VERMONT SUPREME COURT
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Case Nos. 25-AP-266 &
26-AP-028

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

SEPTEMBER TERM, 2026

Alison Beckwith* v. Sebastian Sweatman	}	APPEALED FROM:
	}	Superior Court, Lamoille Unit,
	}	Family Division
	}	CASE NO. 24-DM-00413
		Trial Judge: Mary L. Morrissey

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

In these consolidated appeals, plaintiff challenges the final divorce order and the court's award of attorney's fees to defendant. We affirm.

The court held a hearing in October 2024 and made the following findings in its November 2024 final order. Plaintiff and defendant met in 2002. At that time, plaintiff worked for Sotheby's real estate and defendant was finishing his master's degree in business administration at the University of Vermont. Plaintiff attended eighteen months of college but did not complete a degree. Plaintiff had three children from two prior marriages.

In September 2002, plaintiff purchased a home in Stowe for $244,800. Defendant moved in soon afterward and lived with plaintiff and her children. Defendant was not consistently employed but did some landscaping work. He built a back deck for plaintiff's home, for which plaintiff paid him $2500.

In the winter of 2003, plaintiff started Beckwith Real Estate. Later that year, defendant started Sebali, a home-rental business. Defendant put significant work into building Sebali, including creating a website so that the business did not have to pay website fees. Defendant used his income from the business to pay expenses for the home.

The parties separated in the summer of 2005 and defendant moved out. In April 2006, they reunited. They married in July 2006 and lived together in the Stowe home. At that time, the home was worth $380,000 and was subject to debt of $345,000.

From 2004 to 2013, the parties jointly managed the Sebali rental business. Defendant oversaw the technological side of the business, maintained the website, and set up contracts. Plaintiff generated business for Sebali through her real estate clients. Sebali paid plaintiff varying amounts for her work.

During this time, defendant did significant work on the marital home including landscaping, construction, and tree clearing. He also cared for the parties' donkeys and pony. The household expenses were paid with income from Sebali. In March 2007, the parties had a son. The parties shared caregiving responsibilities for son. His daycare was paid through Sebali.

In 2008, the rental business was negatively affected by the financial crisis. Sebali accumulated $154,000 of debt. The parties eventually negotiated with homeowners to resolve the debt by paying a percentage of what was owed. Around 2012, defendant decided to exit Sebali, as he was tired of running the rental business and found it hard to work with plaintiff. In February 2013, he assigned Sebali to plaintiff. After the transfer, defendant continued to manage the accounting for the business.

Plaintiff and defendant both provided care for their son, and defendant also provided care for plaintiff's older children. By 2014, the Sebali debt was paid off, and defendant transitioned to being a stay-at-home parent. The parties began homeschooling son in fifth grade to facilitate his participation in competitive sports including skiing and soccer. The parties took turns accompanying son to events and practices. When plaintiff attended son's sports events, defendant helped with Sebali, including assisting with customer arrivals, delivering welcome packages, addressing plumbing issues, and cleaning rental units. He was not compensated for this work. In the fall of 2021, son began attending boarding school in Minnesota. At the time of the hearing, son was seventeen years old and preparing to attend college.

At some point after transferring Sebali to plaintiff, defendant began to pursue his interest in art. He participated in two residencies in Johnson, Vermont, and generated a large inventory of paintings. He found it difficult to earn income from his artwork and took on side jobs including working as a ski instructor, valet, and for his brother's company. Approximately 120 of defendant's paintings were stored in the marital home. Defendant marketed his paintings for sale through an online art gallery for $4,000 to $12,000. His artwork was featured on a YouTube program, and he had a reproduction agreement with Restoration Hardware. During the pandemic defendant sold approximately one painting a month, but he sold no paintings in 2023 and only one painting in 2024. He testified he had not created any artwork in 2024.

Prior to the final hearing, defendant took a class in venture capital and started a new business that he described as a strategic advisory business. Because he had not worked in finance for over twenty-five years, it would take time to generate income from the business. At the time of the hearing, he earned $2625 per month from various income sources. He had no retirement assets or savings and received health insurance through plaintiff's business. Plaintiff's expert estimated that defendant could earn between $93,560 to $108,960 if he reentered the financial industry, $68,230 to $73,205 if he remained in property management, and $56,192 if he continued to work multiple part-time jobs.

Plaintiff continued to run Beckwith Real Estate and Sebali. Her income varied over the years, from $0 in 2013 and 2014 to a high of $384,079 in 2021. She credibly testified that her income from 2020 to 2022 was not representative of her typical income because sales and rentals increased significantly during the COVID-19 pandemic. In 2023, she earned $126,567.

The parties jointly retained an expert to value Beckwith Real Estate, Sebali, and defendant's art business. The expert opined that Beckwith Real Estate had a fair market value of $307,000, with an annual cash flow of $190,098. Sebali was worth $110,000. She did not assign a value to defendant's art business but found that its five-year annual cash flow was $26,345.

The court found that the marital home had been substantially improved since plaintiff purchased it in 2002 and was worth $1,150,000 as of June 2024. In 2022, plaintiff refinanced the home and took out a loan of $700,000 to pay off the prior loans as well as $238,638 in IRS debt. She deposited the remaining balance of $285,278 in her bank account. The home was subject to debt of $665,000 at the time of the final hearing.

Plaintiff received $2000 per month from her father from 2013 to 2016, when he died. He also gave her $20,000 for the promissory notes resolving Sebali's debts. In 2016, plaintiff inherited $665,717 from her father's estate. In 2023, she inherited $823,780 from her mother. At the time of the hearing, plaintiff had $666,552 in a bank account, $139,319 in an account held by Beckwith Real Estate, $60,017 in an account held by Sebali, and approximately $2000 in other accounts. Defendant's bank and online accounts totaled approximately $4500.

In fashioning its property award, the court considered the factors set forth in 15 V.S.A. § 751(b). It found that this was a long marriage of over eighteen years. Plaintiff was sixty years old and defendant was fifty-five years old. Both were in good health. Plaintiff's income averaged $120,416, not including the pandemic years or the years when she had no income at all, and she would likely be able to maintain this level of income. Defendant made significant contributions to plaintiff's earning capacity by caring for the parties' child, developing the Sebali rental business, and supporting both businesses when plaintiff needed help. Defendant was underemployed, currently earning $31,500 per year. He had the education and experience necessary to earn a greater income and was younger than plaintiff. The marital estate included significant assets, including the marital home and businesses. Defendant contributed to the home financially and through his labor. Plaintiff used most of the funds she inherited from her father in 2016 to perform renovations on the marital home. The court found that the parties had an equal financial interest in the equity of the home, including the amount that plaintiff deposited in her personal account when she refinanced the home in 2022. The court found that plaintiff made greater contributions over the course of the marriage to Sebali and Beckwith Real Estate and had a greater interest than defendant in the funds she inherited from her mother.

The court awarded plaintiff the marital home and ordered her to pay defendant $242,500 for his share of the equity. It also awarded plaintiff Beckwith Real Estate and Sebali, and ordered her to pay defendant $104,250 for his interest in the businesses. It awarded defendant half of the amounts held in plaintiff's bank, retirement, and trust accounts. It ordered plaintiff to pay defendant $32,500 to offset his personal debts and assigned responsibility for the parties' state tax debt of $11,754 to her. The court awarded plaintiff the personal items in her possession and ordered her to pay defendant $10,000 for his share of these items. It ordered the parties to evenly divide defendant's artwork.

Defendant requested $1500 per month in maintenance for five years. The court concluded that defendant did not have sufficient income or property to support himself. In contrast, plaintiff reported sufficient income to meet her monthly expenses and allocate $2000 per month for clothing and shoes, $600 for vacations, $1000 for dining outside the home, and $2000 for retirement. The court found that defendant would be able to increase his income from its present low level and imputed income to him of $50,000 per year, plus $7400 per year for royalties from his artwork. The court concluded that defendant was entitled to spousal maintenance but determined that an award of property in lieu of maintenance was appropriate. It ordered plaintiff to pay defendant $54,000 in addition to the other awards.

Plaintiff timely moved to amend the judgment under Vermont Rule of Civil Procedure 59, challenging numerous aspects of the court's decision. While that motion was pending, plaintiff retained new counsel and moved for relief from judgment under Vermont Rule of Civil Procedure 60 on the grounds of newly discovered evidence and fraud.

In June 2025, the court issued an order addressing plaintiff's Rule 59 motion. It corrected an error in the original decision that was not relevant to this appeal but otherwise denied the motion. Plaintiff appealed from that decision. At the parties' request, this Court placed the appeal on waiting status and remanded for the trial court to address plaintiff's motion to vacate the judgment, as well as defendant's motion for attorney's fees.

After a hearing in November 2025, the court issued a written order in January 2025 denying plaintiff's Rule 60 motion for relief from judgment. The court concluded that the motion largely relied on evidence that was either available to plaintiff at the time of trial or arose after trial, and therefore did not qualify as "newly discovered evidence" for purposes of Rule 60(b)(2). The court found that plaintiff failed to prove that defendant testified fraudulently by misrepresenting the number of paintings he sold in 2024 and whether he "painted" that year. In a subsequent order, the court granted defendant's request for attorney's fees incurred in defending the Rule 60 motion. Plaintiff filed a second notice of appeal. We granted the parties' request to consolidate the appeals for purposes of briefing and argument.

The family division is required to "equitably divide and assign" marital property in a divorce. 15 V.S.A. § 751(a). Section 751(b) lists factors the court may consider when dividing marital property, including the length of the marriage, the occupation and income of the parties, a party's contributions toward the other spouse's earning power and the appreciation of the marital estate, the disparity in the parties' financial circumstances, the parties' vocational skills and employability, their respective opportunities for future earnings, and the relationship between the property and maintenance award. 15 V.S.A. § 751(b). "The family court has broad discretion when analyzing and weighing the statutory factors in light of the record evidence." Wade v. Wade, 2005 VT 72, ¶ 13, 178 Vt. 189. We review the family court's property award, including its decision on spousal maintenance, for abuse of discretion. Johnson v. Johnson, 155 Vt. 36, 40, 43 (1990).

Plaintiff first challenges the court's decision to award defendant a portion of the value of Beckwith Real Estate and Sebali, arguing that the court did not explain how it calculated the award. Plaintiff also claims that the court failed to credit her for her role in the success of defendant's art business. Under Vermont law, "[a]ll property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court." 15 V.S.A. § 751(a). The court found that plaintiff was entitled to a greater share of the real estate and rental businesses' value because she had expended more effort on them in recent years, but defendant was entitled to some of the value due to his ongoing unpaid labor for the businesses. The court expressly acknowledged that plaintiff had helped defendant sell his paintings but did not assign a value to the art business because no such evidence was presented. The court credited the opinion of the parties' expert that Beckwith Real Estate was worth $307,000 and Sebali was worth $110,000. It therefore awarded defendant $104,250, which is one-quarter of the real estate and rental businesses' total value. The court's explanation for its decision is reasonable in light of the record and we decline to disturb it.

Plaintiff next argues that the court erred in awarding defendant half the equity in the marital home because it failed to account for her premarital equity of $35,000 or the mortgage payments she made prior to marriage and overstated defendant's contributions to the home and family. We see no error. As the court found, this was a long-term marriage of over eighteen years. We have explained that because "long-term marriages are essentially an economic partnership," an equal division of assets is an appropriate starting point for calculating the property award. Lee v. Ogilbee, 2018 VT 96, ¶ 30, 208 Vt. 400. The court considered the statutory factors and found that the parties lived together in the home for nearly twenty years and defendant made significant financial and labor contributions to the home, including caring for the parties' animals and children. It concluded that defendant was therefore entitled to half the value of the home. Plaintiff essentially asks us to reassess husband's credibility on these issues and reweigh the evidence presented, which we will not do. LaRiviere v. Shea, 2023 VT 33, ¶ 18, 218 Vt. 190 ("[T]his Court neither reweighs evidence nor makes credibility determinations."); cf. Stafford v. Stafford, 161 Vt. 580, 581 (1993) (concluding that overall property distribution was reasonable even though husband did not receive compensation for his interest in marital home).

Likewise, plaintiff fails to demonstrate error in the court's award to defendant of half the value of two of wife's retirement accounts. Contrary to her assertion in her appellate brief that she funded those accounts with the inheritance she received from her mother's estate, plaintiff testified below that she initially funded the retirement accounts with the funds left over from the 2022 refinancing of the house. The court found that because these funds derived from the house, he was entitled to half of their value. The court's explanation is reasonable, consistent with our case law, and within its discretion.

Plaintiff also challenges the court's order concerning defendant's debts. The court assigned each party the debt currently owed in their names but ordered plaintiff to pay defendant $32,500 to offset the debts he owed to VSAC and GoingVC and for a small business loan. Plaintiff argues these debts were either contracted by defendant before the marriage or after the parties separated. "The applicable statute requires division of marital property 'however and whenever acquired' and is broad enough to cover property acquired after the parties separated." Nuse v. Nuse, 158 Vt. 637, 638 (1991) (mem.) (quoting 15 V.S.A. § 751(a)); see also Casavant

v. Allen, 2016 VT 89, ¶ 17, 202 Vt. 606 (holding court acted within discretion in assigning all tax debt to husband as part of equitable distribution of marital estate). The court considered the statutory factors in reaching its decision, including the source of the parties' assets and debt, defendant's use of his business skills to support plaintiff's business and earning capacity, and defendant's lack of assets and inadequate income. It further explained in its order denying plaintiff's Rule 59 motion that the $32,500 offset was part of the overall equitable distribution of marital assets, noting that it had awarded plaintiff her jewelry, which was worth at least $45,000 according to plaintiff. The court's decision was within its discretion.*

Next, plaintiff argues that the court erred in awarding each party half of defendant's paintings because the paintings were not equally valuable to both parties and defendant was better able to sell them. Again, we see no error. Plaintiff contended below that the paintings were worth $1.5 million, while defendant valued them at $20,000. The court found insufficient evidence to place a reliable value on the paintings and therefore awarded half of the inventory to each party to dispose of as they wished. The court acted within its discretion in evenly dividing the paintings in the absence of reliable evidence that would allow it to fairly calculate their value. See Lee, 2018 VT 96, ¶ 30 (explaining that equal division of assets is appropriate starting point for calculating property award in long-term marriage).

The court's award of property in lieu of spousal maintenance was also within its discretion. The family division may award maintenance, either permanent or rehabilitative in nature, if the spouse seeking the award: "(1) lacks sufficient income, property, or both . . . to provide for his or her reasonable needs; and (2) is unable to support himself or herself through appropriate employment at the standard of living established during the civil marriage or is the custodian of a child of the parties." 15 V.S.A. § 752(a). If this threshold standard is met, the court must determine the amount of maintenance considering the factors set forth in § 751(b). The court has discretion to award property in lieu of maintenance. Naumann v. Kurz, 152 Vt. 355, 358 (1989). Here, the court found that defendant had earned less than $10,000 in 2022 and 2023, would likely earn $31,000 in 2024, and had virtually no assets in his name. In contrast, plaintiff earned $120,416 on average and had significant savings. The court concluded that defendant did not presently have sufficient income to provide for his reasonable needs given his current low income, the standard of living established during the marriage, and the expenses he would accrue after divorce such as health insurance. The court considered the factors set forth in § 752(b) and determined that defendant was entitled to rehabilitative maintenance while he worked to increase his income. It awarded a lump-sum payment of $54,000, which was equivalent to $1500 per month for three years—two years less than requested by defendant. The award was within the guideline amount for a marriage of eighteen years and had a shorter duration than recommended by the guidelines. The court explained that because plaintiff had assets that could be transferred to defendant, a lump-sum payment was appropriate so that the parties would be financially independent. While plaintiff disagrees with the court's conclusion,

* To the extent plaintiff argues that the court's award violated 15 V.S.A. § 69, she fails to explain how she preserved this argument for our review, and the argument is inadequately briefed. See In re Snyder Grp., Inc., 2020 VT 15, ¶ 26 n.10, 212 Vt. 168 (declining to address inadequately briefed argument).

she fails to identify any error in its findings. The court applied the correct standard and its explanation for its decision is reasonable.

Plaintiff further argues that the court abused its discretion in denying her motion for relief from judgment based on "newly discovered evidence" regarding the value of her real estate business, namely, that she had been unsuccessful in her post-trial efforts to sell the business and had to close it down. Rule 60(b) authorizes the trial court to vacate an order for six enumerated reasons, including "newly discovered evidence." V.R.C.P. 60(b)(2). A motion under Rule 60(b) "is addressed to the discretion of the trial court and is not subject to appellate review unless it clearly and affirmatively appears from the record that such discretion was withheld or otherwise abused." Greenmoss Builders, Inc. v. Dun & Bradstreet, Inc., 149 Vt. 365, 368 (1988) (quotation omitted).

Rule 60(b)(2) applies when "parties are unaware of evidence existing at the time of the judgment and, through no fault of their own, discover that evidence only after the judgment." Tobin v. Hershey, 174 Vt. 634, 638 (2002) (mem.) (emphasis added). Plaintiff's proffered testimony regarding her post-trial efforts to sell Beckwith Real Estate and her ultimate decision to close the business and start working for a different firm involved matters that occurred after the time of judgment and therefore did not justify relief under Rule 60(b)(2). While plaintiff now argues that the trial court should have granted relief under Rule 60(b)(6), she did not invoke that provision in her motion to that court and therefore has failed to preserve her claim for our review. See State v. Ben-Mont Corp., 163 Vt. 53, 61 (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 argues that the court abused its discretion in ordering her to pay defendant for the attorney's fees he incurred in defending against her Rule 60 motion. The court has discretion to award attorney's fees in a divorce action as "suit money," and "[t]he assessment of such fees is proper where justice and equity so indicate." Turner v. Turner, 2004 VT 5, ¶ 9, 176 Vt. 588 (mem.) (quotation omitted). The court's primary consideration is the respective resources of the parties, but the court may also consider "the reasonableness of the parties' litigation conduct and the strength of their positions; the reasonableness of the requested fees; whether the party from whom fees are sought is represented; and the parties' conduct leading up to and during the litigation." Randall v. Hooper, 2020 VT 32, ¶ 7, 212 Vt. 216. The court's decision was consistent with this standard. The court found that defendant was presently unable to pay his outstanding legal bills because he was focused on day-to-day expenses and plaintiff's post-judgment motions had delayed the transfer of funds contemplated by the final divorce order. The court examined the fees and concluded that they were reasonable. The court noted it had deliberately awarded a lump sum to defendant in lieu of maintenance because it "was concerned, based on the tenor of the litigation leading up to the final order, that plaintiff may try to avoid attempts by defendant to collect these payments." It found that plaintiff's Rule 60 motion attempted to relitigate matters that were previously fully litigated at trial and in the Rule 59 motion, lacked merit, and was denied in full. The court therefore ordered plaintiff to pay $4248 for the attorney's fees defendant incurred in defending the Rule 60 motion. The court's explanation was reasonable and is supported by the record. Contrary to plaintiff's argument, the court was entitled to consider the reasonableness and legal strength of plaintiff's Rule 60 motion in deciding whether to award fees. We therefore decline to disturb its decision. See, e.g., Simendinger v. Simendinger, 2015 VT 118, ¶ 15, 200 Vt. 378 (affirming award to wife of attorney's fees incurred while trying to enforce prior order against noncompliant husband).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Christina E. Nolan, Associate Justice