

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2021 TERM

OCTOBER SESSION

Case No: 2021-0032 and 2021-0036

In the Matter of Matthew Routhier and Kelly Routhier

Mandatory Appeal Pursuant to Supreme Court Rule 7

Appeal from a Decision of the

6th Circuit-Family Division- Hooksett

REPLY BRIEF OF RESPONDENT/APPELLANT

KELLY ROUTHIER

Keri J. Marshall, Esquire
NH Bar # 4092
On the brief

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On oral argument

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TABLE OF CASES AND STATUTES

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STATUTES:

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ARGUMENT

Question 1. Whether the trial court erred as a matter of law in interpreting RSA 458:16-a when it found that the statute precluded division of the husband's share of property owned by him and his parents.

On page 25 of his brief the Petitioner/ Cross-Appellant states that it is undisputed that his name is on the deed to the Dunbarton property as a joint tenant with rights of survivorship with his parents. He further states that as a joint owner he has an undivided interest in the property and the full right to occupy and use all of it. That interest is a property interest that was owned by the Petitioner/Cross-Appellant during the marriage.

On page 26 of his brief, the Petitioner/Cross-Appellant states that under RSA 490-D "the Family Court can only divide property that is owned by one or both of the parties." The Respondent/Appellant asserts that nowhere in RSA 490-D does it state that the Family Court can only divide property that is owned (solely) by one or both of the parties.

RSA 458:16-a I states that property shall include all tangible and intangible property and assets, real and personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties.

RSA 458:16-a II states that when a dissolution of a marriage is decreed, the court may order an equitable division of property

between the parties and further states that the court shall presume that an equal division is an equitable division.

In his Answering Brief Petitioner/Cross-Appellant relies on IMO Muller and Muller, 164 N.H. 512 (2013) and IMO Mallett and Mallett, 163 N.H. 202 (2012), although the facts that he ascribes to Muller are actually the facts of Mallett. That reliance by the Petitioner/Cross-Appellant is erroneous as both of those cited cases are distinguished from the case at bar and are not controlling of the decision in this case.

Mallett dealt with an unmarried couple who had lived together for many years, had children together and owned real estate. This court held that the Family Division does not have jurisdiction to divide assets of an unmarried couple. Mallett is distinguishable from the case at bar in that in this case, are married.

Muller dealt with a married couple who owned real estate subject to a first mortgage to a bank and a second mortgage to husband's parents. The Family Division disregarded the mortgage to the husband's parents and divided the net equity between the parties. This Court held that the Family Division does not have jurisdiction to invalidate a third party's claim of interest in marital property. Muller does not apply to the case bar as there is no issue regarding the validity of the third parties' (i.e. Mr. Routhier's parents') interest in the real estate. It is undisputed that Petitioner/Cross-Appellant and his parents each own an undivided one-third interest in the Dunbarton real estate. The Respondent is not seeking to invalidate the parents' interests or to be awarded any portion of their

interests. She is asking that the husband's interest be included in the division of the marital assets.

This matter must be remanded to the Family Division for a determination of the value of the Husband's interest in the Dunbarton property and consideration of that value in the division of the marital assets (The wife had that property appraised and the appraiser testified).

Question 2. Whether the trial court erred as a matter of law when it found that that the mother's gross monthly income was 52% of the father's, yet awarded child support which deviated from the child support guidelines in his favor.

Petitioner/Cross-Appellant argues in his brief that the Respondent could work more hours than she is presently working. He further argues that it is reasonable to assume (emphasis added) that his parenting costs would increase with a 50/50 parenting schedule and that his employment will be affected by a reduction in hours due to travel time transporting their daughter to school.

Petitioner/Cross-Appellant's argument regarding the Respondent's work schedule cannot be considered since the Family Court declined to find that the Petitioner was voluntarily underemployed.

Secondly, the Petitioner/Cross-Appellant's assumed costs and reduction of work hours cannot be considered as the Petitioner presented no evidence to support his assumptions nor any evidence by which the Family Court could determine what the increase in

parenting costs (if any) would be or what (if any) reduction of work hours result.

The Petitioner/Cross-Appellant agrees on page 28 line 19 of his brief that the trial court must provide a written finding as to why a special circumstance justifies an adjustment from the child support guidelines. He asserts that the record will establish an objective basis sufficient to sustain the decision of the trial court. “The record” however, is not tantamount to findings of the trial court.

The failure of the Family Division to provide a written justification of its deviation from the child support guidelines is an error of law which requires the remand of this matter for further consideration. See In re Silva, 171 N.H. 1, 8-9 (2018) (holding that deviation from the child support guidelines requires written explanation as to why deviation is necessary to avoid an unjust or inappropriate result).

Question 3. Whether the trial court erred as a matter of law when it denied wife’s request for alimony without providing a basis as required by RSA 458:19-a, VI(b).

At page 30 line 21 of his brief the Petitioner/Cross-Appellant agrees that the trial court must provide written findings as to why it denied alimony pursuant to RSA 458:19-a, VI(b)(1). The Petitioner/Cross-Appellant fails to provide any reference in the trial court’s Final Decree where the trial court provided a written explanation of its denial of the Wife’s request for alimony. He

appears to rely solely on his statement at page 30 line 22 that the trial court has broad discretion to determine and order alimony.

Accordingly, this matter must be remanded to the trial court for further consideration of the Wife's request for alimony.

Question 4. Whether the trial court erred as a matter of law when it failed to state sufficient findings to support its decisions as required by RSA 491:15, while declining to review wife's proposed findings and rulings.

In his brief the Petitioner/Cross-Appellant asserts that RSA 490-D:15 specifically applies to the Superior Court. He fails to provide any argument contrary to the Respondent's assertion that the trial court erred by not stating sufficient findings to support its decision in declining to respond to Wife's requests for findings and rulings.

As stated in the Respondent's brief, the law is well settled in New Hampshire that if the parties to a divorce case make specific requests for findings of fact and rulings of law, the trial court must state its reasons for its decision and make specific findings and rulings supporting its decision. IMO Sarvela and Sarvela, 154 N.H. 426, 431 (2006).

This matter must be remanded for entry of specific orders on Respondent's Requests for Findings and Rulings.

CONCLUSION AND REQUEST FOR ORAL ARGUMENT

The Family Court erred when it failed to include the husband's interest in the Dunbarton real estate as part of the marital property of the parties, awarded child support which deviated from the guidelines in husband's favor despite finding that wife's income was 52% of husband's, denied the Wife's request for alimony without providing a basis for that decision, and failed to state sufficient findings to support its decision while declining to respond to Wife's requests for Findings and Rulings. The decision of the Family Division must be reversed and the matter remanded for further consideration. Ms Routhier respectfully requests fifteen minutes of oral argument before the full court. Sharon Rondeau, Esq. will present oral argument for the Appellant, Kelly Routhier.

Respectfully submitted,
Kelly Routhier, Respondent/Appellant
by her attorney

Dated: October 14, 2021

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CERTIFICATION OF COMPLIANCE

I, Keri J. Marshall, hereby certify that this Reply Brief complies with Supreme Court Rule 16 as this Reply Brief contains 1428 words exclusive of pages containing the table of contents, table of cases and addendum. I further certify that pursuant to Supreme Court Rule 16, a copy of the foregoing Reply Brief of Kelly Routhier was served upon Matthew Routhier, pro se, and Deborah Mulcrone, Esq., GAL and Kevin Collimore, Esq., through the Court's Electronic Filing System.

Dated: October 14, 2021

/s/Keri J. Marshall
Keri J. Marshall, Esquire