

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0433, In the Matter of Jose A. Lerma Ontberos and Margarita Lerma, the court on June 12, 2008, issued the following order:

The petitioner, Jose Lerma (Husband), appeals his divorce decree; the respondent, Margarita Lerma (Wife), cross-appeals. Husband argues that the trial court erred in: (1) dividing the marital property; (2) calculating his child support obligation; and (3) awarding alimony to Wife. Wife argues that the trial court erred in: (1) determining the value of marital property located in Mexico; (2) awarding the marital residence to Husband; and (3) valuing the equity of the marital residence. We affirm in part, vacate in part and remand.

The trial court has broad discretion in determining matters of property distribution when fashioning a final divorce decree; absent an unsustainable exercise of discretion or error of law, we will affirm its decision. In the Matter of Costa & Costa, 156 N.H. 323, 326 (2007). In a divorce proceeding, marital property is not to be divided by some mechanical formula but in a manner deemed “just” based upon the evidence presented and the equities of the case. *Id.* at 327.

Husband first argues that the trial court unsustainably exercised its discretion in awarding Wife 65% of the value of the marital home. The evidence before the trial court included that the marital home had the potential for increased income with the appropriate approval by the city. Presented with conflicting evidence concerning the valuation of the home, the trial court adopted the lower valuation proffered by Husband and awarded him the home, as well as other real property located in Mexico. The court also found that Husband had a substantial opportunity for future acquisition of capital assets and that Wife had no significant opportunity for future acquisition of assets. *See* RSA 458:16-a (2004). We find no error in the trial court’s award of 65% of the home’s value to Wife.

Husband also argues that the trial court erred in calculating his child support obligation and its alimony award to Wife. We will uphold the trial court’s decision with respect to child support unless it is unsupported by the evidence or tainted by error of law. *See In the Matter of Hampers & Hampers*, 154 N.H. 275, 283 (2006). To calculate child support, the trial court must first determine each parent’s present income. *See In the Matter of Crowe & Crowe*, 148 N.H. 218, 222 (2002). In this case, the amount of Husband’s income was a contested issue at trial. While the trial court denied Wife’s requested finding that

Husband earned \$77,000 per year, the court did not make a specific finding as to the amount of his income. Without such a finding, we are unable to determine whether the trial court correctly calculated the amount of child support. Accordingly, we vacate the award and remand this case so that the trial court may make the necessary findings to support its award.

For the same reason, we vacate the trial court's alimony award. Upon remand, the trial court may make such an award as it deems appropriate after determining the amount of Husband's income, and shall also make such findings and rulings as are necessary to support the award.

We turn to Wife's cross-appeal. She first argues that the trial court erred in determining the value of the marital property located in Mexico. At oral argument, she conceded that the only evidence presented concerning the value of this property was introduced by Husband. Given the record before us, we find no error in the trial court's finding. We note that the trial court's order contains an ambiguity with respect to the amount awarded to Wife for the undeveloped property in Mexico. The only evidence presented at trial was that the property had a value of \$7000; the order awards Wife "\$,500 representing her share in this property." When Wife raised the ambiguity in her motion to reconsider, Husband conceded that he "believe[d] that the court meant to award [Wife] \$3,500 for her interest in the land." Accordingly, we also vacate this portion of the divorce decree so that upon remand the trial court can determine the correct amount to be awarded Wife for this property.

Wife also argues that the trial court erred in awarding the marital home to Husband. The home is currently a two-family home with the potential for a third apartment; at the time of trial, the second unit was occupied by Husband's brother. Testimony at trial included that Husband had "work to do" so that the City of Nashua would permit the third unit. While Wife argues that her status as custodial parent supported an award of the home to her, we find that factor not to be dispositive in this case. Given the evidence before the trial court and the overall division of assets, we find no error in this ruling.

Wife's final argument is that the trial court erred in valuing the equity of the marital residence. She contends that the trial court erred in: (1) finding that the house had a value of \$283,000; (2) finding that it was encumbered by a mortgage of \$95,000; and (3) reducing the value of the home by \$15,500 after finding that Husband owed that amount to his brothers. We find no error in the trial court accepting the appraisal offered by Husband as opposed to the tax assessment produced by Wife. See In the Matter of Peirano & Larsen, 155 N.H. 738, 747 (2007) (conflicts in testimony, questions about credibility of witnesses and weight to be given testimony are for trial court to resolve). That the trial court found that the marital home was encumbered by a mortgage of \$95,000 is irrelevant; the award provides that Wife's share is to be calculated by using the

mortgage balance at the time of refinance. Finally, the trial court's finding that Husband owed \$15,500 to his brothers is supported by testimony in the record. *See id.*

Affirmed in part; vacated in part and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**