

IN THE UTAH COURT OF APPEALS

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Jenifer Hawks,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20080649-CA
v.)	
)	F I L E D
)	(June 4, 2009)
Jeff Hawks,)	
)	
Respondent and Appellant.)	2009 UT App 149

Second District, Farmington Department, 074700043
The Honorable Michael G. Allphin

Attorneys: Robert A. Echard, Ogden, for Appellant
 Keith M. Backman, Ogden, for Appellee

Before Judges Greenwood, Bench, and McHugh.

BENCH, Judge:

Respondent Jeff Hawks (Husband) appeals the district court's alimony award to Petitioner Jenifer Hawks (Wife). We reverse.

When determining alimony, a court must consider certain factors, the following of which are relevant to this appeal: "(i) the financial condition and needs of the recipient spouse; (ii) the recipient's earning capacity or ability to produce income; [and] (iii) the ability of the payor spouse to provide support." Utah Code Ann. § 30-3-5(8)(a)(i)-(iii) (2004). "Failure to consider these factors constitutes an abuse of discretion Moreover, the trial court must make detailed findings on all material issues . . . [,] includ[ing] enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Rehn v. Rehn, 1999 UT App 41, ¶ 6, 974 P.2d 306 (citations and internal quotation marks omitted).

In fashioning an alimony award in accordance with the factors listed in section 30-3-5(8)(a), the district court may impute income to an unemployed spouse by determining that spouse's ability to earn income and contribute to her own support. See Willey v. Willey, 866 P.2d 547, 554 (Utah Ct. App. 1993). Imputed income "cannot be premised upon mere conjecture"

but "demands a careful and precise assessment requiring detailed findings." Id.

Here, the district court made findings regarding Husband's monthly income and the parties' monthly expenses. The district court then simply deducted the amount it determined Husband was able to pay in alimony each month from Wife's monthly expenses and imputed the remaining deficit to Wife. The district court supported its decision with only a vague conclusion that Wife is capable of part-time employment to supplement her income.

The district court abused its discretion by failing to make detailed findings regarding Wife's ability to produce income. The district court improperly determined the alimony award based on Husband's ability to pay, see generally Bingham v. Bingham, 872 P.2d 1065, 1068 (Utah Ct. App. 1994) (reasoning that without explanation a court should not award excessive alimony regardless of spouse's ability to pay), and based its imputed income to Wife only on a remainder. The district court should have made an independent determination of Wife's earning capacity based on specific facts, such as monthly or hourly wages. See generally Leppert v. Leppert, 2009 UT App 10, ¶¶ 4, 11, 200 P.3d 223 (concluding that district court's imputed income of \$1560 a month to wife, based on expert testimony of her earning potential, was supported by detailed findings); Willey v. Willey, 914 P.2d 1149, 1152 (Utah Ct. App. 1996) (affirming district court's imputation of monthly income to wife based on past income, expert testimony of earning potential, and average hourly wages), rev'd on other grounds, 951 P.2d 226 (Utah 1997); Rasband v. Rasband, 752 P.2d 1331, 1333-34 (Utah Ct. App. 1988) (stating that district court's vague conclusion that wife was capable of meaningful employment was an insufficient determination of her earning capacity). The district court also failed to explain why it determined Wife was capable of only part-time rather than full-time employment. See generally Rehn, 1999 UT App 41, ¶ 9 (stating that a court may impute less income to spouse with an explanation, such as providing care to minor children).

Typically, a case such as this would need to be remanded to the district court to impute an income to Wife, recalculate the alimony award, and support its conclusions with "detailed findings on all material issues." See id. ¶ 6. Here, however, such findings are unnecessary. Husband has stipulated that he is willing to pay \$1300 a month in alimony to Wife. Wife has stated that she wants to work and has conceded that she is capable of earning a little over minimum wage. Further, nothing in the record suggests that Wife is unable to work full-time nor has she

made such an argument. If Wife were employed full-time at the current minimum wage of \$6.55 an hour, she would earn a monthly income of \$1135. When combined with the stipulated alimony, this more than meets Wife's claimed monthly expenses.

Accordingly, we reverse and remand for entry of an alimony award of \$1300 per month.¹

Russell W. Bench, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

Carolyn B. McHugh, Judge

¹Having concluded that Husband need only pay \$1300 a month in alimony, we do not reach his second issue raised on appeal regarding the district court's reduction of his claimed monthly expenses.