

ALLISON C. BURKA

v.

DOUGLAS R. BURKA

Submitted on Briefs September 27, 2017
Decided October 12, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Allison C. Burka appeals from an amended divorce judgment and order excluding evidence entered in the District Court (Portland, *Montgomery, J.*). She argues that the court committed reversible error and otherwise abused its discretion (1) by excluding evidence of Douglas R. Burka's alleged workplace misconduct; (2) by failing to find that Douglas violated the terms of the preliminary injunction by accruing substantial credit card debt; (3) in the court's division of marital property; and (4) in the court's failure to award her attorney fees.

Contrary to Allison's contention, on the record presented, the court did not abuse its discretion when it excluded evidence of the details of Douglas's alleged workplace misconduct, *see* 19-A M.R.S. § 951-A(5)(M) (2016), as it related to his decrease in salary, *see* 19-A M.R.S. §§ 951-A(2)(A)(1), 953 (2016); M.R. Evid. 401, 402.

In addition, the court did not clearly err in its finding that after the separation, Douglas's increase in the couple's credit card debt to remain

current on the marital debt was not economic misconduct or a violation of the preliminary injunction; both Allison and Douglas benefitted from those expenditures. *Cf. Nadeau v. Nadeau*, 2008 ME 147, ¶¶ 16 n.3, 46, 957 A.2d 108.

As for Allison's argument regarding the division of the marital property and debt, we discern no abuse of discretion. *See* 19-A M.R.S. § 953. The court properly recognized that Allison and Douglas have vastly different earning capacities that support an unequal division of the marital debt in Allison's favor. *Thumith v. Thumith*, 2013 ME 67, ¶ 10, 70 A.3d 1232. Nor was the court compelled to grant Allison's request to allot substantially all of the debt associated with the marital home to Douglas. *Cf. Kapler v. Kapler*, 2000 ME 131, ¶ 12-14, 755 A.2d 502.

Lastly, the court did not abuse its discretion by declining to award Allison attorney fees where her attorney fee affidavit did not itemize the services her attorney provided and Allison failed to provide the court with a complete and accurate financial statement. *See Nadeau*, 2008 ME 147, ¶¶ 59-61, 957 A.2d 108; M.R. Civ. P. 108(c).

The entry is:

Judgment affirmed.

Susan Schultz McEvoy, Esq., Portland, for appellant Allison C. Burka

Michael J. Donlan, Esq., Verrill Dana, LLP, Portland, for appellee Douglas R. Burka