

Supreme Court

No. 2000-207-Appeal.
(P93-2490)

Thomas R. Sahagian :

v. :

Sandra A. Sahagian.

ORDER

This case came before the Court for oral argument on December 9, 2002, pursuant to an order which had directed the parties to appear in order to show cause why the issues raised by this appeal should not be summarily decided. After hearing the arguments of counsel and examining the memoranda filed by the parties, we are of the opinion that cause has not been shown and that the case should be decided at this time.

The plaintiff, Thomas R. Sahagian, is appealing from a Family Court judgment in favor of the defendant, Sandra A. Sahagian. The parties were divorced on May 10, 1996. Pursuant to the final judgment of divorce, a property settlement agreement dated January 22, 1996, was approved by the court and incorporated by reference, but not merged into the final judgment. The property settlement was a lengthy agreement which provided for the division of numerous marital assets, including real estate, a business entity, and property thereof, and also provided for the payment to the wife of the sum of \$650 per month for a period of thirty-six months.

In May 1999, both parties petitioned the Family Court to enforce their property settlement agreement. After an evidentiary hearing, a family court justice issued a detailed decision

providing for distribution of assets and the proceeds of sale of various assets, and also awarded the former wife, Sandra, the sum of \$1300, plus interest, for two missing checks, each in the amount of \$650 from the agreed thirty-six weekly payments.

At oral argument, counsel for the former husband, Thomas R. Sahagian, waived all appellate issues except those relating to the distribution of proceeds from the sale of S & S Associates, d/b/a Motel Somerset. Arising out of this sale, the trial justice ordered the plaintiff, Thomas R. Sahagian, to pay to the defendant, Sandra Sahagian, \$15,750, said sum being one-half of the premarital assets used for a business loan. When the Motel Somerset (a Massachusetts partnership of which the plaintiff was fifty percent owner) was sold, the former wife received the sum of \$97,706 from the proceeds of that sale. The former husband received from the sale of the real estate the sum of \$39,649.05.

The former wife claimed an additional \$15,750 from these proceeds. That sum represented one-half of the \$31,500 received by the former husband from the sale proceeds of Motel Somerset. The former husband rejected this claim on the ground that he had loaned to the motel money received from his brothers (\$17,500) and a life insurance policy (\$11,000).

The trial justice found as a fact that the former husband's testimony concerning the source of funds for the loans and the repayment thereof was not convincing. He also found that there was no proof that the insurance policy that was the alleged source of funds was not a marital asset.

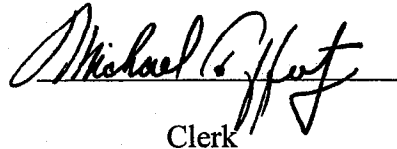
The trial justice also found that the former husband's claim relating to an income tax liability arising from forgiveness of a debt owed by Motel Somerset, negotiated in 1996, was not proven. He found that the husband's evidence did not contain details concerning the debt or computation of the liability.

Our well-settled rule is that the findings of fact of a trial justice are subject to deferential review and that the findings of fact made by a Family Court justice will not be disturbed unless the trial justice overlooked or misconceived evidence relevant to the issues decided or was otherwise clearly wrong. Berard v. Berard, 749 A.2d 577, 580 (R.I. 2000) (per curiam); Lembo v. Lembo, 677 A.2d 414, 417 (R.I. 1996).

Our review of the record in this case leads us to conclude that the findings of fact of the trial justice in this case were based upon adequate evidence or the lack thereof, and that he neither overlooked nor misconceived relevant evidence, nor was he clearly wrong.

For the reasons stated, the former husband's appeal on this issue is denied and dismissed. The judgment of the Family Court in favor of the defendant former wife in the sum of \$15,750 is affirmed. The remainder of the judgment is affirmed pro forma. The papers of this case may be remanded to the Family Court.

Entered as an Order of this Court this 19th day of December, 2002.


Clerk