

JOHANNA M. KAVANAGH

v.

DENNIS J. KAVANAGH

Submitted on Briefs January 24, 2008  
Decided February 21, 2008

Panel: CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Johanna M. Kavanagh appeals from a divorce judgment entered in the District Court (Ellsworth, *Staples, J.*). Contrary to Johanna's contention, the trial court's reopening of the record to allow Dennis J. Kavanagh an opportunity to address its concerns regarding the marital component of certain real property did not amount to either an abuse of discretion or obvious error. *See Lussier v. Runyon*, 50 F.3d 1103, 1113 (1st Cir. 1995); *Dalphonse v. St. Laurent & Son, Inc.*, 2007 ME 53, ¶ 16, 922 A.2d 1200, 1205. Furthermore, although Johanna presented evidence seriously questioning the accuracy of Dennis's appraisal, we cannot say that the trial court was compelled to disbelieve the appraisal report as a matter of law. *See United States v.*

*Egge*, 223 F.3d 1128, 1135 (9th Cir. 2000) (finding that questions of credibility did not compel the fact-finder to discredit a witness's testimony); *Citizens Sav. Bank v. Howland Corp.*, 1998 ME 4, ¶ 5, 704 A.2d 381, 383 (stating that a determination of fair market value is clearly erroneous only if there is no competent evidence in the record to support it); *State v. Spooner*, 666 A.2d 863, 865 (Me. 1995) (stating that the weight to be given discrepancies and inconsistencies in testimony is a question left to the fact-finder). Nor did the court clearly err in accepting Johanna's expert's opinion as to the value of the property at the time of the marriage while simultaneously rejecting his assessment of the property's value at the time of the divorce. See *Rinehart v. Schubel*, 2002 ME 53, ¶ 9, 794 A.2d 73, 76. Finally, Johanna claimed that the court committed an error of law in refusing to address Dennis's purported economic misconduct. This claim was not preserved for appellate review because Johanna conceded in her closing argument "that her marital interest reaches only the 50% of fair market value" and that "this transfer was made pursuant to an estate planning effort by both parties." See *Anderson v. Anderson*, 591 A.2d 872, 874 (Me. 1991); see also *Peters v. Peters*, 1997 ME 134, ¶¶ 25-26, 697 A.2d 1254, 1261-62 (finding no economic misconduct where transfer done for purpose other than to diminish the marital estate).

The entry is:

Judgment affirmed.

---

**Attorney for Johanna Kavanagh:**

Christopher J. Whalley, Esq.  
56 Church Street  
PO Box 516  
Ellsworth, Maine 04605

**Attorney for Dennis Kavanagh:**

William B. Blaisdell, IV, Esq.  
Blaisdell & Blaisdell  
209 Main Street  
Ellsworth, Maine 04605