

SUPREME COURT OF NEW HAMPSHIRE

In the Matter of Eric J. Dube and Jeannie Dube

163 N.H. 575, 44 A.3d 556 (2012) · No. 2011-075 · Decided May 11, 2012

SUMMARY

The Supreme Court of New Hampshire reviewed a divorce decree awarding Eric J. Dube a fault-based divorce, an unequal division of marital property, and denying Jeannie Dube alimony. The court held that Eric was not an innocent party because he had committed adultery and therefore was not entitled to a fault-based divorce, but it upheld dissolution of the marriage based on irreconcilable differences. The court affirmed the alimony denial and unequal property distribution, and declined to review the challenge to the stipulated parenting plan because it was not preserved.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Conboy, J.; Dalianis, C.J.; Lynn, J.; Ualianis, J.
JURISDICTION	New Hampshire
DECIDED	May 11, 2012
DOCKET	2011-075
DISPOSITION	other
PROCEDURAL POSTURE	Jeannie Dube appealed the final divorce decree entered by the Derry Family Division. She challenged the fault-based ground for divorce, the unequal division of marital property, the denial of alimony, and the stipulated parenting plan.
STANDARD OF REVIEW	Factual findings are upheld unless unsupported by the evidence or legally erroneous. Alimony and property-distribution decisions are reviewed under the unsustainable exercise of discretion standard. Unpreserved issues are not considered on appeal.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Jeannie Dube v. Eric J. Dube

TOPICS

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PRACTICE AREAS

family law

divorce

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QUESTIONS PRESENTED

1. Whether Eric was an innocent party entitled to a fault-based divorce after admitting to adultery.
2. Whether the trial court properly denied Jeannie's request for alimony.
3. Whether the trial court adequately supported its unequal division of marital property with written findings and legally relevant considerations.
4. Whether Jeannie's challenge to the stipulated parenting plan was preserved for appellate review.

HOLDINGS

1. Eric was not entitled to a fault-based divorce because his admitted adultery made him not an innocent party, and the record did not establish that Jeannie condoned the adultery. The divorce could nevertheless proceed on the no-fault ground of irreconcilable differences.
2. The trial court sustainably exercised its discretion in denying Jeannie's request for alimony.
3. The trial court made sufficient written findings and rulings to support its unequal division of marital property in Eric's favor, and the distribution was not an unsustainable exercise of discretion.
4. The court declined to address the challenge to the stipulated parenting plan because Jeannie did not raise the argument in the trial court.

KEY QUOTATIONS

"Because we conclude that Eric is not entitled to a fault-based divorce, we need not address Jeannie's alternative argument that the cause of the marital breakdown could not have been her conviction since she had not yet been convicted when the divorce petition was filed or amended prior to the final hearing. Nevertheless, we affirm the trial court's decision dissolving the parties' marriage." (560)

"Affirmed in part; reversed in part." (562)

FACTUAL BACKGROUND

Eric and Jeannie Dube married in 1997 and acquired a marital home in Candia where they lived with their minor son and other family members. After Eric admitted to a single instance of adultery, Jeannie threatened to kill family members, burn the marital residence, and then doused the residence and garage with gasoline, attempted to ignite them, damaged property with an axe, and chased Eric's father. Jeannie was convicted of attempted arson and criminal mischief and sentenced to two to four years in prison; the trial court awarded Eric an unequal share of the marital property and denied Jeannie's alimony request in light of her incarceration and Eric's financial obligations.

PROCEDURAL HISTORY

Eric Dube filed for divorce, initially alleging irreconcilable differences and later adding fault-based grounds based on Jeannie Dube's conduct and criminal conviction. After a final hearing, the trial court granted a fault-

based divorce, awarded Eric an unequal share of the marital property, denied Jeannie's alimony request, and adopted the stipulated parenting plan. The Supreme Court of New Hampshire affirmed in part and reversed in part.

DISPOSITION

other

CASES CITED

- Dombrowski v. Dombrowski, 131 N.H. 654, 559 A.2d 828 (1989)
- In the Matter of Hampers & Hampers, 154 N.H. 275, 911 A.2d 14 (2006)
- Rockwood v. Rockwood, 105 N.H. 129, 194 A.2d 771 (1963)
- Schwarz v. Schwarz, 427 S.W.2d 734 (Mo. Ct. App. 1968)
- Tibbetts v. Tibbetts, 109 N.H. 239, 248 A.2d 75 (1968)
- Quincy v. Quincy, 10 N.H. 272 (1839)
- In the Matter of Peirano & Larsen, 155 N.H. 738, 930 A.2d 1165 (2007)
- In the Matter of Fowler and Fowler, 145 N.H. 516, 764 A.2d 916 (2000)
- Calderwood v. Calderwood, 114 N.H. 651, 327 A.2d 704 (1974)
- In the Matter of Henry, 163 N.H. 175, 37 A.3d 320 (2012)
- In the Matter of Crowe & Crowe, 148 N.H. 218, 804 A.2d 455 (2002)
- In the Matter of Salesky & Salesky, 157 N.H. 698, 958 A.2d 948 (2008)
- In the Matter of Costa & Costa, 156 N.H. 323, 937 A.2d 288 (2007)
- McAlpin v. McAlpin, 129 N.H. 737, 532 A.2d 1377 (1987)
- LaMontagne Builders v. Brooks, 154 N.H. 252, 910 A.2d 1162 (2006)