

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0623, In the Matter of Milena Matyas and John Toth, the court on December 14, 2010, issued the following order:

The respondent, John Toth, appeals an order of the family division granting the petitioner, Milena Matyas, a final decree of divorce. He argues that the trial court erred in failing to include certain Hungarian property, an apartment owned by the petitioner and her sister, in its valuation of the marital estate and in failing to equitably divide the augmented marital estate. We affirm.

The trial court is afforded broad discretion in determining matters of property distribution when fashioning a final divorce decree. In the Matter of Costa & Costa, 156 N.H. 323, 326 (2007). Such discretion includes the awarding of an asset in its entirety to one party, *see id.* at 328, and the valuation of assets, *see In the Matter of Chamberlin & Chamberlin*, 155 N.H. 13, 16 (2007). Absent an unsustainable exercise of discretion or error of law, we will affirm the trial court's determination, *Costa*, 156 N.H. at 326, giving deference to the trial court's determination of witness credibility and weight to be accorded evidence, *see In the Matter of Aube & Aube*, 158 N.H. 459, 465 (2009).

We note at the outset that the respondent does not contest that, under Hungarian law, the petitioner's interest in the Hungarian property is subject to the right of her mother to occupy the property for the remainder of her life. Nor does he dispute that the property cannot, under Hungarian law, be sold without the consent of the petitioner's sister, who testified that she would not consent to a sale.

We note also that, contrary to his assertion, the record reflects that the trial court considered the petitioner's Hungarian property to be part of the marital estate and included it within the property division. After finding that the petitioner had a contingency interest in the property, the trial court determined that the property had "no present financial value at all" for the petitioner because it could not be sold and the petitioner lacked control over it. The court then specifically ordered that "[a]ny interest either party may have in any real estate in Hungary shall remain his or hers alone, and shall be administered or disposed of pursuant to Hungarian law." The petitioner was awarded assets valued at approximately \$196,532; the respondent was awarded assets valued at approximately \$203,000.

To the extent that the respondent contends that the trial court erroneously concluded that the petitioner's interest could not be sold, we conclude that this

issue has not been preserved for our review. In his motion for reconsideration before the trial court, he did not argue that the court erred in determining whether the petitioner's interest alone could be sold under Hungarian law. Rather, he argued that "it was error for the Court to determine that the property has no value simply because she can not sell her interest and/or because she, alone, lacks sole control over it." (Emphasis added.) See N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002) (to preserve issue for appellate review, appealing party obligated to bring unanticipated error in final order to trial court's attention in motion for reconsideration).

Finally, to the extent that the respondent claims that the petitioner has "acknowledged that the property is worth about \$150,000 to each party," the record does not support his assertion. While the respondent asserted in his motion for reconsideration that the petitioner's interest was worth \$150,000, the petitioner did not agree with this assertion, but rather characterized it as "the full value claimed by the respondent," and argued that the respondent offered no evidence to support his claim.

Based upon the record before us, we cannot conclude that the trial court's determination that the petitioner's interest in Hungarian property had no present value, or its award of the asset in its entirety to the petitioner, was either an unsustainable exercise of discretion or erroneous as a matter of law.

Any issues raised in the respondent's notice of appeal but not briefed are deemed waived. See State v. Blackmer, 149 N.H. 47, 49 (2003).

Affirmed.

DALIANIS, HICKS and CONBOY, JJ., concurred.

**Eileen Fox,
Clerk**

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