

IN THE UTAH COURT OF APPEALS

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Raymond William Madsen,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20050139-CA
v.)	
)	F I L E D
Linda Diane Madsen,)	(June 29, 2006)
)	
Respondent and Appellant.)	2006 UT App 267

Fourth District, Provo Department, 024402853
The Honorable James R. Taylor

Attorneys: Steve S. Christensen, Salt Lake City, for Appellant
Randall L. Skeen, Salt Lake City, for Appellee

Before Judges Davis, Orme, and Thorne.

DAVIS, Judge:

Linda Diane Madsen (Wife) appeals from a divorce decree from Raymond William Madsen (Husband), arguing that the trial court failed to make sufficient findings of fact to support its determinations regarding alimony, distribution of marital assets and marital debt, and attorney fees.¹ We reverse and remand.

Wife first challenges the amount awarded in alimony. "In determining whether to award alimony and in setting the amount, the trial court must consider (1) the financial conditions and needs of the receiving spouse; (2) the ability of the receiving

¹Wife also argues that the trial court erred by failing to award Wife unpaid alimony. However, her argument is entirely conclusory and contains almost no legal analysis or references to the record. We are "entitled to have the issues clearly defined with pertinent authority cited and [are] not simply a depository in which the appealing party may dump the burden of argument and research." State v. Gomez, 2002 UT 120, ¶20, 63 P.3d 72 (quotations and citation omitted); see also Associated Gen. Contractors v. Board of Oil, Gas & Mining, 2001 UT 112, ¶37 & n.8, 38 P.3d 291; MacKay v. Hardy, 973 P.2d 941, 947-48 & n.9 (Utah 1998). We therefore decline to address this issue.

spouse to provide for him or herself; and (3) the ability of the payor spouse to provide support." Cox v. Cox, 877 P.2d 1262, 1267 (Utah Ct. App. 1994). Failure to consider these factors constitutes an abuse of discretion. See Bell v. Bell, 810 P.2d 489, 492 (Utah Ct. App. 1991). "Accordingly, the trial court must make sufficiently detailed findings of fact on each factor to enable a reviewing court to ensure that the trial court's discretionary determination was rationally based upon these three factors." Id.

"Findings are adequate only if they are sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Cox, 877 P.2d at 1267 (quotations and citation omitted); see also Bakanowski v. Bakanowski, 2003 UT App 357, ¶13, 80 P.3d 153 ("The findings of fact must show that the court's judgment or decree follows logically from, and is supported by, the evidence." (quotations and citation omitted)). "The absence of findings of fact is a fundamental defect that makes it impossible to review the issues that were briefed without invading the trial court's fact-finding domain." Bakanowski, 2003 UT App 357 at ¶13 (quotations and citation omitted). Therefore, "[i]f sufficient findings are not made, we must reverse unless the record is clear and uncontroverted such as to allow us to apply the [three] factors as a matter of law on appeal." Bell, 810 P.2d at 492.

Wife argues that the trial court erred because it based Wife's ability to provide for herself on her imputed gross income, whereas it based Husband's ability to provide support on his net income. In her direct examination, Wife stated twice that the evidence presented referred to her imputed gross monthly income, and she was specifically cross-examined on this same issue. Yet the trial court assumed that Wife's evidence pertained to her imputed net monthly income, stating in a hearing that:

[W]e were imput[ing] income trying to come up with the best estimate of cash that she should be able to put in her pocket were she to engage in the most gainful employment we could anticipate from her history. And so it was dollars, I mean, it was anticipated real dollars that went into her pocket. And so I guess implicit in that is the idea that that's what I thought she would net.

There is nothing in the trial court's findings of fact regarding this discrepancy, much less the propriety or effect of basing Wife's ability to provide for herself on imputed gross income and

Husband's ability to provide support on net income. The absence of such findings makes it impossible for us to review this issue.

Wife also contends that the trial court underestimated Husband's ability to provide support because it erroneously considered as expenses two monthly payments--\$424.52 for "installment payments" going to purported marital debts and \$900 for temporary spousal support. Although the \$900 monthly payments for temporary spousal support terminated upon the final decree of divorce, the trial court stated in a hearing that it intentionally counted them as Husband's expenses because he was charged with paying down the purported marital debt:

To make explicit, one of the most important factors that I observed and that I found and that I concluded in considering this case was . . . the uneven distribution of debt responsibility. There were substantial debts from this marriage, I gave them all to him. I ordered him to pay off all of the debts and assume all of the debt load. And that had a lot to do with my intentionally leaving the \$900 expense on his, in his expenses

But the monthly "installment payments" of \$424.52 were also regarded as Husband's expenses and were also used to pay down the purported marital debts. In other words, Husband's monthly expenses included \$1324.52 for payment of the purported marital debt, despite the fact that only \$424.52 was due each month on that debt. Again, there is nothing in the trial court's findings of fact regarding this discrepancy, and it is therefore impossible for us to review this issue. We must reverse and remand for sufficient findings on alimony.²

²Husband argues on appeal that the trial court properly considered the fault of the parties in determining alimony, see Utah Code Ann. § 30-3-5(7)(b) (Supp. 2001) (current version at Utah Code Ann. § 30-3-5(8)(b) (Supp. 2005)), because Wife "drained the bank accounts" and "racked up thousands and thousands of dollars in marital credit card debt to support her frolic." While this may or may not be true, the trial court did not state in its findings of fact that it was using fault as a factor in determining alimony. We must therefore reverse on the issue of alimony and remand for sufficient findings. See Howell v. Howell, 806 P.2d 1209, 1213 (Utah Ct. App. 1991) ("The trial court must make findings on all material issues. Failure to do so constitutes reversible error, unless pertinent facts in the record are clear, uncontroverted, and capable of supporting only
(continued...)

Wife next challenges the trial court's distribution of marital assets and marital debt, arguing that "the debts were almost equally divided and the assets were all awarded to [Husband]."³ Although in a divorce action there is no fixed formula upon which to determine a division of marital assets or debts, see Rehn v. Rehn, 1999 UT App 41, ¶19, 974 P.2d 306; Osguthorpe v. Osguthorpe, 804 P.2d 530, 535 (Utah Ct. App. 1990) (per curiam), the general rule is that "each party is presumed to be entitled to . . . fifty percent of the marital property," Bradford v. Bradford, 1999 UT App 373, ¶26, 993 P.2d 887 (quotations, citation, and alteration omitted). "However, such allocation must be based upon adequate factual findings which ruling we will not disturb absent an abuse of discretion." Rehn, 1999 UT App 41 at ¶19; see also Haumont v. Haumont, 793 P.2d 421, 425 (Utah Ct. App. 1990) ("To permit appellate review of the trial court's property distribution, . . . the distribution must be based upon adequate factual findings."). Moreover, "[a]n unequal division of marital property . . . is only justified when the trial court memorializes in commendably detailed findings the exceptional circumstances supporting the distribution." Bradford, 1999 UT App 373 at ¶27 (quotations, citation, and alteration omitted).

In its findings of fact, the trial court awarded Husband approximately \$25,000, representing one hundred percent of the liquid proceeds from the sale of the marital home, and a timeshare worth approximately \$8000. In a hearing, the trial court stated that it was "intentionally [awarding Husband] the

²(...continued)
a finding in favor of the judgment." (quotations and citation omitted)); Haumont v. Haumont, 793 P.2d 421, 424 (Utah Ct. App. 1990).

³Wife also argues that the trial court overvalued her vehicle. "Determining and assigning values to marital property is a matter for the trial court, and [we] will not disturb those determinations absent a showing of clear abuse of discretion." Morgan v. Morgan, 854 P.2d 559, 563 (Utah Ct. App. 1993) (quotations and citation omitted). "It is elementary that a judge is not bound to believe one witness's testimony to the total exclusion of that of another witness. When acting as the trier of fact, the trial judge is entitled to give conflicting opinions whatever weight he or she deems appropriate." Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). Evidence was presented at trial that Wife traded in a vehicle worth approximately \$15,000 at the time the parties separated. We therefore find that the trial court did not abuse its discretion in valuing Wife's vehicle.

[\$]25,000 cash [and] giving him the condo" because the trial court was "also giving him the debts." But Husband was only required to pay two specific debts, while Wife was required to pay one specific debt. Beyond this, the trial court ordered Husband to pay "all other marital debt," without specifying which debts fell into that category. In other words, the trial court did not delineate in its findings of fact which debts were considered marital, nor did it make any findings regarding the propriety or effect of using the timeshare and the liquid proceeds from the sale of the marital home to discharge such debt. Because the findings of fact here are insufficient, we are unable to review the trial court's distribution of marital assets and marital debt. We therefore reverse and remand for sufficient findings on the distribution of marital assets and marital debt. See Finlayson v. Finlayson, 874 P.2d 843, 849 (Utah Ct. App. 1994) (holding that trial court abused its discretion where it "made no findings . . . regarding the propriety or effect of using liquid assets of the marital estate to discharge the debt").

Wife next challenges the trial court's refusal to award her attorney fees "without making any of the findings required by [Utah law]." ⁴ A trial court may award attorney fees in divorce proceedings, and "[b]oth the decision to award attorney fees and the amount of such fees are within the trial court's sound discretion." Wilde v. Wilde, 969 P.2d 438, 444 (Utah Ct. App. 1998). "However, the award or denial of such fees must be based on evidence of the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees." Id. (quotations, citation, and alteration omitted). In Wilde, we remanded for the trial court to reconsider defendant's request for attorney fees and to make required findings in support of its determination where

the trial court ordered both parties to pay their own attorney fees and costs, but made no findings regarding defendant's need for the award, the ability of the plaintiff to pay attorney fees or costs, or the reasonableness of defendant's requested fees.

⁴Wife also argues in passing that the trial court "abused its discretion by awarding [Husband] attorney[] fees," referring to the trial court's order that Wife pay Husband's attorney fees associated with Wife's unsuccessful motion to compel. However, we are "not simply a depository in which the appealing party may dump the burden of argument and research," Gomez, 2002 UT 120 at ¶20 (quotations and citation omitted), and we therefore refuse to address this issue.

In short, the [trial] court gave no explanation for requiring each party to bear his or her own fees and costs. The absence of these findings prevents a meaningful review of the trial court's ruling.

Id.; see also Williamson v. Williamson, 1999 UT App 219, ¶13, 983 P.2d 1103 (remanding for trial court to reconsider request for attorney fees and enter findings regarding same where "trial court ordered both parties to pay their own attorney fees, but made no findings about either party's need for or ability to pay attorney fees"). Similarly, the trial court here simply stated in its findings of fact that, "[b]ased upon the allocation of debt and assets, each party has the ability to assume and pay their own attorney[] fees." Because we cannot meaningfully review the trial court's refusal to award Wife's attorney fees, we must reverse and remand for the trial court to reconsider Wife's request for attorney fees and to make sufficient findings in support of its determination.

The trial court's findings of fact are insufficient regarding the amount awarded in alimony, the distribution of marital assets and marital debt, and the refusal to award attorney fees. Therefore, we must reverse and remand for the trial judge that heard this case to reconsider such matters and to make sufficient findings in support of his determinations.

James Z. Davis, Judge

WE CONCUR:

Gregory K. Orme, Judge

William A. Thorne Jr., Judge