



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

AUGUST TERM, 2022

Rodney Watkins* v. Doreen Watkins } APPEALED FROM:
 } Superior Court, Windsor Unit,
 } Family Division
 } CASE NO. 190-7-19 Wrdrn
 } Trial Judge: Robert P. Gerety, Jr.

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

Plaintiff appeals from a final divorce order, arguing that the family division improperly divided the marital assets and erred in awarding spousal maintenance to defendant. We affirm.

The final hearing in this case took place over three days in November 2020, January 2021, and April 2021. The proceeding was continued twice because plaintiff failed to timely comply with defendant's requests for financial information. Plaintiff was pro se and defendant was represented by counsel. Based on the evidence presented, the family division found the following facts.

The parties began living together as a couple in 1984 and married in 1992. They separated in July 2019. They had one child together, who died at the age of twenty-seven in 2015. Defendant was previously married and had two adult children from her first marriage.

Defendant was sixty-six years old at the time of the hearing. During the marriage, defendant worked as a server, cared for the children in the home, and managed the marital household. She was no longer able to work as a server due to physical limitations. At the time of the hearing, defendant worked as a laundromat attendant, a position she had held since 2012. Her gross monthly income was \$2264. Her monthly expenses, including the mortgage payment on the marital home, totaled \$3386. Once divorced, she would have to pay an additional \$300 per month for health insurance, bringing her total monthly expenses to approximately \$3700.

Plaintiff was sixty-four years old and was employed by a construction company as a heavy equipment operator. He received benefits including dental and medical insurance, vacation time, and sick time, but no retirement benefits. His gross monthly income was approximately \$4465. The court was unable to determine plaintiff's monthly expenses, concluding that the evidence was incomplete and largely not credible. The court found, however, that plaintiff had the ability to pay spousal maintenance.

Plaintiff managed the finances for the family during the marriage. The court found that plaintiff used some of the parties' funds to pay for joint marital expenses. It was unable to quantify this amount due to lack of evidence.

Defendant had four credit cards with balances. These accounts were opened by plaintiff in defendant's name and were used exclusively to transfer credit card obligations incurred by plaintiff for personal purchases on high-interest cards. Plaintiff promised to pay the balances but did not do so. Defendant made payments totaling \$2147 on the cards when plaintiff failed to pay. The court found that the total amount owed on these cards, including the payments already made by defendant, was \$7745.

Plaintiff inherited approximately \$20,000 from the sale of his mother's house at the time that the parties separated. He also inherited \$25,000 from his mother's IRA account. Instead of using the funds to pay the tax obligation due because of the distribution, he asked defendant to contribute \$6000 to pay the taxes, which she did. Plaintiff also inherited \$21,898 from the sale of his mother's Morgan Stanley stock account. The court was unable to determine how these funds were used. Defendant inherited approximately \$70,000 from her mother during the marriage, of which \$49,000 remained. Defendant held these funds in CD accounts.

The parties' primary asset was their home in Springfield, Vermont, which was acquired by defendant during her first marriage and had a fair market value of \$117,300. Defendant continued to reside in the home after the parties separated. The parties obtained a home equity line of credit during the marriage. The balance due on the loan was approximately \$26,000, leaving the parties with approximately \$91,300 in home equity. The parties each possessed pickup trucks that were encumbered with debt exceeding their value. Defendant had a Toyota Corolla with negligible value. Plaintiff also owned a camper valued at approximately \$3000.

Upon retirement, defendant expected to receive \$1150 per month in Social Security benefits. Plaintiff expected to receive \$2302 per month.

The court found that plaintiff physically and verbally abused defendant during the marriage. The physical abuse caused temporary bruising on defendant's face.

The court awarded plaintiff his camper and truck, the personal property in his possession, and the bank accounts in his name, and made him solely responsible for the debt in his name. It ordered plaintiff to pay defendant \$7745 for the credit card debt on the cards he opened in defendant's name. It ordered plaintiff to pay defendant \$750 per month in permanent maintenance, which would be reduced to \$500 per month when he retired.

The court awarded defendant the marital home, subject to the home equity loan. It awarded her the truck and personal property in her possession, the Toyota Corolla, and the bank accounts in her name. It made her responsible for repaying the credit card debt on the four credit cards. The court also granted defendant's motion for sanctions, finding that plaintiff had willfully failed to comply with her reasonable discovery requests and the court's discovery orders, and awarded defendant \$1665 in attorney's fees.

On appeal, plaintiff first argues that the maintenance award must be reversed because the family division exceeded the guideline duration set forth in statute. The family division may award rehabilitative or long-term maintenance to a spouse if it finds that a spouse lacks sufficient

income or property to meet their reasonable needs and is unable to support themselves through appropriate employment at the standard of living enjoyed during the marriage. 15 V.S.A. § 752(a). The award “shall be in such amounts and for such periods of time as the court deems just, after considering all relevant factors.” *Id.* § 752(b). The statute lists a number of factors that the court may consider, including guidelines for the length and duration of maintenance awards. *Id.* Plaintiff argues that under the guidelines, the maintenance award in this case should extend for forty-five percent of the length of the parties’ marriage, or 12.15 years. See 15 V.S.A. § 752(b)(9). Plaintiff argues that the court erred by failing to follow or to even consider the guideline duration in its decision.

“The family court has considerable discretion in ruling on maintenance, and the party seeking to overturn a maintenance award must show there is no reasonable basis to support the award to succeed on appeal.” *Golden v. Cooper-Ellis*, 2007 VT 15, ¶ 47, 181 Vt. 359. We see no reason to overturn the award in this case. “[T]he guidelines calculation, while important, is not presumptive; that is, a court need not justify a departure from the guideline range.” *Jaro v. Jaro*, 2018 VT 105, ¶ 19, 208 Vt. 391. Rather, the court is only required to give the guidelines “due consideration,” and it did so here. *Id.* ¶ 24. The court expressly stated in its decision that it had considered the statutory factors, including the guidelines. It concluded that defendant would not be able to meet her reasonable expenses without maintenance, and that plaintiff was able to pay. It found, based on the length of the marriage, the parties’ income and expenses, and their respective ages and likely remaining work lives, as well as the guidelines, that an award of permanent maintenance was warranted. We have held that “permanent maintenance is appropriate in long-term marriages where the court finds that one spouse will not be able to become self-sufficient and is aimed at equalizing the parties’ standards of living in reference to the standard of living established during the marriage.” *Weaver v. Weaver*, 2017 VT 58, ¶ 22, 205 Vt. 66. The court’s decision shows that it weighed the statutory guidelines but elected to give other factors greater weight in fashioning its maintenance award. This decision was within its discretion, and we see no basis to overturn it.

Plaintiff next argues that the court’s property award must be reversed because the court awarded a disproportionate share of the marital assets to defendant and assigned him most of the marital debt.¹ In determining a property settlement in a divorce proceeding, the court is required to “equitably divide and assign” marital property, and it may consider various statutory factors in rendering its decision. 15 V.S.A. § 751; *Cabot v. Cabot*, 166 Vt. 485, 500 (1997). “The court need not specify the weight given to each factor, but is required only to provide a clear statement as to what was decided and why.” *Molleur v. Molleur*, 2012 VT 16, ¶ 15, 191 Vt. 202 (quotation omitted). We will uphold the family division’s findings of fact unless, taking the evidence in the

¹ Plaintiff asserts in his brief that the court assigned him “all” marital debt, which is inaccurate. The court made defendant solely responsible for repaying the \$26,000 home equity loan. He suggests that the award was rendered even more unfair because the court assigned him the debt in his name, which he claims totaled about \$20,000. The court made no findings about how much credit card debt plaintiff owed on his own cards. This is unsurprising, given plaintiff’s admissions during cross-examination that his financial affidavit contained numerous inaccuracies, and the numbers it contained were not corroborated by any other evidence. In any event, we have held that “where the court finds that one party is primarily responsible for the debt, it acts within its discretion when it assigns all the debt to that party.” *Casavant v. Allen*, 2016 VT 89, ¶ 15, 202 Vt. 606.

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. Semprebon v. Semprebon, 157 Vt. 209, 214 (1991).

As a threshold matter, we reject plaintiff's argument that this case is subject to a higher standard of review because the court did not award him fifty percent of the assets. The cases relied upon by plaintiff simply "stand for the proposition that we will carefully examine the evidence and findings to assure that the family court made adequate findings and acted within its wide discretion in awarding one spouse the vast majority of the marital assets." Wade v. Wade, 2005 VT 72, ¶ 20, 178 Vt. 189. It is true that we have reversed unequal property awards when the family division did not adequately explain the bases for the awards and there appeared to be countervailing evidence supporting more equal divisions. See Lee v. Ogilbee, 2018 VT 96, ¶ 32, 208 Vt. 400; Harris v. Harris, 162 Vt. 174, 183-84 (1994); Dreves v. Dreves, 160 Vt. 330, 335 (1993). This case is distinguishable because the court directly and indirectly explained its reasoning and the evidence does not clearly merit a higher award to plaintiff.

In its decision, the court stated that it had considered the statutory factors in dividing the marital property. The relative merits of the parties were the most significant factor in the court's decision; it found that plaintiff bore a greater degree of fault for the dissolution of the marriage due to his abusive conduct toward defendant. See 15 V.S.A. § 751(b)(12). Elsewhere in its decision, the court found that plaintiff had "lived a higher and somewhat more expensive lifestyle" than defendant and had incurred thousands of dollars in credit card debt for personal expenses that he then transferred to defendant's name. The court found that the parties were nearing retirement, that defendant had a lower earning capacity and would receive less retirement income than plaintiff, and that defendant had brought the marital home, which was the parties' primary asset, into the marriage. These factors weighed in favor of defendant and sufficiently justified the court's property division. See Casavant, 2016 VT 89, ¶ 17 (affirming property award giving wife majority of assets and assigning all tax debt to husband, leaving husband with more debts than assets, where court found husband's infidelity, alcoholism, emotional abuse, and spending habits significantly harmed stability of family); Wade, 2005 VT 72, ¶ 23 (affirming award giving ninety percent of marital assets to wife where court carefully explained basis for its decision, which was that all assets were acquired through wife and she contributed more to their preservation).

Plaintiff argues that because this was a long-term marriage, the court should have divided the marital assets evenly, and that the failure to do so requires reversal. While a fifty-fifty split is the typical starting point, "[c]ourts are, of course, free to divide property on some basis other than an equal division in a long-term marriage." Lee, 2018 VT 96, ¶ 31. A large disparity in a property division is not "facially inequitable"; the question is whether "the family court made adequate findings and acted within its wide discretion in awarding one spouse the vast majority of the marital assets." Wade, 2005 VT 72, ¶ 20. As explained above, the court adequately explained its decision, which is supported by the evidence and findings. See id. ¶ 23; Daitchman v. Daitchman, 145 Vt. 145, 151-52 (1984) (upholding unequal property division in long-term marriage and recognizing that respective-merits-of-parties factor is designed to call court's attention to fact that award should take into account equities as measured in connection with parties' conduct during marriage).

Plaintiff contends that the court's decision is internally inconsistent because the court relied heavily on certain statutory factors when determining the maintenance award that it disregarded when dividing the marital assets. Specifically, plaintiff argues that the court should have found that the length of the marriage, the age of the parties, and the likelihood that they would both stop working within a few years favored a larger award to him. We see no inconsistency; the court found in both contexts that these factors weighed in defendant's favor. The family division has broad discretion in weighing the statutory factors, Cabot, 166 Vt. at 500, and acted within its discretion here.

Plaintiff challenges the court's finding that he was primarily at fault for the dissolution of the marriage due to his abusive conduct. We see no error. Defendant testified that after the parties married, plaintiff became verbally and physically abusive. He called her derogatory names and told her she was "effing stupid." He also verbally abused her children. On one occasion in 2009, he threw a jar at her and gave her a black eye. She submitted a photograph of her face that showed bruising below her eye. On other occasions he would pick her up by the neck, "hit me upside the neck," and push her around. This testimony supported the court's finding that defendant was verbally and physically abusive and that the abuse was a significant reason for the dissolution of the marriage. The fact the physical abuse may have ceased for a period of time prior to the divorce does not negate the court's finding that plaintiff was primarily at fault for the divorce.

Plaintiff also challenges the court's finding that plaintiff "lived a somewhat higher and more expensive lifestyle than defendant." This finding is supported by the financial information submitted into evidence at trial, which shows that plaintiff routinely spent more per month than defendant. Although plaintiff argues that he used all his income during the marriage to support the family and maintain the marital home, defendant contested this testimony, and his bank statements show that he continued to spend at a relatively high level compared to defendant after the parties separated and he was no longer paying household expenses. In fact, plaintiff admitted that he had purchased things that he could not afford, such as his truck, for which he was paying \$911 per month, and that he was "always in debt." We therefore conclude that the finding was not clearly erroneous.

In his appellate brief, plaintiff contends that the court should have imputed rental income to defendant in calculating the marital assets because her adult son lives with her. Plaintiff failed to raise this issue below and therefore did not preserve it for our review. See State v. Ben-Mont Corp., 163 Vt. 53, 61, 652 A.2d 1004, 1009 (1994) ("To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it.").

Finally, plaintiff claims that the court erred in ordering him to pay defendant for the outstanding balances on the four credit cards in her name, because the evidence showed that this debt was accumulated before the parties separated, partly for household expenses and partly because defendant's son used plaintiff's credit card to make unauthorized PayPal purchases. While this was his testimony, defendant testified that plaintiff had incurred the debt for personal expenses and that she agreed to transfer the balances to cards in her name solely to help him get out of debt. The court plainly found defendant's explanation for the debt to be more credible. Because the family division "is in a unique position to assess the credibility of witnesses and weigh the persuasiveness of the evidence," we defer to its findings. Gravel v. Gravel, 2009 VT

77, ¶ 13, 186 Vt. 250. Furthermore, plaintiff's claim that defendant's son used plaintiff's cards was unsupported by any admissible evidence and therefore does not render the court's finding clearly erroneous.

Affirmed.

BY THE COURT:

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice