

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2008-0777, In the Matter of Virginia G. Burr and Robert E. Burr, Sr., the court on August 11, 2009, issued the following order:**

The respondent, Robert E. Burr, Sr., appeals a post-divorce decree order of the trial court. He argues that the trial court erred in implementing the divorce decree when it did not effectuate an equitable distribution of the property and was impossible for him to satisfy. He seeks an order that will require the trial court to amend its original decree to “formulate a more just result.” We affirm.

The parties’ divorce became final in January 2008; no appeal was taken from the decree. One of the provisions of the decree addressed the marital home and provided in relevant part: “Thus, the equity to which Ms. Burr is entitled is \$112,500.00. Mr. Burr shall have 90 days within which to make arrangements to transfer that sum to Ms. Burr.” When the respondent failed to pay the required amount, the petitioner, Virginia G. Burr, filed a petition for contempt. After a hearing and multiple post-hearing orders addressing the parties’ motions for reconsideration, the trial court reaffirmed the language of the divorce decree awarding the petitioner \$112,500. The trial court gave the respondent 30 additional days to pay the petitioner; if he failed to comply, he was then ordered to deed the property to the petitioner to create a joint tenancy to allow the petitioner to attempt to sell the property. The trial court reiterated that the petitioner was entitled to retain \$112,500 of the sale proceeds.

The respondent appealed. Citing bad health, a poor real estate market, bad weather and the unavailability of suitable financing mechanisms, he argues that the trial court erred in insuring that “its original equitable mandate be carried out.”

A property settlement in a divorce decree is a final distribution of a sum of money or specific portion of the spouses’ property and is not subject to judicial modification on account of changed circumstances. In the Matter of Birmingham & Birmingham, 154 N.H. 51, 57 (2006). Such a property distribution will not be modified unless the complaining party shows that the distribution is invalid due to fraud, undue influence, deceit, misrepresentation or mutual mistake. Id.

Having reviewed the record before us, we conclude that the respondent failed to establish that the property division was invalid for any of the foregoing reasons. The property award was not appealed. To the extent that circumstances changed after the parties' decree became final, those changes do not permit modification of the decree. See id. Accordingly, the trial court correctly denied the respondent's request for modification. See id.

Affirmed.

BRODERICK, C.J., and DALIANIS and HICKS, JJ. concurred.

**Eileen Fox,  
Clerk**

Distribution:

Clerk, Concord Family Division, 217-2005-DM-00935

Honorable Susan B. Carbon

Honorable Edwin W. Kelly

✓ Joshua L. Gordon, Esquire

Diane M. Puckhaber, Esquire

Marcia McCormack, Supreme Court

Michelle A. Caraway, Supreme Court

Irene Dalbec, Supreme Court

Lorrie Platt, Supreme Court

File