 166 Vt. at 496-97 (concluding that even if court made error in estimating net value of marital estate, error was harmless given that court did not award fraction of net value to wife but instead "calculated an award that would generate an appropriate income, given the duration of the marriage and the standard of living during the marriage"). The court awarded wife \$515,483.80 in marital assets and husband \$441,329.84 when the value of goodwill is included. Removing the value attributable to goodwill reduces husband's share to \$297,812.84, which represents 37% of the marital estate rather than 46%. Husband retains the valuable and profitable marital asset of his firm, as intended by the court, which provides an ongoing benefit to him. We cannot conclude in light of the court's extensive findings that a different business valuation for husband's firm would lead the court to a different result.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice