

IN THE UTAH COURT OF APPEALS

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Karen Morris,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellee,	)	
	)	Case No. 20040342-CA
v.	)	
	)	F I L E D
Michael Anthony Morris,	)	(October 14, 2005)
	)	
Respondent and Appellant.	)	<u>2005 UT App 435</u>

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Fifth District, St. George Department, 024500415  
The Honorable James L. Shumate

Attorneys: Reed R. Braithwaite, St. George, for Appellant  
            Jeffery D. Bursell, St. George, for Appellee

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Before Judges Bench, Davis, and Orme.

DAVIS, Judge:

Michael Morris (Husband) appeals the trial court's distribution of the marital estate and award of attorney fees to Karen Morris (Wife). We affirm.

Husband argues that the trial court's distribution of the marital estate was an abuse of discretion. "There is no fixed formula for determining a division of property in a divorce action." Osguthorpe v. Osguthorpe, 804 P.2d 530, 535 (Utah Ct. App. 1990). "The trial court has wide discretion in adjusting financial and property interests, and its actions are entitled to a presumption of validity." Id. "Absent a showing of a clear and prejudicial abuse of discretion, we will not interfere with a property award." Id.

Husband first contends that the trial court abused its discretion when it valued as marital property certain gifts that the parties had given each other during the marriage.<sup>1</sup> We disagree. Trial courts have wide discretion in property division

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<sup>1</sup>The gifts challenged here include items such as skis, golf clubs, binoculars, and a grill. The trial court did not include in the marital property the value of the parties' anniversary or wedding rings.

regardless of the property's source. See id. Generally, a gift of interest in separately owned property is considered marital property when it is given by one spouse to another. See id.; Bradford v. Bradford, 1999 UT App 373, ¶22, 993 P.2d 887 ("Utah law provides that a spouse may transfer his or her interest in separately acquired property into the marital estate."). Even if we analyzed the gifts given during the marriage as if they had come from a third party, trial courts consider gifts to be marital property if the non-acquiring spouse contributed to the property, the property lost its identity through commingling or exchanges, or the acquiring spouse gifted an interest in the property to the other spouse. See Osquthorpe, 804 P.2d at 535. Here, Wife contributed to the property she gave Husband--she was the one who actually purchased the gifts during their marriage, using marital funds to do so. And the trial court, having heard the evidence, is in the best position to know whether the gifts at issue lost their identity through commingling or exchanges. As such, the trial court did not abuse its discretion when it valued as marital property the gifts that the parties had given each other.

Husband also argues that the trial court erred because it did not place a value on every item on the parties' lists, but instead ruled that:

The parties have acquired other personal property during the course of the marriage which shall be divided as they presently hold it. The exhibits and the testimony offered do not convince the [c]ourt, to the required burden of proof, that there need be any further finding of values needed to equalize the division of the marital estate since the exhibits tend to support the "award as hold" division.

"[T]he general purpose to be achieved by a property division . . . is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives." Naranjo v. Naranjo, 751 P.2d 1144, 1148 (Utah Ct. App. 1988) (quotations and citation omitted). Here, the parties divided up certain property prior to the divorce proceedings, and the trial court, having heard the evidence, was in the best position to determine whether the property was divided in a manner that "best serve[d] the needs of the parties and best permit[ted] them to pursue their separate lives." Id. (quotations and citation omitted).

Finally, Husband challenges the trial court's valuation of certain property.<sup>2</sup> "Determining and assigning values to marital property is a matter for the trial court, and this [c]ourt 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). Here, the parties gave differing opinions regarding the value of the truck, and the trial court simply chose Wife's valuation over Husband's. "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). Husband's argument here is "nothing but an attempt to have this [c]ourt substitute its judgment for that of the trial court on a contested factual issue." Id. We decline to do so. The trial court here, in choosing Wife's valuation of the truck over Husband's, did not abuse its discretion. Accordingly, we affirm the trial court's valuation.

Husband also argues that the trial court erroneously awarded attorney fees to Wife. We disagree. "An award of attorney[] fees . . . in divorce actions rests within the sound discretion of the trial court, which we will not disturb absent an abuse of discretion." Wilde v. Wilde, 969 P.2d 438, 442 (Utah Ct. App. 1998) (quotations and citation omitted). However, the award 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 reasonableness of the requested fees." Id. at 444 (quotations and citation omitted).

Husband appears to challenge Wife's financial need, arguing that Wife should not have been awarded attorney fees because she "was awarded ample personal property to satisfy her attorney[] fees." However, when awarding attorney fees, Utah courts ordinarily consider the distribution of property when the

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<sup>2</sup>Husband also argues, in passing, that the trial court erred when it distributed the marital debt because it "did not value the debts, [but] simply allocated the debts without a value and without taking that value into consideration in the overall property division." However, Husband's analysis ends there. We will not address this issue because we are not "simply a depository in which the appealing party may dump the burden of argument and research." Associated Gen. Contractors v. Board of Oil, Gas & Mining, 2001 UT 112, ¶37, 38 P.3d 291 (quotations and citation omitted); see also MacKay v. Hardy, 973 P.2d 941, 948 n.9 (Utah 1998) (giving examples of a "legion" of inadequately briefed cases).

property generates income or includes liquid assets. See, e.g., Larson v. Larson, 888 P.2d 719, 726 (Utah Ct. App. 1994) (affirming trial court's denial of attorney fees where wife would be receiving \$108,000 in a final lump sum property settlement); Hoagland v. Hoagland, 852 P.2d 1025, 1029 (Utah Ct. App. 1993) (holding that parties should each pay their own attorney fees where "[w]ife had received funds through the sale of the motor home, cash left to her when [h]usband left the state, money received from the sale of the house, and the other assets"). Here, the majority of the property distributed to Wife does not and cannot generate income. The trial court, therefore, did not abuse its discretion by not considering Wife's share of the marital property when awarding attorney fees. Accordingly, we affirm the award of attorney fees.

We affirm the trial court's distribution of marital property and award of attorney fees. Because Wife was awarded attorney fees by the trial court and she is the prevailing party on appeal, she is entitled to attorney fees incurred in this appeal. See Lyngle v. Lyngle, 831 P.2d 1027, 1031 (Utah Ct. App. 1992). We therefore affirm and remand for entry of an award of reasonable attorney fees on appeal.

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James Z. Davis, Judge

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I CONCUR:

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Russell W. Bench,  
Associate Presiding Judge

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ORME, Judge (concurring and dissenting):

I concur in the court's decision except as concerns the award of attorney fees. I believe the trial court's findings on attorney fees are inadequate and would remand for reconsideration of the fee award.

While in the context of divorce "[t]he decision to award attorney fees and the amount thereof rests primarily in the sound discretion of the trial court," the court must "base the award on evidence of the receiving spouse's financial need, the payor spouse's ability to pay, and the reasonableness of the requested

fees." Childs v. Childs, 967 P.2d 942, 947 (Utah Ct. App. 1998), cert. denied, 982 P.2d 88 (Utah 1999). "Failure to consider these factors is grounds for reversal on the fee issue." Wilde v. Wilde, 969 P.2d 438, 444 (Utah Ct. App. 1998). "Moreover, [s]uch an award must be based on sufficient findings regarding these factors." Shinkoskey v. Shinkoskey, 2001 UT App 44, ¶18, 19 P.3d 1005 (internal quotations and citations omitted) (alteration in original). "This enables an appellate court to determine if the trial court has abused its discretion. Without adequate findings of fact, there can be no meaningful appellate review." Willey v. Willey, 951 P.2d 226, 230 (Utah 1997).

While there is some evidence that the amount of the requested attorney fees was reasonable, the trial court did not specifically make all the required findings in awarding Wife her attorney fees. See Walters v. Walters, 812 P.2d 64, 68 (Utah Ct. App. 1991), cert. denied, 836 P.2d 1383 (Utah 1992). Here, the trial court merely ordered Husband to pay a portion of Wife's attorney fees after determining that he could afford to pay and that Wife would be awarded alimony. In fact, it appears that the court presumed that because Wife met all the requirements to merit an award of alimony, she also deserved an award of attorney fees. This is essentially the position urged by Wife on appeal, although she couches it more in terms of a request that we simply apply the alimony findings to the attorney fees determination.

But just because the trial court properly concluded that Wife met all the requirements to merit an award of alimony does not necessarily mean that she simultaneously qualifies for an award of attorney fees. Instead, the court must give a more focused explanation for requiring one spouse to bear the other spouse's attorney fees. Otherwise, the absence of such an explanation prevents meaningful appellate review of the trial court's ruling. See Wilde, 969 P.2d at 444. Also, determining the propriety of an award of attorney fees in this case necessitates, as a practical matter, a separate needs/ability analysis from that made by the trial court in awarding alimony. In other words, Wife's need for help with the fees, as well as Husband's ability to pay the fees, must be analyzed in light of the alimony awarded as well as the property distributed. Thus, I would require the trial court to make specific factual findings regarding the award of attorney fees and to reconsider its decision in light of those findings, adjusting its decision if appropriate.

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Gregory K. Orme, Judge