

IN THE UTAH COURT OF APPEALS

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| Alan R. Larsen, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Petitioner and Appellee, |) | |
| |) | Case No. 20040630-CA |
| v. |) | |
| |) | F I L E D |
| Debra D. Larsen, |) | (July 13, 2006) |
| |) | |
| Respondent and Appellant. |) | 2006 UT App 295 |

Sixth District, Richfield Department, 034600001
The Honorable Paul D. Lyman

Attorneys: Gary H. Weight, Provo, for Appellant
 Douglas L. Neeley, Manti, for Appellee

Before Judges Bench, Greenwood, and Orme.

ORME, Judge:

In divorce actions, it is well settled that trial courts are afforded "considerable latitude of discretion in adjusting financial and property interests." English v. English, 565 P.2d 409, 410 (Utah 1977). On appeal, Respondent Debra Larsen therefore bears the burden of proving that "there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion." Id. Because she has failed to meet this burden, we decline to disturb the trial court's divorce decree.

We are not convinced that the trial court's decision to consider as marital property the parties' interests in the motel was in error--despite the agreement the various owners of the motel reached concerning the value of Respondent's share in the motel.¹ Given the way the parties commingled their business and

¹We also note that we do not consider the agreement to be the type of "compromise" to which rule 408 of the Utah Rules of Evidence would apply. In addition, we view as unmeritorious
(continued...)

personal assets and liabilities throughout the marriage, it was wholly appropriate for the trial court to consider as marital property the entire value of their respective interests in the motel. Cf. Doqu v. Doqu, 652 P.2d 1308, 1310 (Utah 1982) ("[T]he trial court's duty to make an equitable division of property in a divorce action 'encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived[.]'") (citation omitted).

Moreover, given the testimony and proffered evidence before the trial court, it was not inconsistent for the trial court to have initially determined that each of the parties' respective interests in the motel should be credited as having a value of \$200,000, and then later to have acted to balance the disparity between the amounts Petitioner Alan Larsen and Respondent actually received from the sale of the motel. There is sufficient evidence supporting the trial court's ultimate equitable division of the value of their interest in the motel.

Finally, even if we were to overlook some of Respondent's marshaling problems, see, e.g., West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah Ct. App. 1991), we would nevertheless conclude that there was sufficient evidence to support the trial court's finding that the debt for unpaid rent had been acknowledged and otherwise kept alive by regular payments. Thus, we conclude that the trial court's finding was not clearly erroneous and that the four-year statute of limitations, see Utah Code Ann. § 78-12-25 (2002), was accordingly inapplicable.²

¹(...continued)

Respondent's argument that it was somehow an unfair surprise for the trial court to consider the parties' respective interests in the motel during the property division determination.

²Respondent's marshaling problems with regard to the findings she alleges the trial court made concerning "inventory" and "interest" cannot be so easily overlooked. Besides failing to undertake the heavy burden our marshaling rule imposes, see, e.g., West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah Ct. App. 1991), Respondent has not directed us to a specific place in the record where any such findings were actually made. We accordingly decline the invitation to disturb the findings, if any, that concern these matters.

The divorce decree is affirmed. Petitioner's request for attorney fees incurred on appeal is denied. See Utah R. App. P. 24(a)(9).

Gregory K. Orme, Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge