VERMONT SUPREME COURT
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Case No. 22-AP-037

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

Alison Wallis-Buxton v. Garrison H. Buxton*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	CASE NO. 243-11-16 Wmdm
		Trial Judge: Katherine A. Hayes

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

In this post-divorce dispute, husband appeals from the trial court's order granting wife's motion to enforce the property division in part and awarding wife a portion of her attorney's fees. We affirm.

The parties were divorced in July 2019. The trial court issued a decision regarding the division of property as part of its final divorce order, which this Court affirmed. Wallis-Buxton v. Buxton, No. 2019-363, 2020 WL 1694879 (Vt. Apr. 3, 2020) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo19-363.pdf [https://perma.cc/79UL-G5CX]. That order included a detailed list of some 150 items awarded to wife that she believed remained at the marital residence—now husband's home. The court initially required wife to collect these items within thirty days of the divorce order, but this deadline was extended at wife's request numerous times, due partly to pandemic restrictions and partly to ongoing disputes and lack of cooperation between the parties. The parties engaged in motion practice and at least four mediation sessions relating to the logistics of dividing property to comply with the divorce order. Wife eventually obtained much of the personal property she was awarded.

However, wife filed the instant motion to enforce in February 2021, claiming that she had still not been able to retrieve many valuable items that were in husband's possession, including both tangible property and electronically stored information. She also sought to recover $5217 in attorney's fees incurred toward attempting to enforce the property division.

The court held a hearing in June 2021. The parties presented extensive and conflicting testimony about their respective efforts to locate wife's items of property and return them to her. Husband claimed that he had made reasonable efforts to find what items he could, and had returned them to wife. Wife disputed this assertion and testified to numerous instances of husband obstructing or making difficult a thorough search.

Wife emphasized the importance of certain missing pieces of artwork and her mother's table. Husband testified that the artwork was likely stored in one of four large cargo containers at the home, which were damaged by flooding. He testified that he had performed a cursory search of the containers but could not find wife's artwork. Wife suggested that husband was simply choosing not to either look for the art or permit her to do so. The court found that husband "made it very clear in his testimony that he did not want [wife] to set foot on his property again and had made every effort to prevent her from doing so during the period when she was trying to collect the property that was awarded to her."

The court granted wife's motion in part.[*] As relevant here, it ordered that wife be allowed one final and limited opportunity to visit the home to search for and collect tangible personal property. The order specified that the visit would be limited to three hours; that wife must be accompanied by a sheriff's deputy and may be accompanied by up to two other people to assist her in moving items; and that wife must be allowed to open and examine the cargo containers and walk through the house and other buildings, but that she could not open any closed containers, drawers, or the like. The court also found that husband had been "unnecessarily obstructive in the process of arranging the transfer of the concrete personal property." Accordingly, it ordered that husband pay $1000 of wife's attorney's fees.

Husband moved for reconsideration, arguing that: a three-hour search was a violation of his and their child's privacy; any search was unsafe because of the COVID-19 pandemic and because wife had allegedly abused husband in the past; the court's order was vague and overbroad; wife had unclean hands; and an award of attorney's fees was not warranted because husband complied with all court orders. The court ordered wife to include in her responsive filing a specific list of items she wished to search for at husband's home, which she did. The court denied the motion for reconsideration but modified its order to limit wife's search to only the specific items identified in her opposition memorandum.

On appeal, husband advances essentially the same arguments stated in his motion for reconsideration. Where one party seeks injunctive relief to enforce a final divorce decree, the trial court has discretion to fashion an appropriate order. Simendinger v. Simendinger, 2015 VT 118, ¶ 7, 200 Vt. 378. We review such an enforcement order under an abuse-of-discretion standard and will not reverse unless it is based on clearly erroneous findings or "the court's decision lacks any legal grounds to justify the result." Id. (quotation omitted).

Husband first argues that the trial court abused its discretion by allowing a three-hour search because wife already had an opportunity to search for her personal property, and this additional visit will violate his and their child's privacy. Husband cites no legal authority regarding privacy rights. The trial court heard extensive evidence on the efficacy of prior searches and determined that husband had unfairly stymied wife's opportunities to find her property. Its conclusion that wife should have one more chance to search for her belongings is supported by its findings and evidence presented at the hearing. We uphold this aspect of the order as a reasonable exercise of discretion, especially considering that the court accounted for the parties' fraught relationship by placing strict limits on the duration and scope of wife's search.

[*] The court denied other relief sought by wife pertaining to electronic files, but she did not file a cross-appeal.

Husband next contends that the enforcement order is unsafe and thus an abuse of discretion. He asserts that permitting wife to search his home constitutes emotional abuse and may expose him and their child to COVID-19. In doing so, he cites no evidence from the enforcement hearing; indeed, he raised these issues for the first time in his motion for reconsideration. Because husband failed to develop relevant evidence and give the trial court a fair opportunity to consider his safety contentions, we reject them as unpreserved. See In re Cent. Vt. Pub. Serv. Corp., 2006 VT 70, ¶ 11, 180 Vt. 563 (declining to consider argument raised for first time in post-judgment motion because appellant deprived lower tribunal of "important evidence necessary to test it in the crucible of an adversary hearing"). In any event, we note that the court acknowledged the parties' acrimonious history and crafted a reasonable solution to ensure compliance with the final divorce decree while also limiting the parties' direct interactions with each other. It mitigated difficult circumstances by requiring wife to be accompanied by a sheriff's deputy and limiting the search to a single three-hour visit. We see no abuse of discretion.

Husband also challenges the court's order as being impermissibly vague. He contends that two enumerated categories of property in the enforcement order are so broadly described that they are unenforceable: "[Wife's] personal property from the container and attic from before the marriage" and "any clothes in the closets." But nearly identical language regarding pre-marital property appeared in the original property division. When we previously affirmed that order, it became final, and husband may not now attempt to litigate issues that he could have raised then. See Lamb v. Geovjian, 165 Vt. 375, 380 (1996) ("[R]es judicata bars parties from litigating claims or causes of action that were or should have been raised in previous litigation." (quotation omitted)). Moreover, the enforcement order must be read in conjunction with the divorce decree. See Viskup v. Viskup, 149 Vt. 89, 91 (1987) (noting that trial court has authority to enforce property division but generally cannot modify terms of final divorce decree except in limited circumstances). Thus, a generalized reference to clothing does not mean that the court was expanding the terms of the property division and permitting wife to take clothing not awarded to her. Nowhere in the current order did the trial court suggest that it was modifying the divorce decree, and we will not presume such error.

Relatedly, husband contends that the court abused its discretion by allowing wife to search for items that were not awarded to her in the final divorce order. We have noted that "the difference between what may be considered enforcement compared to a modification of property division is not an exact science." Horgan v. Horgan, 2021 VT 84, ¶ 15. Here, the court's final divorce decree included nearly 150 items and categories of property. Although the narrowed list of outstanding property incorporated by reference into the court's enforcement order does not match up word for word with the divorce decree, they are not necessarily inconsistent. For example, husband claims that a particularly described knife, certain side tables, and a set of stairs were not listed in the divorce decree. But the decree references multiple different tables and staircases as well as categories of property that could include any of these specific items. It is husband's burden to demonstrate error. See In re S.B.L., 150 Vt. 294, 297 (1988) (recognizing that it is appellant's burden "to demonstrate how the lower court erred warranting reversal"). Without more specific evidence to distinguish these allegedly new items from other similar property identified in the divorce decree, we will not infer that the trial court exceeded its authority by modifying the property division.

Husband additionally argues that at the time of the enforcement hearing wife was in breach of certain court orders and thus had unclean hands, so she should not be allowed to enforce the property division. He refers to a September 2020 ruling in which the court found that

husband was in violation of a court order and that wife was attempting to manipulate the court process. It is unclear how this order had any bearing on wife's February 2021 enforcement motion or the June 2021 hearing. Husband provides scant legal analysis, cites no evidence from the enforcement hearing, and does not indicate whether and how he preserved this argument for our review. We will not consider arguments, such as this one, which are so inadequately briefed as to fail to minimally meet the standards of V.R.A.P. 28(a). Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992); see V.R.A.P. 28(a) (appellant's brief must set forth "the issues presented, how they were preserved, and appellant's contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies").

Finally, husband contests the award of attorney's fees, asserting that he violated no court orders. Violation of a court order is not a prerequisite to an order to pay attorney's fees. We have recognized the trial court's inherent discretion to award attorney's fees "to do justice and vindicate rights" where one party has unnecessarily "prolonged the litigation" and compelled the other party to incur additional expenses to protect her rights. In re Gadhue, 149 Vt. 322, 328 (1987) (quotation omitted); see also Simendinger, 2015 VT 118, ¶ 15 (affirming award of attorney's fees incurred by wife while trying to enforce final divorce agree against "noncompliant husband"). We will affirm a trial court's award of attorney's fees unless it abused its discretion. Simendinger, 2015 VT 118, ¶ 12. Here, the court awarded wife a portion of her attorney's fees because it found that husband had been "unnecessarily obstructive" in the process of transferring personal property. Husband does not argue there was insufficient evidence to support this finding, which provided an adequate legal basis for awarding attorney's fees. He has thus failed to show any abuse of discretion.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice