

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0365, In the Matter of Paul Summerville and Sandra L'Heureux, the court on March 19, 2010, issued the following order:

Having considered the parties' briefs and the appellate record, we conclude that oral argument is unnecessary for the disposition of this appeal. See Sup. Ct. R. 18(1). The respondent, Sandra L'Heureux, appeals a final decree of divorce from the petitioner, Paul Summerville. She argues that the trial court erred by awarding her alimony of only \$1,250.00 per month for 24 months, by requiring that she liquidate assets to support herself, by denying her request to order the respondent to reimburse her for a \$12,245.00 student loan debt, and by requiring that she share the costs of a commissioner appointed to sell marital property. Finding no error, we affirm.

"The trial court has broad discretion in determining and ordering the payment of alimony." In the Matter of Nassar & Nassar, 156 N.H. 769, 772 (2008) (quotation and ellipsis omitted). We will uphold the trial court's findings and rulings as to alimony unless they are lacking in evidential support or tainted by error of law. See id. Absent an unsustainable exercise of discretion, we will not overturn the trial court's factual determinations. See id.

"It has long been recognized that the primary purpose of alimony is rehabilitative. This principle is based upon the realization that modern spouses are equally able to function in the job market and to provide for their own financial needs." Id. at 777 (quotations and citations omitted). "[T]he purpose of alimony is not to provide a lifetime profit-sharing plan." In the Matter of Sutton & Sutton, 148 N.H. 676, 679 (2002). Accordingly, an alimony award should generally encourage the establishment of an independent income source on the part of the recipient. See Nassar, 156 N.H. at 777.

RSA 458:19 (Supp. 2009) contemplates, however, that not all alimony awards must be rehabilitative. See id. The trial court may provide for more than rehabilitative alimony where "the supported party lacks the wherewithal to enter the job market and provide for [her] own financial needs, as those needs have been shaped by the parties' lifestyle during the marriage." Id. at 778 (quotation, ellipsis, and citation omitted). The statute allows an alimony award where:

- (1) the party in need lacks sufficient income, property, or both to provide for his or her reasonable needs, considering the style of living to which the parties have

become accustomed during the marriage; (2) the payor is able to continue to meet his or her own reasonable needs, considering the style of living to which the parties have become accustomed during the marriage; and (3) the party in need cannot be self-supporting through appropriate employment at a standard of living that meets reasonable needs, or is the custodian of the parties' child, whose condition or circumstances make it appropriate that the custodian not seek employment outside the home.

In the Matter of Hampers & Hampers, 154 N.H. 275, 283 (2006); see RSA 458:19, I.

Upon this record, we cannot conclude that the trial court unsustainably exercised its discretion. While the respondent claims that she "had a grand total of social security earnings of \$751.00" from 1992 through 2007, the trial court also found, and the respondent does not dispute, that she worked as a real estate developer and property manager during the same period, that her endeavors generated income, and that "[n]ot all income earned is W-2 income." Indeed, the testimony at trial suggests she was a successful developer. While the trial court did not make a specific finding as to the amount of income such activities generated, it noted that she had failed to comply with its order to provide a financial accounting, that it was "very difficult to grasp a big picture" of the parties' financial circumstances based upon the "minutia of individual snippets of financial facts and information" the parties submitted, and that "trying to go back over the financial matters that had already been settled to prove or disprove alimony [was] very counterproductive." It was the respondent's burden to establish her need for an award of alimony.

We reject the respondent's attempt to analogize this case to In the Matter of Fowler and Fowler, 145 N.H. 516 (2000), in which we struck a rehabilitative alimony award. In Fowler, the alimony recipient had "refrained from entering the workplace or furthering her education for nearly all of [the parties'] twenty-four year marriage and committed her energy to the maintenance of [the parties'] home and finances," *id.* at 521, and had received a total property settlement of only \$111,000.00, *id.* at 518. The respondent, by contrast, in addition to having developed an extensive background in real estate development during the marriage, has a bachelor's degree, a paralegal certificate, and training to be a medical transcriptionist, and under the parties' property settlement, received numerous assets, including all of the parties' investment properties and business interests, with a gross value, according to her financial affidavit, in excess of \$1.7 million, and a net value of almost \$700,000.00. See Nassar, 156 N.H. at 778; In the Matter of Harvey & Harvey,

153 N.H. 425, 434 (2006), overruled on other grounds by In the Matter of Chamberlin & Chamberlin, 155 N.H. 13, 15-16 (2007).

Nor were the trial court's findings inconsistent with its award of alimony. While the trial court found that the respondent "lacks sufficient income and property, inclusive of the property awarded by the Partial Stipulation, to provide for her reasonable needs," that she "earned comparatively little or no income to that which was earned, pursued and generated" by the petitioner, and that the petitioner "has a substantially greater opportunity to earn future income than" she does, it did not find that she lacks the capacity to become self-supporting. Indeed, it specifically rejected her request that it rule she "is unable to be self-supporting through appropriate employment at a standard of living that meets her reasonable needs without substantial alimony contribution by Petitioner." While the trial court found that the respondent's present income would not "allow her to live in the same manner as existed previously," nothing in the record or in the trial court's findings compels the conclusion that she is unable to become self-supporting at a standard of living that meets her reasonable needs, see RSA 458:19, I (c), or that she is entitled, in the meantime, to a greater amount.

The respondent contends that the trial court erred under Russman v. Russman, 124 N.H. 593 (1984), by requiring that she liquidate assets awarded to her in order to sustain herself. In Russman, we concluded that, where the recipient of alimony was "employed commensurate with her training, and yet [wa]s unable to even come close to meeting her expenses," where the alimony awarded was clearly inadequate to meet her needs, and where the trial court's presumption that the properties awarded her had a present use value of \$90,000.00 was unsupported, the property distribution alone could not support the alimony award. See id. at 597-98. We did not hold, however, that a property distribution could never be considered in awarding alimony, noting instead that "the assets received in the division of property might be a proper consideration in making a corresponding support award." Id. at 598.

Contrary to the respondent's argument, the trial court in this case did not require that she liquidate the properties awarded to her. While it noted that its alimony award was "based upon the fact that it may take a period of time before the properties in Pittsburgh are liquidated and [the respondent] can then utilize said monies to generate a cash flow," it also found that she had "stated that she would be selling the properties in Pittsburgh, Pennsylvania," a finding she does not challenge on appeal. Moreover, unlike the alimony recipient in Russman, the record in this case, as noted above, supports a determination that the respondent is able to become self-supporting at a standard of living that meets her reasonable needs.

Finally, we agree with the petitioner that, to the extent the respondent argues that the alimony award was impermissibly retroactive and retaliatory, and otherwise challenges the refusal of the trial court to order the petitioner to reimburse an education debt, and its order that the parties share the costs of a commissioner equally, the arguments are not sufficiently developed to warrant judicial review. See State v. Blackmer, 149 N.H. 47, 49 (2003).

Affirmed.

Broderick, C.J., and Dalianis, Duggan and Conboy, JJ., concurred.

**Eileen Fox,
Clerk**

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