IN THE UTAH COURT OF APPEALS

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Rita Y. Richins, Petitioner and Appellant, v. James E. Richins, Respondent and Appellee.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090365-CA F I L E D (September 16, 2010) 2010 UT App 253

Third District, Salt Lake Department, 054902600
The Honorable Denise P. Lindberg

Attorneys: James A. McIntyre and J. David Milliner, Salt Lake City, for Appellant
Tom D. Branch, Draper, for Appellee

Before Judges Davis, McHugh, and Roth.

DAVIS, Presiding Judge:

Rita Y. Richins (Wife) challenges as clearly erroneous several of the trial court's factual findings relating to property division in the parties' divorce decree. Wife also argues that the trial court erred because the divorce decree is, taken as a whole, punitive in nature. James E. Richins (Husband) requests attorney fees and costs incurred in defending the appeal. We conclude that there is sufficient evidence supporting the factual findings challenged by Wife and that the divorce decree is not punitive. Accordingly, we affirm. We also award Husband his fees and costs reasonably incurred on appeal.

Wife first contends that there was insufficient evidence to support the trial court's finding that she had earned $3800 per month from July 1998 to May 2005, which resulted in the trial court imputing $312,740 in income to Wife when dividing the marital estate.

> A challenge to the sufficiency of the evidence concerns the trial court's findings of fact. Those findings will not be disturbed unless they are clearly erroneous. A trial court's factual determinations are

> clearly erroneous only if they are in conflict with the clear weight of the evidence, or if [the appellate] court has a definite and firm conviction that a mistake has been made.

Kimball v. Kimball, 2009 UT App 233, ¶ 14, 217 P.3d 733 (citation and internal quotation marks omitted). Stated another way,

> [w]hen reviewing a district court's findings of fact on appeal, we do not undertake an independent assessment of the evidence presented during the course of trial and reach our own separate findings with respect to that evidence. Rather, we endeavor only to evaluate whether the court's findings are so lacking in support that they are against the clear weight of the evidence.

438 Main St. v. Easy Heat, Inc., 2004 UT 72, ¶ 75, 99 P.3d 801.

In this case, we cannot say that the trial court's findings are so lacking in support as to be clearly erroneous. Indeed, according to Husband's Exhibit 28--the Ford Credit application that Wife testified that she had filled out in 2004[1]--Wife's current income as the estate manager of the Powell Family Trust (the Trust) was $3800 per month. Moreover, the credit application indicated that Wife had worked for the Trust for six years. And while Wife's Exhibit 22--a largely handwritten, unsigned, undated document created by Wife in anticipation of litigation--contained contradictory figures, it was reasonable under the circumstances for the trial court to give more credibility to Husband's Exhibit 28 than to Wife's Exhibit 22.[2] "'In a bench trial or other proceeding in which the judge serves as fact finder, the court has considerable discretion to assign relative weight to the evidence before it. This discretion

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[1]On cross-examination, Wife admitted that in a prior deposition she had told Husband's attorney that she "agreed with everything that was in [the 2004 Ford Credit application]."

[2]Wife also argues that the trial court erred in failing to consider the earlier 2003 Ford Credit application, also filled out by Wife, which stated that Wife had earned $2400 a month for three years and two months. The 2003 credit application, however, was never introduced at trial. Moreover, even had it been introduced, the trial court would have been well within its discretion to give more weight to the 2004 credit application. See State v. Comer, 2002 UT App 219, ¶ 15, 51 P.3d 55.

includes the right to minimize or even disregard certain evidence.'" State v. Comer, 2002 UT App 219, ¶ 15, 51 P.3d 55 (emphasis added) (citation omitted). Here, the trial court specifically found that Wife had lied numerous times throughout the proceedings "'to get what [she] want[ed],'" (first alteration in original), and that, therefore, her "testimony utterly lacks credibility and should be given weight only to the extent there is corroborative evidence to support it."[3] In light of this finding regarding Wife's lack of credibility, as well as the fact that Wife testified she had not maintained contemporaneous accounting records of the hours she worked for the Trust and that Wife's Exhibit 22 was prepared after-the-fact and from her memory, the trial court did not exceed its discretion in assigning Wife's Exhibit 22 little weight.[4] Accordingly, we conclude that there was sufficient evidence supporting the trial court's finding that Wife had earned $3800 a month from 1998 to 2005--for a total of $312,740 in imputed earnings.[5]

Wife next argues that the trial court "inferred that the Trust . . . had . . . sufficient liquidity to pay [Wife] what she was owed" and erred in finding that Wife "could have paid herself for her services [from 1998 to 2005]" but chose not to do so. We conclude that there was ample evidence supporting this finding. For instance, Wife testified that she paid herself and her four siblings a $500 "gift" each month from the Trust during nearly

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[3]Wife does not challenge this finding on appeal.

[4]Wife claims that the information contained in her Exhibit 22 was corroborated by her Exhibit 50--a letter from the Trust's attorney. However, far from corroborating Wife's claim that she was entitled to only $118,699.44 in unpaid earnings, the letter simply states (1) that the amount of unpaid earnings claimed by Wife had been reviewed and (2) that the hours were "reasonable for the time period listed."

[5]Wife also contends that the trial court erred in failing to deduct from the imputed earnings $27,207.50 purportedly paid by the Trust to Wife and Husband. Footnote 5 of the trial court's findings is somewhat ambiguous. However, when that footnote is considered in the context of the other findings, it appears that the trial court simply did not believe Wife's claim that the $27,207.50 had actually been paid. Moreover, the $27,207.50 figure was calculated by Wife and then attached as a part of her Exhibit 22. As previously stated, the trial court was justified in questioning the veracity of Wife's Exhibit 22. Accordingly, we conclude that the trial court did not exceed its discretion in refusing to deduct from the unpaid earnings this amount Wife claimed to have been paid.

four years of the time period in question.[6] Additionally, Wife testified that the Trust owned several pieces of real estate, was worth over a million dollars, and had multiple bank accounts. Furthermore, Wife testified that she had check writing authority for the Trust dating back to 2001 and that her mother had made her a $50,000 loan "from the trust accounts" in September 2005. And while Wife's Exhibit 50 states that the Trust "does not have enough liquid assets at the present time to immediately pay [Wife the unpaid earnings]," (emphasis added), it says nothing of the Trust's liquidity for the time period in question, that is, from 1998 to 2005. With these facts in mind, as well as the deferential standard of review, see, e.g., Leppert v. Leppert, 2009 UT App 10, ¶ 9, 200 P.3d 223 ("'We afford the trial court considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity.'" (quoting Davis v. Davis, 2003 UT App 282, ¶ 7, 76 P.3d 716)); Stonehocker v. Stonehocker, 2008 UT App 11, ¶ 44, 176 P.3d 476 ("We defer to the trial court in its findings of fact related to property valuation and distribution."), we cannot say that the trial court's finding is clearly erroneous.

Wife also contends that the effect of the property distribution in the divorce decree is punitive. See generally Read v. Read, 594 P.2d 871, 872 (Utah 1979) ("A trial court must consider many factors in making a property settlement in a divorce proceeding, but the purpose of the settlement should not be to impose punishment upon either party."). Because Wife failed to preserve this issue below, she argues plain error on appeal. "To demonstrate plain error, [Wife] must establish that (i) [a]n error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful . . . ." State v. Holgate, 2000 UT 74, ¶ 13, 10 P.3d 346 (second alteration in original) (internal quotation marks omitted).

The divorce decree divides the marital property in half and distributes it equally between the parties. In fact, the decree states, "The total of the parties' estate and accounts is $760,745.66. When divided by one-half it equals $380,372.83[,] which is the amount awarded to each party." Wife contends that although this appears equitable on its face, the effect of the property division is that Wife receives only one third of the marital estate. Wife's argument rests on her claim that the trial court erred in imputing $312,740 to her and that the trial

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[6]Wife testified that she had used the money from these monthly gifts to, among other things, fund three different IRAs.

court further erred in treating those funds as a liquid asset.[7] Because we have already affirmed the trial court's findings on these issues, Wife's claim that the trial court erred in equitably dividing the marital property between Husband and Wife is without merit and her plain error claim fails. See id. (stating that plain error requires that an error actually occur).

Finally, Husband seeks attorney fees and costs incurred in defending the appeal. "[I]n divorce proceedings, when the trial court has awarded attorney fees below to the party who then prevails on the main issues on appeal, we generally award fees on appeal." Wall v. Wall, 2007 UT App 61, ¶ 26, 157 P.3d 341 (internal quotation marks omitted). Here, Husband was awarded attorney fees below and has prevailed on appeal. Accordingly, we award Husband attorney fees and costs reasonably incurred on appeal and remand to the trial court for a determination of such amount.

Affirmed.

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James Z. Davis,
Presiding Judge

WE CONCUR:

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Carolyn B. McHugh,
Associate Presiding Judge

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Stephen L. Roth, Judge

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[7]Wife also cursorily references the trial court's denial of alimony and the award of attorney fees to Husband as factors demonstrating that the divorce decree was punitive. However, Wife never develops these claims. Accordingly, we decline to address them because they are inadequately briefed. See Daniels v. Gamma W. Brachytherapy, 2009 UT 66, ¶ 52, 221 P.3d 256 (declining to address an argument that was inadequately briefed).