

IN THE UTAH COURT OF APPEALS

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Judith Wanda Lowry,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellee,	)	
	)	Case No. 20060018-CA
v.	)	
	)	F I L E D
Kenneth Raymond Lowry,	)	(February 23, 2007)
	)	
Respondent and Appellant.	)	2007 UT App 56

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Fifth District, St. George Department, 044500246  
The Honorable James L. Shumate

Attorneys: Reed R. Braithwaite, St. George, for Appellant  
Andrew B. Berry Jr., Moroni, for Appellee

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Before Judges Davis, McHugh, and Orme.

DAVIS, Judge:

Kenneth Raymond Lowry (Husband) appeals several of the trial court's rulings pertaining to the divorce of Husband and Judith Wanda Lowry (Wife). We affirm.

First, Husband claims that the trial court erred by awarding Wife attorney fees. "[T]he decision to award attorney fees [in a divorce action is] within the sound discretion of the trial court." Moon v. Moon, 1999 UT App 12, ¶31, 973 P.2d 431 (alterations in original) (quotations and citation omitted). "[T]o award attorney fees, the trial court must find (1) the requesting party is in need of financial assistance; (2) the requested fees are reasonable; and (3) the other spouse has the ability to pay." Bolliger v. Bolliger, 2000 UT App 47, ¶26, 997 P.2d 903 (quotations and citation omitted). Here, the parties stipulated and the trial court found that Wife was completely disabled and otherwise unable to pay for her attorney. The court also found that Wife's attorney fees were "reasonable in light of the circumstances of this case and the fees of other experienced lawyers in the community." Finally, the trial court considered Husband's living expenses and attorney fees, and found that Husband was healthy enough to continue working and had a higher monthly income than Wife. Taken together, these findings support

the trial court's conclusion that Husband had the ability to pay Wife's attorney fees. Thus, the trial court considered all the required factors and did not abuse its discretion in awarding Wife attorney fees.

Next, Husband argues that the trial court erred by signing the proposed order four days after the order was served upon Husband.<sup>1</sup> We decline to review this issue because it is inadequately briefed and "the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." Smith v. Smith, 1999 UT App 370, ¶8, 995 P.2d 14 (quotations and citation omitted); see also id. at ¶10 (applying inadequate briefing analysis when appellant "obliquely refer[red] to the Utah Rules of Civil Procedure and to a general concept of due process").

Third, Husband contends that the trial court erred in its valuation and division of the marital residence. We will not disturb the trial court's valuation of marital property "absent a showing of a clear abuse of discretion." Munns v. Munns, 790 P.2d 116, 119 (Utah Ct. App. 1990). Similarly, we review the trial court's distribution of marital property for an abuse of discretion. See id. at 118-19. Husband argues that the valuation and division of the marital residence was improper because the trial court "ignored" Husband's evidence regarding the value of the house. Furthermore, Husband claims the trial court erred by allowing Wife's expert witness to testify regarding the value of the home despite Wife's failure to disclose her expert prior to trial as required by rule 26(a)(3) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 26(a)(3).

Husband's claim that the trial court ignored his valuation of the marital property has no merit. The trial transcript clearly shows that the court heard both Husband's testimony and the testimony of his expert witness, each of whom valued the marital property at over \$200,000. Respecting Husband's claim that Wife violated rule 26(a)(3) of the Utah Rules of Civil Procedure, see id., we conclude that even without Wife's expert's testimony, the trial court did not abuse its discretion in valuing the marital property. The record establishes that Husband and Wife purchased the home in 2002 for a price of \$149,000 and that Wife testified that the home was worth

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<sup>1</sup>Rule 7(f)(2) of the Utah Rules of Civil Procedure states that a party must file any objections to a proposed order within five days of service. See Utah R. Civ. P. 7(f)(2).

\$175,000. After hearing all the evidence, the trial court valued the home at \$185,000, which was well within its discretion.

Fourth, Husband argues that the trial court erred by awarding Wife a portion of his inheritance. Trial courts have "considerable discretion" when distributing marital property in divorce cases, and distributions "will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated." Bradford v. Bradford, 1999 UT App 373, ¶12, 993 P.2d 887 (quotations and citation omitted). Although "[e]ach party should, in general, receive the real and personal property he or she . . . inherited during the marriage," the "[e]xceptions to this general rule include whether the property has been commingled . . . and whether the distribution achieves a fair, just, and equitable result." Finlayson v. Finlayson, 874 P.2d 843, 847 (Utah Ct. App. 1994) (quotations and citations omitted).

Here, Husband concedes that he kept the inherited funds in a joint banking account and that he deposited his income into the account. The record also shows that Husband and Wife paid for living expenses, vacations, and a GMC pickup truck with the funds from this joint account. Nonetheless, Husband argues that the inherited funds never commingled with marital property because he can trace the inherited funds. We disagree. Husband provides no authority regarding, and cites no evidence supporting, his claim that his inheritance is traceable. The trial court, therefore, did not abuse its discretion by awarding Wife a portion of Husband's inherited funds.<sup>2</sup>

Finally, Husband claims that the trial court erred in its division of certain items of personal property and credit card debt between the parties. "We set aside findings of fact only when they are clearly erroneous." Peterson v. Peterson, 818 P.2d 1305, 1307 (Utah Ct. App. 1991). To challenge the trial court's division of property, Husband must first "marshal all evidence in favor of the facts as found by the trial court and then demonstrate that even viewing the evidence in a light most favorable to the court below, the evidence is insufficient to support the findings of fact." Id. at 1308 (quotations and citation omitted). Moreover, "[b]riefs must contain reasoned analysis based upon relevant legal authority." Smith v. Smith, 1999 UT App 370, ¶8, 995 P.2d 14 (analyzing inadequate briefing). Here, Husband provides a terse and conclusory recitation of limited facts and very general legal standards, without any

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<sup>2</sup>It follows that Husband's argument that he should be reimbursed for the \$8000 of inherited funds that he spent when purchasing the marital home necessarily fails.

meaningful analysis of why the evidence is insufficient to support the trial court's findings. Because Husband has inadequately briefed this issue and failed in his duty to marshal the facts, we "assume[] that the record supports the findings of the trial court," Peterson, 818 P.2d at 1308 (quotations and citation omitted), and affirm the trial court's division of personal property and debt.

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James Z. Davis, Judge

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WE CONCUR:

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge