

IN THE UTAH COURT OF APPEALS

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Shelley L. Gish,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner, Appellee, and)		
Cross-appellant,)	Case No. 20081037-CA	
)		
v.)	F I L E D	
)	(September 23, 2010)	
Rodney J. Yanke,)		
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Respondent, Appellant,)		
and Cross-appellee.)		

Fifth District, St. George Department, 064500711
The Honorable Eric A. Ludlow

Attorneys: Rodney J. Yanke, Las Vegas, Nevada, Appellant Pro Se
 and Cross-appellee Pro Se
 Brent M. Brindley, St. George, for Appellee and
 Cross-appellant

Before Judges Thorne, Roth, and Christiansen.

CHRISTIANSEN, Judge:

Respondent Rodney J. Yanke (Husband) appeals the trial court's enforcement of a property settlement agreement (the Agreement) in the parties' divorce proceeding. We affirm.

"The governing principle in our law is that contracts between spouses are enforceable and 'generally subject to ordinary contract principles' so long as they are negotiated 'in good faith . . . and do not unreasonably constrain the [divorce] court's equitable and statutory duties.'" Ashby v. Ashby, 2010 UT 7, ¶ 21, 227 P.3d 246 (omission and alteration in original) (citation footnotes omitted); see also Land v. Land, 605 P.2d 1248, 1250-51 (Utah 1980) (stating that "when a decree is based upon a property settlement agreement, forged by the parties and sanctioned by the court, . . . [e]quity is not available to reinstate rights and privileges voluntarily contracted away simply because one has come to regret the bargain made" (footnote omitted)).

Husband testified that he was under duress and coerced into signing the Agreement, that he had been unable to consult with legal counsel before signing the Agreement, and that he had not been informed of certain financial transactions that would have affected his willingness to sign the Agreement. The trial court specifically found that Husband's testimony regarding the signing of the Agreement was not credible,¹ that the Agreement "was freely and voluntarily entered into by both parties after full disclosure, and that it was entered into after both parties had been given the opportunity to have the document reviewed by their respective counsel of choice." Given these findings, as well as Husband's lack of marshaling to dispute such findings, see generally Kimball v. Kimball, 2009 UT App 233, ¶¶ 20 n.5, 21, 217 P.3d 733 (explaining marshaling requirements), we affirm the trial court's enforcement of the Agreement and its division of the property according to the Agreement.²

¹Husband urges us to find that his testimony was credible in all aspects. However, the trial court, not the appellate court, is in the best position to assess a witness's credibility. See Glouser Storage, LLC v. Smedley, 2001 UT App 141, ¶ 24, 27 P.3d 565 ("Clearly, the fact-finder is in the best position to judge the credibility of witnesses and is free to disbelieve their testimony." Even where testimony is uncontroverted, a trial court is free to disregard such testimony if it finds the evidence 'self-serving and not credible.'" (citations omitted)).

²We decline to address several additional issues Husband raised because he did not adequately brief those issues. His shortcomings include that he argued issues in the brief that were not included in his statement of issues, see Utah R. App. P. 24(a)(5); he failed to indicate where in the record the issues were preserved for appeal, see id. R. 24(a)(5)(A); he failed to properly brief his arguments, see id. R. 24(a)(9); and he raised issues for the first time in his reply brief, see id. R. 24(c). See also id. R. 24(k) ("Briefs which are not in compliance may be disregarded or stricken."); MacKay v. Hardy, 973 P.2d 941, 947-48 (Utah 1998) (stating that both the Utah Supreme Court, "as well as the court of appeals, ha[ve] held in numerous cases that we will not address issues not adequately briefed").

Despite these procedural shortfalls, Husband essentially requests that we view the evidence differently than the trial court. Even if Husband had argued and marshaled effectively, there was sufficient evidence to support the trial court's findings.

Because the trial court correctly divided the property according to the parties' Agreement, Husband's arguments related to improper property classification and property division are without merit. See Keiter v. Keiter, 2010 UT App 169, ¶¶ 18-20, 235 P.3d 782 (determining that the trial court did not err in not classifying a business as marital or separate property when the value of the business was divided according to a stipulation and such a classification had "no bearing on the underlying issue presented by [the h]usband").³

Petitioner Shelley L. Gish (Wife) filed a cross-appeal challenging the trial court's determinations that the ceremony performed in Mexico⁴ was not a legal marriage and that the parties' relationship was not considered a marriage pursuant to Utah Code section 30-1-4.5. See generally Utah Code Ann. § 30-1-4.5 (2007). We affirm the trial court's decision because Wife has not challenged the relevance of the marriage date given that the property was distributed in accordance with the Agreement; has not properly marshaled the trial court's factual findings, including its credibility determinations, see Utah R. App. P. 24(a)(9); and has not demonstrated that the court erred given that there was sufficient evidence to support its determinations, see generally Kimball, 2009 UT App 233, ¶ 14 (outlining appellate review of sufficiency of evidence challenges); Hansen v. Hansen, 958 P.2d 931, 935-37 (Utah Ct. App. 1998) (determining that there

³Two days before this case was scheduled for this court's consideration, Husband filed a motion requesting oral argument and inclusion into the appellate record an exhibit that was admitted into evidence but excluded from the record. For purposes of this appeal, we will include the exhibit in the record. However, we deny Husband's request for oral argument as "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3); see also Brown v. Glover, 2000 UT 89, ¶ 17, 16 P.3d 540 (stating that "[c]learly, while an appeal as of right exists, there is no specific right to oral argument under Utah law").

⁴In September 2001, a ceremony similar to a marriage ceremony was performed in Mexico. Then in December 2005, the parties obtained a marriage license, see generally Utah Code Ann. § 30-1-7 (2007), and were legally married in Santa Clara, Utah.

was insufficient evidence to establish a marriage under Utah Code section 30-1-4.5).

Affirmed.

Michele M. Christiansen, Judge

WE CONCUR:

William A. Thorne Jr., Judge

Stephen L. Roth, Judge