

IN THE UTAH COURT OF APPEALS

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Marjorie M. Hayes,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20050645-CA
v.	)	
	)	F I L E D
Arthur C. Hayes,	)	(July 13, 2006)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 289</span>

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Third District, Salt Lake Department, 044906384  
The Honorable Bruce C. Lubeck

Attorneys: Kent B. Linebaugh, Salt Lake City, for Appellant  
            Roger D. Sandack, Salt Lake City, for Appellee

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Before Judges Bench, Davis, and McHugh.

BENCH, Presiding Judge:

Marjorie M. Hayes (Wife) appeals the trial court's distribution of the parties' marital estate. Wife argues that the trial court abused its discretion in the allocation and division of the property owned by the parties. "Absent a showing of a clear and prejudicial abuse of discretion, we will not interfere with a property award." Osquthorpe v. Osquthorpe, 804 P.2d 530, 535 (Utah Ct. App. 1990).

Wife first contends that the trial court abused its discretion in allowing Arthur C. Hayes (Husband) credit for his financial contributions to the marital estate. In Burt v. Burt, we stated that a trial court should categorize and separate premarital and marital properties, and then divide the marital property equally unless exceptional circumstances exist. See 799 P.2d 1166, 1172 (Utah Ct. App. 1990). However, as we stated in Hall v. Hall, the court can "first subtract[] the amount necessary to reimburse [a party's] contribution" to the marital property before "divid[ing] the proceeds from the sale of the [marital property] equally." 858 P.2d 1018, 1023 (Utah Ct. App. 1993); see also Preston v. Preston, 646 P.2d 705, 706 (Utah 1982). Thus, the trial court properly used a "back-out" method

to credit Husband's contribution toward the marital property before applying the fifty percent presumption.

Wife also asserts that the trial court assigned an incorrect value to her contribution of her Park City condominium to the marital estate. As stated above, the trial court can properly subtract the parties' contributions to the marital property before equally dividing the remaining equity. See Hall, 858 P.2d at 1023. Here, the court did not credit Wife with her full contribution of \$135,000, representing her equity in the condominium when it became marital property. Rather, the court credited her with the value of the condominium at the time of trial, \$95,000, and awarded it to Wife. Because Wife did not receive credit for the full value she contributed, the division of the remaining deficit in the marital estate was unequal. "Absent findings that would justify departure from the presumptive rule of equal distribution, we reverse and remand to give the trial judge an opportunity to enter findings" justifying the unequal division of the marital estate after backing out each party's contribution. Id. If the court cannot make findings to justify an unequal division, the net deficit of the marital estate should be shared equally.

Finally, Wife claims that the trial court abused its discretion in failing to award her a share of the appreciated value of Husband's separate Dune Road property and its rental income. Wife concedes that "[t]he general rule is that equity requires that each party retain the separate property he or she brought into the marriage, including any appreciation of the separate property." She contends, however, that this case should fall under an exception to the rule. The exception is that if property has been commingled, or the other spouse has augmented, maintained, or protected the separate property, then the distribution should achieve an equitable result. See Burt, 799 P.2d at 1169; Noble v. Noble, 761 P.2d 1369, 1373 (Utah 1998). Wife claims that she protected the Dune Road property by arranging for her mother to purchase a one-half interest in it. The exception, however, does not apply because the property's increase in value came "solely from the effects of inflation on land values." Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). Therefore, the trial court did not abuse its discretion in determining that Wife was not entitled to a share of the appreciation of Husband's Dune Road property.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this decision.

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Russell W. Bench,  
Presiding Judge

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WE CONCUR:

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge