

DOCKET NO: HHD FA-23-5078237-S : SUPERIOR COURT
TRACEY GAY-BALLANTYNE : JUDICIAL DISTRICT
V. : AT HARTFORD
KENROY BALLANTYNE : APRIL 19, 2024

MEMORANDUM OF DECISION

This action seeks the dissolution of the parties' nine-year marriage, commenced by a complaint filed on May 26, 2023. The parties appeared at trial on March 8, 2024. The plaintiff represented herself and the defendant was represented by counsel. As the plaintiff had not submitted an updated financial affidavit and some additional necessary financial information, at the conclusion of the trial, the court ordered that she submit that information no later than March 28, 2024 (#115). The court has fully considered the rules of practice; full exhibits; testimony from the parties, including their demeanor and credibility; applicable case law; and the criteria set forth in General Statutes §§ 46b-56, 46b-56c, 46b-81, 46b-82, 46b-84, and 46b-215a in reaching the decisions reflected herein. The court also reviewed the parties' financial affidavits, child support guidelines and proposed orders.

As financial matters were in dispute, the court unsealed the financial affidavits pursuant to Practice Book § 25-59a (h).

FINDINGS OF FACT

The court makes the following findings of fact by a preponderance of evidence.

FILED

APR 19 2024

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HARTFORD J.D.

4/19/24 -
cc: T. Gay, M. Pech, RJD
S. Bremond

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The court has jurisdiction over this matter. The parties were married on March 7, 2015, in Queens, New York. The parties have resided in Connecticut for twelve months prior to the entry of this final decree. The marriage of the parties has broken down irretrievably with no possibility of reconciliation. The allegations in the complaint have been proven and are found to be true.

There is one minor child born of the marriage: Gabriella Ballantyne born May 16, 2015. Neither party, nor the child, receive financial assistance from the State of Connecticut or any municipality thereof, other than Husky insurance.

The plaintiff is 45 years old, and in good health. She resides at 135 Bel Aire Circle in Windsor Locks, Connecticut, the marital home, with Gabriella and two of her children who are not the defendant's children. For the first few years of the marriage, the parties lived in a rental property together in Manchester, Connecticut. The plaintiff purchased the home in 2018 for \$129,000 and she is the sole person on the deed and on the mortgage. She paid the approximately \$11,000 down payment on the property from her earnings. The loan she obtained for the home was for approximately \$140,000 as she obtained a loan for more than the purchase price so that she could have additional funds to make capital improvements to the property. She has consistently paid the mortgage on the home throughout the marriage. She has never refinanced the home mortgage. The plaintiff places a current value on the home of \$189,000 and the defendant values it at \$307,098. Both parties purportedly obtained these values online. The court finds the defendant's stated value to be

reasonable. The plaintiff is employed at Veterans Affairs (V.A.) and earns \$1322 weekly.

From 2021 through December of 2023, the plaintiff earned significant additional income by taking care of a disabled person who moved into the marital home. Based upon the documentation provided by the plaintiff, she earned \$18,888 in 2022 and \$24,218 in 2023. However, she is no longer earning this income.

The plaintiff is enrolled in the Federal Employee Retirement System which consists of a Thrift Savings Plan, Social Security, and a Basic Benefit Plan. The plaintiff currently has approximately \$22,230 in her Thrift Savings Plan. It is not clear what she may be entitled to under the Basic Benefit Plan after five years of service. The parties have no joint financial accounts or assets of any type.

The defendant father appears to be in good health and currently earns \$920 weekly through his employment. He is seeking 90 days to vacate the marital home. The court finds this to be a reasonable period of time. The defendant is also seeking cash in the form of equity from the house and/or from the plaintiff's Thrift Savings Plan in order to finance his relocation.

The defendant states that he has contributed significant labor to the marital home. He still resides in the home, on the couch in the living room. He testified that he is very handy and knows how to do electrical and plumbing work, along with other home improvements. From 2018-2020, his full-time job was working on the house. He renovated the kitchen, refinished the floors and did electrical and plumbing work

on the house. He values his labor during this time period at \$65,000-\$80,000.

However, no evidence was produced to support this valuation. In addition, the defendant contributed toward household bills, such as groceries, during the course of the marriage.

The parties' child is eight years old and a third-grade student at Noah Webster MicroSociety Magnet School in Hartford. She has a strong bond with the defendant and has lived with both parents throughout her life. Yet, the plaintiff is seeking sole legal custody of the child because she has responsibility for all decisions for her and does not find the defendant helpful. She does agree that the defendant should have parenting time and did not object to the defendant's proposal of every other weekend and every Wednesday after school from 3 p.m. to 7 p.m. The defendant is involved with her daughter and communicates with her school. He is seeking joint legal custody and cannot fathom that the plaintiff does not find that to be appropriate. The court agrees.

The parties agree that the defendant shall pay child support to the plaintiff pursuant to the child support guidelines. The presumptive weekly amount of child support payable by the defendant is \$133.

Both parties have waived the right to alimony.

Unless otherwise stated herein, the court relied on the financial affidavits filed in this matter by the parties.

The court finds the values for the parties' expenses, assets, and liabilities as of the date of dissolution. The court accepts the values as stated on the parties' respective financial affidavits for their assets, expenses and liabilities, and accepts the value of the marital home as stated on the defendant's financial affidavit.

Additional findings of fact are stated or incorporated as applicable in the discussion, conclusion and orders set forth in this decision.

RELEVANT CASE LAW

Trial Court's Role

“It is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. .. The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible.” (Internal quotation marks omitted.) *Caciopoli v. Lebowitz*, 131 Conn. App. 306, 327, 26 A.3d 136 (2011), *aff'd*, 309 Conn. 62, 68 A.3d 1150 (2013). “Nothing in our law is more elementary than that the trier is the final judge of the credibility of witnesses and of the weight to be accorded their testimony.” *Morande v. Newman Lincoln-Mercury, Inc.*, 5 Conn. App. 423, 423, 499 A.2d 78 (1985), citing *Morgan v. Hill*, 139 Conn. 159, 161, 90 A.2d 641 (1952).

“The factfinding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties, which is not

fully reflected in the cold, printed record which is available to [appellate courts].”

Lupien v. Lupien, 192 Conn. 443, 445, 472 A.2d 18 (1984).

Best Interest of the Child

In deciding the best interest of the child, the court may consider, but is not limited to, sixteen factors set forth in § 46b-56 (c).¹ “[I]n matters involving child custody, and, by implication, visitation rights, [although] the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the

¹ General Statutes § 46b-56 (c) provides: “In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child’s parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child’s siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents’ dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child’s adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child’s family home pendente lite in order to alleviate stress in the household; (11) the stability of the child’s existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child’s cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision.”

child [that] must control the decision of the court.” (Internal quotation marks omitted.)
Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980).

Distribution of Assets

General Statutes § 46b-81² “confers broad powers upon the court in the assignment of property, and the allocation of liabilities and debts is a part of the court’s broad authority in the assignment of property.” (Internal quotation marks omitted.) Roos v. Roos, 84 Conn. App. 415, 420, 853 A.2d 642, cert. denied, 271 Conn. 936, 861 A.2d 510 (2004). “Indeed, § 46b-81 (a) permits the farthest reaches from an equal division as is possible, allowing the court to assign to either the husband or wife all or any part of the estate of the other.” (Internal quotation marks omitted.) Kaczynski v. Kaczynski, 124 Conn. App. 204, 213, 3 A.3d 1034 (2010). A trial court has discretion to remedy a party’s “violations of a court order through its distribution of the parties’ marital property.” O’Brien v. O’Brien, 326 Conn. 81, 103, 161 A.3d 1236 (2017). An unequal distribution of assets may be warranted where one party is abusive and responsible for the breakdown of the marriage. See Desai v. Desai, 119 Conn. App. 224, 238, 987 A.2d 362 (2010). “There is no . . . requirement

² General Statutes § 46b-81 (c) provides: “In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates.”

that the court specifically state how it weighed the [§ 46b-81 (c)] factors or explain in detail the importance it assigned to these factors.” Id.

DISCUSSION

The parties’ marriage appeared stressed within a few years into its commencement. The defendant found the plaintiff to be controlling. In his words: “She plays the role of the guy, rather than of the wife.” He feels used. He thinks that she had a plan to stay with him through the renovation of her home, which she purchased solely in her name, and thinks she stayed with him because of his handiwork talents. He took care of their child and her other children when she was working and improving her earnings and her career. He appeared hurt and incredulous that the court might believe that a man would be a part of a household and contribute nothing. He passively accepted, yet resented, her dominance. In turn, the plaintiff took advantage of the defendant. She knew the life that she wanted to create and went forward and created it with his assistance, but without his inclusion or input. The plaintiff is a strong, successful woman, who has financially taken care of her children, but who has also left the defendant behind.

It is time for these parties to live separately and try to work together to support and take care of their child. It is reasonable that the defendant should be the recipient of some of the equity in the marital home and the plaintiff’s work earnings during the marriage. However, as the court does not find it is in the child’s best interest to sell

the marital home, the plaintiff will have to utilize her other available funds to fairly compensate him.

The court finds evidence that it is more likely than not that the parties would have provided support to their children for the expenses of higher education or private occupational school if the family were intact.

CONCLUSION

The court finds the parties' testimony to be credible. This marriage collapsed due to the parties' different views of their respective marital roles and declining respect for one another.

As to the issues of child support, alimony, the assignment of assets, and liabilities, the court has entered orders that it finds to be fair and equitable under all the facts and circumstances as presented. In the case of custody and parenting, the court has entered orders that are in the best interest of the minor children.

ORDERS

1. Dissolution of Marriage

The marriage of the parties is hereby dissolved on the grounds of irretrievable breakdown. The parties are declared to be single and unmarried.

2. Custody

The parties shall have joint legal custody of the minor child. The minor children's primary residence for school accommodation purposes shall be with the plaintiff. The defendant shall have parenting time with the child each Wednesday

from after school at approximately 3:00 p.m. to 7:00 p.m. and every other weekend from Friday after school until Sunday at 6:00 p.m. and any other time as mutually agreed upon by the parties. Vacation and holiday time shall be as follows, unless otherwise mutually agreed upon by the parties:

Christmas Day commencing at 10 a.m.: Even years with defendant; odd years with plaintiff;

Christmas Eve commencing at 4 p.m.: Odd years with defendant; even years with plaintiff;

Balance of Christmas school break: According to regular parenting schedule.

February school break: Even years with defendant; odd years with plaintiff;

April school break: Odd years with defendant; even years with plaintiff;

Easter Sunday: According to regular parenting schedule;

Memorial Day, Labor Day: Child will stay with whichever parent has had her for preceding weekend to the Monday holiday;

July 4: Even years with defendant; odd years with plaintiff;

Halloween: According to regular parenting schedule;

Thanksgiving from 12 noon to following day at 12 noon: Odd years with defendant; even years with plaintiff.

3. Child Support

The defendant shall pay weekly child support to the plaintiff in the amount of \$133, which is the presumptive amount of child support pursuant to the Child Support Guidelines. The child support ordered is subject to a contingent, rather than immediate, income withholding order. All uninsured and unreimbursed medical expenses, dental expenses and work-related childcare for the minor children shall be paid 78% by the plaintiff and 22% by the defendant, in accordance with the Guidelines.

4. Alimony

Neither party shall receive alimony from the other party.

5. Health Insurance

The plaintiff shall maintain medical insurance for the benefit of the minor child until she attains the age of twenty-three or graduates from college as long as the insurance is available through her employer at a reasonable cost. She shall otherwise maintain the child's enrollment in Husky insurance.

The parties shall be responsible for the maintenance and cost of their own health insurance after the date of dissolution.

6. Assets

a. Real Estate: Full ownership in 135 Bel Aire Circle in Windsor Locks and continue to be responsible for any mortgages, taxes, insurance and all expenses associated with the property from the date of this judgment forward and shall

indemnify and hold the defendant harmless thereon. The defendant shall vacate the marital home no later than 90 days from the date of this judgment.

b. Securities/Pension/Retirement: The defendant shall receive a distribution of \$12,000 from the plaintiff's Thrift Savings Plan as soon as possible. Said transfer shall be by way of a Qualified Domestic Relations Order or other tax-free method of transfer (QDRO) as may be permitted or required by the plaintiff's employer or pension plan administrator. The parties shall use the services of a mutually agreed upon person to prepare the QDRO and shall equally share the costs for its preparation. If the parties cannot reach agreement within 14 days of this judgment regarding the person to prepare the QDRO, the defendant shall choose the individual. The court shall retain jurisdiction over this matter to fulfill the intent of this provision related to the division of the retirement assets.

c. Motor Vehicles: Each party shall retain the car they are currently driving. The plaintiff shall retain the 2014 Infiniti QX60 and the defendant shall retain the 2017 Infiniti QX70. Each party shall assume and indemnify the other from all expenses pertaining to the vehicles, including any loans, taxes, insurance, registration, or other costs associated with their respective vehicles.

d. Bank Accounts: The parties shall each retain their respective individual bank accounts as listed on their financial affidavits.

e. Personal Property: Each party shall retain any personal property currently in their possession free from any claim by the other party.

7. Liabilities

The parties shall each be solely responsible for the debts and liabilities as listed on their respective financial affidavits as filed herein.

8. Educational Support

The court shall retain jurisdiction to enter an educational support order pursuant to §46b-56c.

9. Taxes/Credit

The parties shall alternate claiming the minor child each year on their respective tax returns. The plaintiff shall take the deduction/credit for 2024, and the parties shall alternate each year thereafter.

10. Dissemination

Neither party shall allow their minor children to review or receive a copy of this decision.

11. Indemnification

Each of the parties shall indemnify and hold the other harmless with respect to any debt, or portion thereof, ordered to be paid herein.

Each party is ordered to sign whatever documents are necessary and presented to them by the other party to effectuate these orders within ten days of presentment unless otherwise ordered herein.

Unless otherwise specifically set forth herein, these orders are effective immediately.

12. **Restoration of Name**

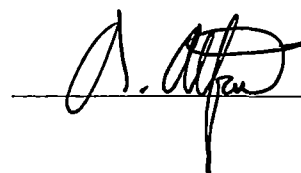
The plaintiff's name shall be restored to Tracey Gay.

13. **Parenting Education Program**

Any party who has not completed the required parenting education program is ordered to do so within 60 days after the date of judgment by completing an appropriate in-person or internet-based program.

SO ORDERED.

BY THE COURT,

A handwritten signature in black ink, appearing to read 'J. Alfano', is written over a horizontal line.

Alfano, J