

SUPREME COURT OF NEW HAMPSHIRE

In re Harvey

153 N.H. 425 (2006) · Decided April 26, 2006

SUMMARY

The New Hampshire Supreme Court reviewed a divorce decree involving alimony, child support, property distribution, and reimbursement of the respondent’s parents. The court upheld the alimony award but held that a twenty-three-year installment schedule for the property settlement was unreasonable and that reimbursement to the parents was not supported by an enforceable legal obligation. The case was affirmed in part, vacated in part, and remanded.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Duggan, J.; Galway, J.
JURISDICTION	New Hampshire
DECIDED	April 26, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The petitioner appealed from a final divorce decree recommended by a marital master and approved by the Derry Family Division; the respondent cross-appealed provisions concerning property classification, distribution, and valuation.
STANDARD OF REVIEW	The trial court has broad discretion in determining property distribution and alimony, and the Supreme Court will not overturn those decisions absent an unsustainable exercise of discretion. The admission or exclusion of expert opinion is reviewed under the same unsustainable-exercise-of-discretion standard.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire.
PARTIES	Rebecca Harvey, Paul E. Harvey, Jr. (cross-appellant) v. Paul E. Harvey, Jr., Rebecca Harvey (cross-appellee)

TOPICS

- dissolution of marriage
- alimony
- equitable distribution
- appellate procedure
- standard of review

PRACTICE AREAS

family law

divorce

alimony

equitable distribution

appellate procedure

QUESTIONS PRESENTED

1. Whether the three-year duration of the petitioner's alimony award was inadequate.
2. Whether the monthly alimony award of \$3,000 was inadequate.
3. Whether the trial court abused its discretion by permitting payment of a substantial portion of the petitioner's property settlement over twenty-three years.
4. Whether the trial court erred by ordering reimbursement to the respondent's parents for their contributions to the marital home's equity absent an enforceable legal obligation.
5. Whether the trial court properly included the respondent's premarital, gifted, and separately titled property interests in the marital estate.
6. Whether the trial court abused its discretion by declining to award an unequal property distribution in the respondent's favor.
7. Whether the trial court abused its discretion by refusing expert testimony proposing a discount for the respondent's fractional interests in real estate.

HOLDINGS

1. The trial court did not unsustainably exercise its discretion by limiting alimony to three years because the petitioner had a law degree and bar passage, the evidence supported the possibility of law-related employment within approximately three to four years, and her health issues were found to be temporary.
2. The trial court did not unsustainably exercise its discretion by awarding the petitioner \$3,000 per month in alimony.
3. The trial court unsustainably exercised its discretion by permitting the respondent to pay a substantial portion of the petitioner's marital-property share over twenty-three years.
4. The trial court unsustainably exercised its discretion by ordering the parties to reimburse the respondent's parents \$275,000 and reducing the marital estate by that amount when no enforceable legal obligation to repay the contributions was found.
5. The trial court properly included the respondent's interests in the real estate, timeshares, dental practice, and dental-practice building in the marital estate.
6. The trial court did not unsustainably exercise its discretion by awarding the petitioner a slightly unequal distribution in her favor.
7. The trial court did not unsustainably exercise its discretion by refusing to admit expert testimony proposing a discount for the respondent's fractional interests in certain real estate.

KEY QUOTATIONS

“As such, a trial court should award a property settlement to be effected immediately where practicable.”
(436)

“In the event that there is no other recourse than to order a property settlement to be paid by installment, the trial court should consider, when fashioning the duration of such distribution, among other things, the liquidity of marital assets, the obligor’s ability to borrow and the threat of serious financial hardship for the obligor.” (436-437)

“Accordingly, the trial court unsustainably exercised its discretion in ordering such a reimbursement and reducing the marital estate by \$275,000.” (437)

FACTUAL BACKGROUND

The parties married in 1989, had four minor children, and separated in 2002. The petitioner primarily cared for the children and household during the marriage, obtained a law degree and passed the New Hampshire bar examination, but had limited employment outside the home at the time of divorce. The respondent earned approximately \$190,000 annually plus bonuses and owned or held interests in numerous real estate properties, a dental practice, and the building housing it. The trial court valued the marital estate at approximately \$2.9 million, awarded the petitioner approximately \$1.6 million, awarded her three years of \$3,000 monthly alimony, required reimbursement of \$275,000 to the respondent's parents, and permitted the remaining property settlement to be paid over twenty-three years.

PROCEDURAL HISTORY

The Derry Family Division entered a final divorce decree awarding joint legal custody, primary physical custody to the petitioner, child support, limited-duration alimony, and an unequal division of the marital estate. The court later corrected a mathematical error by extending the respondent's property-settlement payment schedule from fifteen to twenty-three years and denied reconsideration motions. The Supreme Court of New Hampshire affirmed some rulings, vacated the extended payment schedule and reimbursement order, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must reconsider the property settlement, using an immediate division of assets or lump-sum payment if practicable. If installment payments are necessary, it must order deferred payments over a reasonable period and consider the liquidity of marital assets, the obligor's ability to borrow, and the threat of serious financial hardship. The reimbursement order requiring payment of \$275,000 to the respondent's parents must also be vacated.

CASES CITED

- In the Matter of Sutton & Sutton, 148 N.H. 676, 679 (2002)
- In the Matter of Fowler and Fowler, 145 N.H. 516, 520-21 (2000)
- In the Matter of Letendre & Letendre, 149 N.H. 31 (2002)
- Murphy v. Murphy, 116 N.H. 672, 675 (1976)

- In the Matter of Crowe & Crowe, 148 N.H. 218, 224 (2002)
- In the Matter of Coderre & Coderre, 148 N.H. 401, 406 (2002)
- Lawton v. Lawton, 113 N.H. 429, 430-31 (1973)
- Bettinger v. Bettinger, 396 S.E.2d 709, 716-18 (W. Va. 1990)
- Dodge v. Dodge, 435 A.2d 407, 408 (Me. 1981)
- Phillips v. Phillips, 464 P.2d 876, 880 (Colo. 1970)
- Hertz v. Hertz, 657 P.2d 1169, 1173 (N.M. 1983)
- Lien v. Lien, 278 N.W.2d 436, 442 (S.D. 1979)
- Bonneville v. Bonneville, 142 N.H. 435, 438 (1997)
- Azzi v. Azzi, 118 N.H. 653, 656-57 (1978)
- Weeks v. Weeks, 124 N.H. 252, 256 (1983)
- Hoffman v. Hoffman, 143 N.H. 514, 522 (1999)
- In the Matter of Jones and Jones, 146 N.H. 119, 123 (2001)
- Dombrowski v. Dombrowski, 131 N.H. 654, 660 (1989)
- Tullgren v. Phil Lamoy Realty Corp., 125 N.H. 604, 609 (1984)
- State v. Lambert, 147 N.H. 295, 296 (2001)