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Panel Criticizes Husband, But Rejects Award to Wife

BY MARK FASS

Despite the husband's 'campaign of avoidance,' the court said the equitable distribution award had to be justified on the record.

The decision will be published Tuesday.

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AN APPELLATE panel has thrown out an equitable-distribution award, holding that the husband's consistent firing of attorneys and failure to appear influenced the trial court to make a distribution extremely favorable to his wife that was not justified in the record.

The court, however, conditioned its vacatur of the award on the retention by the husband, who lives in Singapore, of a New York attorney to counsel him for further proceedings.

"In this case, it seems fairly obvious that defendant's campaign of avoidance, by inter alia discharging attorneys and failing to appear on various occasions, weighed heavily in the court's decision to grant plaintiff, without specific findings, virtually everything she requested," a unanimous Appellate Division, First Department, panel held in its unsigned decision, *Warner v. Houghton*, 303548/04.

"While defendant's conduct bordered on the contemptuous, the equitable distribution award must still be justified on the record, and should be supported by specific findings," the panel said. "The record is barren of any such support. Thus, the equitable distribution awards must be vacated and the matter remanded for a new hearing."

Carissa Warner and Richard Houghton met in London, where they both worked. They married on Staten Island in the summer of 1999.

In December 1999, Mr. Houghton left London for an investment banking job in Hong Kong; Ms. Warner remained in London. In September 2001, Mr. Houghton transferred to Singapore. In May 2001, Ms. Warner moved to New York. The couple reunited briefly in Singapore in October 2001, before Ms. Warner returned to New York for good in January 2002.

Ms. Warner initiated divorce proceedings in Manhattan Supreme Court in March 2004.

After originally filing an "Affidavit of Defendant in Action for Divorce" on his own behalf, Mr. Warner's defense of the divorce action was marked by a series of new lawyers, no shows and missed deadlines. He fired his counsel at least twice—including the law firm Blank Rome—and failed to appear at numerous hearings, including a key inquest in 2006.

Justice Phyllis Gangel-Jacob entered an amended judgment of divorce in

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December 2006. Represented by yet another attorney, Mr. Houghton appealed that judgment shortly thereafter, arguing that Justice Gangel-Jacob "simply observed [that Mr. Houghton] had not appeared at the inquest, and granted the relief requested by plaintiff" nearly in its entirety.

That distribution, Mr. Houghton argued, was not in fact equitable, when considering such factors as the short duration of the marriage, the couple's lack of children and the fact that, for most of the marriage, the parties lived on separate continents.

Yesterday, the First Department found in favor of the husband, holding that Justice Gangel-Jacob failed to support her decision in the record. The panel cited the 1986 decision *Capasso v. Capasso*, 119 AD2d 268, which held that an "insufficient explanation for the court's distribution of property requires reversal of the judgment and remand for further consideration."

However, the court added that Mr. Houghton's missed appearances and parade of new attorneys played a role in the default judgment, and directed him to retain counsel.

"In view of our observation that defendant's tactics in proceeding pro se and then failing to appear contributed to the result, and also in view of the reality that he lives outside the jurisdiction, it is directed that the vacatur be conditioned upon the continued retention by defendant of New York counsel," the panel wrote. "Future discharges of counsel would be viewed as evidence of bad faith, and should be treated accordingly."

Justices David B. Saxe, Joseph P. Sullivan, Luis A. Gonzalez, James M. Catterson and Michael Kavanagh sat on the panel.

Adam Richards represented Mr. Houghton. He did not return a call for comment.

Barbara Bevando Sobal represented Ms. Warner. She declined to comment.

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