SUPREME COURT OF VERMONT

Juster v. Juster

182 Vt. 622 (2007) · Decided October 10, 2007

SUMMARY

The Vermont Supreme Court affirmed the denial of a defendant's motion under V.R.C.P. 60(b)(1), (2), and (6) to set aside a divorce judgment based on a stipulation. The court held that the defendant's failure to scrutinize asset valuations prepared by his accountant was a voluntarily assumed tactical decision, not grounds for relief based on mistake, newly discovered evidence, or another reason justifying relief.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	October 10, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the denial of his V.R.C.P. 60(b)(1), (2), and (6) motion seeking relief from a final divorce order and decree entered pursuant to a voluntary stipulation.
STANDARD OF REVIEW	Abuse of discretion.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion
PARTIES	Defendant v. Plaintiff

TOPICS

family law procedure · divorce · civil procedure · appellate procedure · remedies

PRACTICE AREAS

family law · civil procedure · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the defendant was entitled to relief from the divorce judgment under V.R.C.P. 60(b)(1) based on alleged errors in asset valuations that he could have discovered before voluntarily entering the stipulation.

2. Whether the alleged valuation errors constituted newly discovered evidence warranting relief under V.R.C.P. 60(b)(2).
3. Whether relief was available under V.R.C.P. 60(b)(6) when the asserted grounds were encompassed by Rule 60(b)(1) and (2).

HOLDINGS

1. A party is not entitled to relief under V.R.C.P. 60(b)(1) for errors resulting from the party's voluntary tactical decision to accept available information without scrutiny and enter into a stipulation.
2. Evidence available to a party before judgment, but not discovered because the party failed to exercise due diligence, does not qualify as newly discovered evidence under V.R.C.P. 60(b)(2).
3. Relief under V.R.C.P. 60(b)(6) is unavailable when the asserted grounds are encompassed within one of the preceding Rule 60(b) grounds.

KEY QUOTATIONS

> *"Rule 60(b) "does not operate to protect a party from freely made tactical decisions which in retrospect may seem ill advised""* (623)

> *"Relief under V.R.C.R 60(b)(6) is available only when a ground justifying relief is not encompassed within any of the first five classes of the rule."* (623)

FACTUAL BACKGROUND

The parties entered into a voluntary divorce stipulation dividing their property by percentages based on asset values listed in a spreadsheet. Defendant hired an accountant and accepted the spreadsheet figures without scrutinizing them, although the figures were available to him before he agreed to the stipulation. After discovering alleged valuation errors totaling approximately $500,000, defendant sought to set aside or modify the divorce judgment under V.R.C.P. 60(b).

PROCEDURAL HISTORY

The trial court entered a final order and decree of divorce based on the parties' stipulation on May 16, 2005. Defendant moved for relief from judgment on May 2, 2006, arguing that erroneous asset valuations in a spreadsheet caused an approximately $500,000 error in the property distribution. The trial court denied relief under each asserted subsection of Rule 60(b), and the Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- Sandgate Sch. Dist. v. Cate, 2005 VT 88, ¶ 6, 178 Vt. 625, 883 A.2d 774 (mem.)
- Wild v. Brooks, 2004 VT 74, ¶ 20, 177 Vt. 171, 862 A.2d 225

- Stalb v. Stalb, 168 Vt. 235, 248, 719 A.2d 421, 429-30 (1998)
- Alexander v. Dupuis, 140 Vt. 122, 124, 435 A.2d 693, 694 (1981)

OPINION

PER CURIAM.

¶ 1. Defendant appeals from a denial of his motion for relief from judgment, filed pursuant to V.R.C.P. 60(b)(1), (2) and (6), which moved the court to set aside a final order and decree of divorce based on a stipulation.

We find no abuse of discretion by the trial court in denying defendant’s motion and affirm. See Sandgate Sch. Dist. v. Cate, 2005 VT 88, ¶ 6, 178 Vt. 625, 883 A.2d 774 (mem.) (stating abuse-of-diseretion standard for reviewing Rule 60(b) motions). ¶ 2.

The final order defendant seeks to set aside was issued on May 16, 2005. Defendant moved for relief from judgment on May 2,2006. Defendant’s claim is that, although he entered into the stipulation voluntarily, the stipulation was based on an erroneous set of figures in a spreadsheet setting forth the assets of the parties for division. Defendant submits that he did not scrutinize the spreadsheet for errors so that he did not discover them until after he entered the stipulation, having trusted the accountant whom he hired, and having relied on the accountant's good faith and professionalism.

Defendant claims that an error of some $500,000 has been made as a result of the erroneous valuations that appeared on the spreadsheet, all of which were available to defendant prior to his agreement to the stipulation.

Because the stipulation divided the parties’ property by percentages of the values stated, defendant claims he is not trying to set aside the judgment, but merely to correct the accuracy of the distributions under the stipulation. He asks that we set aside the order below and remand to distribute the assets in light of the corrected spreadsheets. ¶ 3.

The trial court accepted defendant’s allegations as true for the purposes of the motion, but denied relief claimed under each section of Rule 60(b) because defendant voluntarily entered into the stipulation. The trial court reasoned that, to the extent defendant’s accountant made mistakes, defendant had an opportunity to examine the figures before accepting them.

The fact that he did not avail himself of that opportunity does not afford him relief under Rule 60(b). No other ground for relief was justified, and therefore the trial court denied the motion. ¶4. We agree with the trial court’s analysis.

First, there is no “mistake” for which defendant is not solely responsible. Defendant made the decision to hire the accountant, accept the figures in the spreadsheet without scrutiny, and enter into a stipulation, admittedly voluntarily. This is not the sort of mistake contemplated by Rule 60(b)(1), but rather reflects a tactical decision made by defendant that he now regrets.

See Wild v. *623Brooks, 2004 VT 74, ¶ 20, 177 Vt. 171, 862 A.2d 225 (Rule 60(b) “does not operate to protect a party from freely made tactical decisions which in retrospect may seem ill advised” (citation omitted)).

Second, the “mistaken” evidence is not cognizable under Rule 60(b)(2), which permits the court to afford relief on the basis of newly discovered evidence that could not have been discovered before trial through the exercise of due diligence. See Stalb v. Stalb, 168 Vt. 235, 248, 719 A.2d 421, 429-30 (1998). By his own admission, defendant had the figures available to him, but did not exercise the opportunity to avoid the error.

Finally, no other relief is available under Rule 60(b)(6) (“any other reason justifying relief’), because the grounds asserted by defendant are of the type recognized under 60(b)(1) and (2). See Alexander v. Dupuis, 140 Vt. 122, 124, 435 A.2d 693, 694 (1981) (“Relief under V.R.C.R 60(b)(6) is available only when a ground justifying relief is not encompassed within any of the first five classes of the rule.” (citation omitted)).

Affirmed.