

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2008-0250, In the Matter of Christine McMaster and Scott McMaster, the court on December 23, 2008, issued the following order:**

The petitioner, Christine (McMaster) Keller, appeals an order of the Derry Family Division denying her petition to reopen the parties' divorce. She argues that the trial court erred by denying her petition when she alleged that the respondent, Scott McMaster, fraudulently failed to disclose marital assets on two financial affidavits and that she relied upon them in entering into the parties' permanent stipulation. We reverse and remand.

"[W]e afford trial courts broad discretion in determining matters of property distribution." In the Matter of Hampers & Hampers, 154 N.H. 275, 285 (2006). "[W]e will not overturn the trial court's decision absent an unsustainable exercise of discretion." *Id.* "Property settlements can be modified only upon a showing of fraud, undue influence, deceit, misrepresentation, or mutual mistake." Leary v. Leary, 137 N.H. 161, 165 (1993). Having alleged fraud, "the plaintiff must prove that the defendant made a fraudulent representation for the purpose or with the intention of causing the plaintiff to act upon it." Shafmaster v. Shafmaster, 138 N.H. 460, 464 (1994) (quotation omitted). "The duty of full disclosure is mandatory and cannot be waived by either of the parties or by the court." In the Matter of Rohdenburg & Rohdenburg, 149 N.H. 276, 278 (2003).

The petitioner alleged that the respondent's financial affidavits failed to disclose that he: (1) owned half of McMaster Development, LLC; (2) had purchased real property at 5 Berge Lane in Derry for McMaster Development, LLC; (3) personally owned a one-half share of real property at 1 Camnod Way in Derry; (4) owned certain personal checking and savings accounts; and (5) had received an inheritance from his father's estate.

The trial court found that during the pendency of the divorce, the respondent had formed McMaster Development, LLC and "failed to disclose . . . that McMaster Development had purchased" the 5 Berge Lane property. Furthermore, the respondent admitted, through counsel, that he had an undisclosed savings account at the time of the divorce.

However, the trial court found that the petitioner failed to prove that the respondent intentionally and fraudulently misrepresented the true nature of

his assets. The trial court also found that the petitioner failed to prove that she relied upon the respondent's representations in his financial affidavits when she agreed to the permanent stipulation. In making this finding, the trial court noted that: (1) the petitioner did not allege that the respondent had failed to provide or responded falsely to any discovery requests; (2) the parties had known each other for many years; and (3) the petitioner had worked as a bookkeeper at the respondent's landscaping business. Additionally, the trial court found that given the short-term nature of the parties' marriage and when the properties were purchased, the petitioner failed to prove that she would have been entitled to any portion of their value in the property distribution.

We have recognized that “[t]he unique circumstances involved in . . . equitably dividing their property by agreement enhance the parties' obligation to deal with each other fairly and truthfully.” *Shafmaster*, 138 N.H. at 466. In *Shafmaster*, we held that when “the defendant failed to provide the plaintiff with updated financial statements in violation of his duty to do so, . . . the plaintiff . . . did not have a duty to conduct discovery or further investigate the defendant's representations.” *Id.* at 467. Here, as in *Shafmaster*, the respondent failed to update his financial disclosures in violation of his duty to do so. We therefore conclude, based upon the record and the trial court's findings, that the respondent misrepresented the true nature of his assets when he failed to disclose marital assets in his financial affidavits. *See Rollins v. Rollins*, 122 N.H. 6, 9 (1982) (financial misrepresentations suggest the existence of fraud). That the petitioner failed to conduct discovery or further investigate the respondent's sworn representations is not an absolute bar to her claim of reliance.

The respondent argues that the petitioner failed to prove reliance because she was aware of marital assets that were not disclosed when she entered into the stipulation. However, the trial court found that the respondent organized McMaster Development, LLC and purchased undisclosed property after the parties were separated and prior to the permanent stipulation and the divorce. Although the trial court maintained that the petitioner could not have relied solely upon the financial affidavits, there is no evidence in the record that the petitioner knew of these assets. We conclude that the evidence does not support a finding that she did not rely on the financial affidavits.

During the hearing, the trial court recognized the nature of the proceedings as a “petition to re-open divorce and a motion for further discovery.” We note that the trial court, however, went beyond the limited scope of the hearing in finding that the petitioner failed to prove that she might be entitled to a portion of the undisclosed marital assets. *See Rollins*, 122 N.H. at 9 (“On the basis of the defendant's allegation of fraud and deception and the

offers of proof, the master should have re-opened the hearing on the limited issue of property division.”).

Because the respondent failed to disclose known marital assets in his financial affidavits and there was no evidence that the petitioner did not rely, at least partially, upon those disclosures when entering into the permanent stipulation, we reverse and remand for further proceedings consistent with this order.

Reversed and remanded.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**