

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: January 12, 2012

512754

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JULIE MAGGIORE,

Respondent,

v

MEMORANDUM AND ORDER

JOSEPH MAGGIORE,

Appellant.

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Calendar Date: November 15, 2011

Before: Spain, J.P., Lahtinen, Malone Jr., Stein and  
Egan Jr., JJ.

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Teresa C. Mulliken, Harpersfield, for appellant.

Richard L. Gumo, Delhi, for respondent.

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Lahtinen, J.

Appeals from an order and a judgment of the Supreme Court (Peckham, J.), entered September 27, 2010 and November 23, 2010 in Delaware County, ordering, among other things, equitable distribution of the parties' marital property and maintenance to plaintiff.

In this matrimonial action, defendant contends that Supreme Court abused its discretion in determining that he had wastefully dissipated marital assets, failed to find economic fault by plaintiff, and erred in granting plaintiff maintenance. The parties were married in 1996, they are the parents of two children (born in 1992 and 1996), and defendant commenced a divorce action in 2008. He discontinued his action in December 2009 and plaintiff immediately commenced the current action. Several orders were entered while the actions were pending,

including mutual orders of protection as well as an order that defendant continue paying the mortgage on the marital residence and that he keep plaintiff on his health insurance. Defendant, however, stopped the mortgage payments resulting in a foreclosure proceeding, and he removed plaintiff from his health insurance at a time when she was recovering from back surgery. In an attempt to prevent foreclosure on the home, defendant was permitted, with plaintiff's consent, to withdraw some retirement funds, which he instead used for his personal expenses. He also violated the protective order resulting in a multicount indictment, and he pleaded guilty to criminal contempt in the second degree.

At the outset of trial, the parties stipulated to grounds for divorce and custody, with a bench trial ensuing on the issues of maintenance, equitable distribution and child support. Although Supreme Court rejected plaintiff's contention that defendant's action constituted egregious conduct that should affect equitable distribution, it did find wasteful dissipation by defendant and was unpersuaded by defendant's assertion of economic fault by plaintiff. The court awarded plaintiff the marital residence (which was characterized by Supreme Court as essentially worthless in light of foreclosure and other judgments) and her salon business, as well as a distributive award of \$14,341.71. Plaintiff received maintenance of \$250 per week for six years and child support was set at \$182 per week. Defendant appeals.<sup>1</sup>

The record supports Supreme Court's determination that defendant wastefully dissipated marital assets, which is one of the statutory factors in equitable distribution analysis (see Domestic Relations Law § 236 [B] [5] [d] [12]; Noble v Noble, 78 AD3d 1386, 1388-1389 [2010]). During the divorce actions, defendant failed to make mortgage payments resulting in foreclosure on a primary marital asset, and he used money from his retirement account for personal reasons rather than to

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<sup>1</sup> Defendant's appeal from the September 2010 order must be dismissed since it was subsumed by the appeal from the November 2010 judgment (see Armstrong v Armstrong 72 AD3d 1409, 1410 n 1 [2010]).

prevent foreclosure. He further permitted vehicles purchased during the marriage to be repossessed and a judgment to be entered for unpaid marital debt. Defendant repeatedly violated court orders resulting in a substantial reduction in marital assets.

Defendant's assertion that Supreme Court erred in not finding economic fault by plaintiff is unpersuasive. To be sure, this matrimonial action was replete with acrimoniousness and uncooperative postures by both parties. However, Supreme Court was in the best position to consider the credibility of the parties' various accusations (see Matter of Lopez v Robinson, 25 AD3d 1034, 1035-1036 [2006]), and its decision not to attribute economic fault to plaintiff in its equitable distribution analysis was not an abuse of discretion (see Farkas v Farkas, 11 NY3d 300, 310 [2008]). Supreme Court's determination regarding equitable distribution has ample record support.

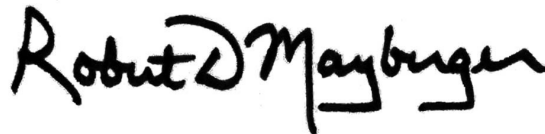
The requisite statutory factors were considered by Supreme Court regarding maintenance, and the award was well within its discretion (see Fosdick v Fosdick, 46 AD3d 1138, 1140 [2007]; Brzuskiewicz v Brzuskiewicz, 28 AD3d 860, 862 [2006]). The court noted, among other things, defendant's superior earning power, plaintiff's back problems and the potential affect on her ability to continue working as a hair stylist, her need to train for other work, the length of the marriage, the amount of time before the children reached the age of majority, and plaintiff's role as primary caretaker of the children.

Spain, J.P., Malone Jr., Stein and Egan Jr., JJ., concur.

ORDERED that the appeal from the order entered September 27, 2010 is dismissed, without costs.

ORDERED that the judgment entered November 23, 2010 is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court