MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 09-41
Docket No. Aro-08-432

DANIEL L. MARTIN

v.

GEORGIE MARTIN

Submitted on Briefs February 26, 2009
Decided March 5, 2009

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

MEMORANDUM OF DECISION

Daniel L. Martin appeals from a judgment of divorce entered in the District Court (Fort Kent, *McElwee, J.*), and Georgie Martin cross-appeals.

Contrary to Daniel's contention, the court did not abuse its discretion in its division of the marital property, including debt. *See Libby v. Libby*, 2001 ME 130, ¶ 6, 781 A.2d 773, 775. The award of attorney fees was similarly within the court's discretion, given the parties' respective assets and in light of the court's finding that Daniel was "less than forthcoming during the litigation regarding his personal financial affairs." *See Largay v. Largay*, 2000 ME 108, ¶ 16, 752 A.2d 194, 198 ("An award of attorney fees should be . . . fair and just under the circumstances.") (quotation marks and citation omitted).

Further, the court did not clearly err when it found that the majority of Daniel's Federal Civil Service Disability Annuity was wage replacement and therefore non-marital. *See Williams v. Williams*, 645 A.2d 1118, 1119-20 ("A court's determination of what property is marital or non-marital is reviewed for

clear error, and will not be disturbed if there is competent evidence in the record to support it."); *see also Doucette v. Washburn*, 2001 ME 38, ¶¶ 15-16, 766 A.2d 578, 583-84 (a portion of a workers' compensation award intended as wage replacement for life is properly set aside as wages earned post-divorce, and therefore non-marital property); *and Murray v. Murray*, 529 A.2d 1366, 1368 n.1 (Me. 1987) (when a party does not file a motion pursuant to M.R. Civ. P. 52(a) or 52(b), "we assume that the trial justice found all of the facts necessary to support the decision").

The court similarly did not clearly err in its finding that the accounts and annuities in Daniel's name alone were non-marital gifts and inheritances. *See* 19-A M.R.S. § 953(2)(A) (2008); *and Veilleux v. Veilleux*, 565 A.2d 95, 96 (Me. 1989); *see also Jenkins, Inc. v. Walsh Bros., Inc.*, 2001 ME 98, ¶ 22, 776 A.2d 1229, 1236 (noting that "[t]he fact-finder has the prerogative to selectively accept or reject testimony") (quotation marks omitted).

The entry is:

Judgment affirmed.

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