

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2010-0250, In the Matter of Yvonne M. Taylor and Michael J. Taylor, the court on February 15, 2011, issued the following order:

Having considered the parties' briefs and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The respondent, Michael J. Taylor (husband), appeals the final decree entered in his divorce from the petitioner, Yvonne M. Taylor (wife). We affirm.

The husband challenges the trial court's decision to award alimony to the wife. In reviewing the husband's claims, we will sustain the findings and rulings of the trial court unless they are lacking in evidentiary support or tainted by error of law. In the Matter of Fowler and Fowler, 145 N.H. 516, 519 (2000). The trial court has broad discretion in determining and ordering the payment of alimony. *Id.* We will not overturn its decision absent an unsustainable exercise of discretion. In the Matter of Peirano & Larsen, 155 N.H. 738, 746 (2007).

The husband first argues that the alimony award was error because the evidence did not support the trial court's findings justifying its award. RSA 458:19, I (Supp. 2010) allows the trial court to award alimony for a definite or indefinite period of time if the court finds that: (1) the party in need of alimony "lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage"; (2) the party from whom alimony is sought "is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage"; and (3) the party in need of alimony "is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs" As there is evidence in the record to support the trial court's findings upon these factors, we uphold them. While the evidence before the trial court was conflicting, it was for the trial court, as finder of fact, to resolve these conflicts. In the Matter of Salesky & Salesky, 157 N.H. 698, 707 (2008).

The husband next asserts that the trial court "erroneously placed significant emphasis on the . . . phrase 'style of living to which the parties have been accustomed during the marriage'" and, therefore, failed to award alimony based upon the wife's purported need for it. We do not share the husband's interpretation of the trial court's order.

The husband next contends that the trial court erred by not holding the wife “responsible for her own underemployment due to her misconduct.” The trial court specifically rejected the husband’s argument that the wife was voluntarily underemployed because it found the wife’s testimony on this issue credible. We defer to the trial court’s judgment on the credibility of witnesses. Syncom Indus. v. Wood, 155 N.H. 73, 86 (2007).

The husband next argues that the trial court erred because its final decree differed from its temporary order with respect to alimony. He argues that for the court to order an alimony award that differed from that set forth in the temporary decree, the wife had to prove, and the court had to find, a change in circumstances. See In the Matter of Arvenitis & Arvenitis, 152 N.H. 653, 655 (2005); see also RSA 458:14 (2004). The burden to show a change of circumstances applies only when a party is requesting to modify an initial final alimony award. See In the Matter of Canaway and Canaway, 161 N.H. ___, ___ (decided December 7, 2010). It does not apply when, as in the instant case, the court has not yet made a final alimony determination. The statutory scheme implicitly contemplates that a court may issue a permanent order that differs from any temporary order it may have issued. In the Matter of Stapleton & Stapleton, 159 N.H. 694, 697 (2010). RSA 458:16 (2004) authorizes a trial court to issue any temporary order it deems just upon the filing of a divorce petition and even allows such orders to be issued *ex parte*. See *id.* It is not until the court conducts a full hearing on the merits that the court makes a final determination as to whether and to what extent an alimony award is warranted. Cf. *id.* (discussing final property distribution that differed from temporary property distribution).

Finally, the husband asserts that the trial court erred when it ordered the wife to file a post-decree child support worksheet. The trial court ordered that the wife would not pay child support. In this appeal, the husband does not seek child support. Accordingly, we do not deem the husband to have appealed the trial court’s child support order and decline to address his argument regarding the wife’s post-decree child support worksheet.

Affirmed.

Dalianis, C.J., and Duggan, Hicks, Conboy and Lynn, JJ., concurred.

**Eileen Fox,
Clerk**

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