

IN THE UTAH COURT OF APPEALS

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Wesley O. Bayles,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20070334-CA	
v.)		
)	F I L E D	
Linda Caryl Bayles,)	(March 20, 2008)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2008 UT App 98</td></tr></table>	2008 UT App 98
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Second District, Farmington Department, 004702059
The Honorable Thomas L. Kay

Attorneys: Wesley O. Bayles, Forbestown, California, Appellant
 Pro Se
 Judy Dawn Barking, Ogden, for Appellee

Before Judges Bench, Billings, and McHugh.

McHUGH, Judge:

Wesley Bayles (Husband) appeals the trial court's Order Modifying Decree of Divorce. Husband argues the trial court erred when it ruled Linda Bayles (Wife) need not comply with contractual provisions, which would have been imposed by a third-party purchaser, when Husband exercised his right of first refusal. Husband further argues the trial court erred when it awarded Wife a percentage of his retirement payments and required him to incur a portion of the survivor benefit premium. We affirm the trial court's ruling on both issues.

We first discuss whether the trial court erred when it ruled Husband waived his right to enforce certain third-party contractual provisions against Wife. Waiver is a mixed question of law and fact. See Chen v. Stewart, 2004 UT 82, ¶ 23, 100 P.3d 1177. "[W]hether the trial court employed the proper standard of waiver presents a legal question which is reviewed for correctness, but the actions or events allegedly supporting waiver are factual in nature and should be reviewed as factual determinations." United Park City Mines Co. v. Stichting Mayflower Mountain Fonds, 2006 UT 35, ¶ 21, 140 P.3d 1200

(internal quotation marks omitted) (alteration in original).¹
"Accordingly, we 'grant broadened discretion to the trial court's findings' when reviewing questions of waiver." Id. (quoting Chen, 2004 UT 82, ¶ 23).

Because the determination of waiver is extremely fact-sensitive, Husband has a duty to marshal the evidence supporting the trial court's ruling. See id. ¶¶ 24-27; Chen, 2004 UT 82, ¶ 20. Husband failed to meet this duty. Indeed, Husband does not even acknowledge the trial court's ruling, let alone "present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings [Husband] resists." Chen, 2004 UT 82, ¶ 77 (internal quotation marks omitted). Husband's failure is, by itself, sufficient reason to affirm the trial court's ruling. See id. ¶ 80. Even looking beyond that deficiency, our independent review of the record simply does not convince us that the trial court's ruling was incorrect. The record supports the trial court's finding that Husband paid Wife for the properties without asserting the terms set forth in the prospective, third-party purchase agreements. Likewise, the record supports the court's finding that Husband accepted Wife's conveyance of the property before he asserted these additional terms. Moreover, Husband admitted that if Wife had exercised her corresponding right of refusal, he would not have complied with at least some of the third-party contractual provisions he now asserts against Wife. Given our independent review of the record and Husband's failure to challenge the trial court's findings, we affirm on this issue.

Husband next argues the trial court erred when it awarded Wife a continuing interest in Husband's monthly retirement payments and required Husband to incur a portion of the survivor benefits premium. The trial court has "broad discretion in adjusting the financial interests of parties to divorce and modification proceedings, so long as the decision is within the confines of legal precedence." Crockett v. Crockett, 836 P.2d 818, 819 (Utah Ct. App. 1992). Accordingly, "we presume the correctness of the court's decision absent 'manifest injustice or inequity that indicates a clear abuse of . . . discretion.'" Id. at 819-20 (omission in original) (quoting Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah Ct. App. 1987)).

¹The proper standard of waiver was reiterated in United Park City Mines Co. v. Stichting Mayflower Mountain Fonds, 2006 UT 35, 140 P.3d 1200. According to that case, "'waiver is the intentional relinquishment of a known right. To constitute waiver, there must be an existing right, benefit, or advantage, a knowledge of its existence, and an intention to relinquish it.'" Id. ¶ 22 (quoting Soter's, Inc. v. Deseret Fed. Sav. & Loan Ass'n, 857 P.2d 935, 942 (Utah 1993)).

In this case, the trial court determined as part of the original divorce decree that Wife was entitled to a deferred distribution of Husband's retirement benefits. To the extent Husband now argues the trial court erred when it awarded a deferred distribution instead of satisfying Wife's portion from other assets, that issue is not before us. If Husband wanted to contest the trial court's ruling on this issue, he was required to do so within thirty days of the trial court's November 25, 2002 original divorce decree. See generally Utah R. App. P. 4(a) (requiring notice of appeal within thirty days of the order appealed from); Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616 ("If an appeal is not timely filed, this court lacks jurisdiction to hear the appeal.").²

To the extent Husband argues the trial court exceeded its discretion when it required Husband to incur a portion of the survivor benefit premium, we disagree. There is nothing unjust or inequitable about the court's ruling. Indeed, the trial court offset Husband's monthly payments by awarding him five acres of property worth the equivalent of twenty years of survivor benefit premiums. In addition, the trial court completely relieved Husband of his obligation to pay alimony. Accordingly, we reject Husband's arguments that the trial court's ruling was inequitable or unjust.

Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Russell W. Bench, Judge

Judith M. Billings, Judge

²The wisdom of limiting the time for appeal is demonstrated in this case. Husband argues Wife's share of the retirement plan should have been satisfied from other assets--assets which have already been sold and apportioned pursuant to the original decree.