

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Kenneth Clark Ranson,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20060449-CA	
v.)		
)	F I L E D	
Marianna DiPaolo,)	(March 6, 2008)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2008 UT App 65</td></tr></table>	2008 UT App 65
2008 UT App 65			

Third District, Salt Lake Department, 044900818
The Honorable Joseph C. Fratto Jr.

Attorneys: Kenneth Clark Ranson, Sandy, Appellant Pro Se
Robert Devin Pusey, Sandy, for Appellee

Before Judges Thorne, Billings, and Orme.

THORNE, Associate Presiding Judge:

Kenneth Ranson appeals from the district court's findings of fact, conclusions of law, and decree of divorce, as well as its denial of his motion for a new divorce trial. We affirm.

Ranson's appeal focuses on the district court's failure to award alimony to him despite Marianna DiPaolo's significantly greater earning capacity. Ranson argues that the district court failed to account for taxes on Ranson's imputed earnings; failed to make allowances for the costs of owning and maintaining an automobile and other major purchases; made no provision for Ranson's retirement needs; gave no consideration to the parties' standard of living during the marriage and failed to equalize their post-divorce standards of living; and made no allowance for the enhancement of DiPaolo's earning capacity that could be attributed to Ranson's efforts during the marriage.¹ Ranson also

1. Ranson also argues that, as a man seeking alimony from a woman, he has been discriminated against on the basis of sex by both the district court and by various members of the Utah State Bar who declined to represent him. Ranson provides only vague anecdotal support for these arguments and does not appear to have
(continued...)

argues that the district court erred in imputing his annual income in the amount of \$32,000. Trial courts have considerable discretion in determining alimony, and determinations of alimony will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated. See Riley v. Riley, 2006 UT App 214, ¶ 15, 138 P.3d 84. A trial court acts within the bounds of its discretion so long as there is a reasonable basis for its decision. See id.

A review of the district court's detailed order reveals that some of Ranson's contentions are clearly without merit. For example, the district court awarded Ranson \$5265 out of the parties' joint investment account due to the disparity in value in the vehicles awarded to each party. This award contemplated Ranson's need to maintain or upgrade his vehicle. Similarly, the district court expressly addressed the parties' retirement needs by equitably dividing DiPaolo's retirement account. The district court also expressly considered the parties' standard of living in determining Ranson's reasonable monthly need.

As to the issues relating to Ranson's income, Ranson has not demonstrated that the district court erred in imputing \$32,000 of annual employment income to him. The district court found that Ranson was voluntarily underemployed and that neither his age nor his health precluded him from gainful employment. Further, the \$32,000 figure is within the range specified in the report and testimony of vocational specialist Dr. Kristy Farnsworth. Farnsworth identified several positions for which Ranson was qualified, with minimum starting salaries expected to range from \$19,760 as a customer service representative, to \$24,336 as a finish carpenter, and up to \$32,864 as a construction supervisor. Farnsworth also concluded that Ranson could "expect a steady increase in earnings once he demonstrates his abilities and develops current work experience." While not conclusive evidence, Farnsworth's report and testimony does provide a reasonable basis for the district court's decision and renders it within the boundaries of the court's discretion.

Ranson also argues that the district court erred in its conclusion that Ranson's total imputed income was sufficient to meet his reasonable need and, in particular, failed to account for taxes that he would owe on the income imputed to him. We agree that the district court did not deduct taxes from Ranson's imputed employment income and instead acknowledged that it was relying on a gross figure of \$2666 monthly or \$32,000 annually.

1. (...continued)
preserved them in the district court. We therefore decline to address these arguments.

But the court also found that Ranson enjoyed some small, but unspecified, income from his separate land and security investments.² The court then determined Ranson's reasonable monthly need to be \$2500 monthly or \$30,000 annually. Balancing Ranson's need against his imputed income, the court determined that Ranson is able to meet his own needs.

Ranson has not demonstrated on appeal that his imputed employment income, augmented by his investment income but less taxes, fails to meet his reasonable need as found by the court. In his appellate brief, Ranson points to income and tax figures in one of DiPaolo's trial exhibits, performs unspecified calculations on those figures, and arrives at an alleged post-tax imputed monthly income of \$2072, a \$428 shortfall from his \$2500 monthly need. Without knowing Ranson's methodology, we cannot simply accept these calculations on appeal. And, even if we can assume that taxes would reduce his imputed monthly income, we are unable to say that Ranson's income is insufficient for his needs because Ranson's calculations ignore the additional land and security investment income available to him. In addition, Ranson was awarded \$85,000 in cash, the investment of which could also result in income.³

Where, as here, the district court considers the statutory factors in making its alimony decision, "we will not disturb the trial court's alimony award unless such a serious inequity has resulted as to manifest a clear abuse of discretion." Chambers v. Chambers, 840 P.2d 841, 843 (Utah Ct. App. 1992) (quoting Schindler v. Schindler, 776 P.2d 84, 90 (Utah Ct. App. 1989)).⁴ Although Ranson asserts on appeal that taxes would reduce his imputed income from \$2500 to \$2072 per month, the district court did not make findings of fact accepting the figures that Ranson

2. Although the district court did not make a finding as to the amount of his land and security investment income, Ranson's trial testimony indicated that it was about \$1500 annually.

3. We note that Ranson devoted considerable trial testimony to establishing his proficiency as an investment manager over the course of the parties' marriage.

4. Utah Code section 30-3-5(8) lists multiple factors that a district court must consider in determining alimony. See Utah Code Ann. § 30-3-5(8)(a)(i)-(vii) (2007). The two mandatory factors relevant to Ranson's imputed income arguments are "the financial condition and needs of the recipient spouse" and "the recipient's earning capacity or ability to produce income." Id. § 30-3-5(8)(a)(i), (ii). The district court addressed each of these factors extensively.

relies on, and Ranson fails to explain how he derived the \$2072 from those figures. Thus, Ranson has failed to adequately demonstrate the effect that imputed taxes would have on his imputed income.

Nor would it be enough for Ranson merely to establish that taxes would reduce his imputed income by a specific amount. In order to show inequity, Ranson would have to demonstrate that his total income--his properly imputed post-tax income plus the potential investment incomes identified above--fell below the \$2500 in monthly need found by the district court. Ranson has failed to do so. Under these circumstances, we cannot say that Ranson has shown the serious inequity required in order for us to disturb the district court's award.

In reviewing the district court's order as a whole, we see no abuse of discretion in the court's failure to award Ranson alimony. The district court considered Ranson's continued ability to earn and balanced that ability against his needs. Ranson was also awarded the family home, which was valued in excess of \$175,000 and was not encumbered by mortgage debt, and received approximately \$85,000 in cash and nearly \$100,000 in retirement funds. In light of these substantial assets and the district court's balancing of Ranson's earning capacity against his need, the court's determination that Ranson is able to meet his own needs without alimony from DiPaolo is eminently reasonable. Accordingly, the district court's decision falls within the bounds of its discretion. See id.

Finally, Ranson argues that the district court erred in denying his motion for a new trial. "We review the trial court's decision on a motion for a new trial for an abuse of discretion," Balderas v. Starks, 2006 UT App 218, ¶ 13, 138 P.3d 75, and we reverse "only if there is no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 817 P.2d 789, 805 (Utah 1991). Ranson sought a new trial, alleging improprieties in the proceedings caused by the incompetence of his own counsel. Specifically, Ranson alleged that counsel failed to present certain evidence that would have resulted in a more favorable result to Ranson. In denying Ranson's motion, the district court noted that ineffective assistance of counsel as a ground for a new trial is a concept that is limited to criminal matters. The district court stated that it could grant a new trial if counsel's performance created an injustice, but found that Ranson had not demonstrated such an injustice because he failed to establish the claimed existence of additional evidence or demonstrate how such additional evidence would likely have altered the outcome at trial.

While we agree with Ranson that the Utah Supreme Court has not categorically rejected the idea that civil counsel's inadequacy can ever justify a new trial, see, e.g., Rukavina v. Triatlantic Ventures, Inc., 931 P.2d 122, 126 (Utah 1997), "[t]he general rule is that in civil cases a new trial will not be granted based upon the incompetence or negligence of one's own trial counsel." Id. (alteration in original) (quoting Jennings v. Stoker, 652 P.2d 912, 913 (Utah 1982)). We see nothing in this matter that warrants a departure from the general rule.

Here, the district court's ruling states a reasonable basis for the denial of Ranson's motion for a new trial: Ranson failed to demonstrate the existence or relevance of the evidence that his counsel allegedly failed to present. Thus, even if we assume that an injustice created by a party's own counsel could justify the granting of a new trial, the district court's finding that Ranson had failed to establish an injustice adequately justifies the denial of his motion in this case.

For these reasons, we affirm the district court's judgment and denial of Ranson's motion for a new trial. Although we do not find any of Ranson's arguments to be meritorious, neither do we find them to be frivolous, particularly when viewed in light of his pro se status. Accordingly, we decline to award attorney fees to DiPaolo.

William A. Thorne Jr.,
Associate Presiding Judge

I CONCUR:

Judith M. Billings, Judge

ORME, Judge (concurring specially):

I agree that the trial court acted reasonably in denying Ranson's request for alimony. I write separately only to disavow any suggestion that, in denying alimony, the trial court had to find Ranson able to meet his monthly expenses out of his current income. Such is not the case.

The very reason trial courts typically distribute property before determining alimony, an approach ratified by Utah's appellate courts, is so that the trial court's assessment of a spouse's ability to provide for himself or herself takes into account assets as well as income. See, e.g., Mortensen v. Mortensen, 760 P.2d 304, 308 (Utah 1988) ("The fact that one spouse has inherited or donated property, particularly if it is income-producing, may properly be considered as eliminating or reducing the need for alimony by that spouse or as a source of income for the payment of child support or alimony (where awarded) by that spouse."); Newmeyer v. Newmeyer, 745 P.2d 1276, 1277-79 & n.1 (Utah 1987) (addressing property distribution before alimony); Dubois v. Dubois, 29 Utah 2d 75, 504 P.2d 1380, 1381 (1973) (reducing alimony award to \$1 per year because the wife was able to support herself on income from the property awarded to her as part of the property distribution); Burt v. Burt, 799 P.2d 1166, 1170 (Utah Ct. App. 1990) ("In conjunction with making adequate findings as to the appropriate distribution of inherited property . . . , the court may then determine the propriety and amount of alimony for either party.") (emphasis added). It is far from incidental, then, that Ranson was awarded a mortgage-free residence worth \$175,000, some \$85,000 in cash, and retirement funds in an amount approaching six figures.

In considering alimony, the question properly before the trial court was not whether annual income of \$32,000 would cover Ranson's yearly expenses, but whether, given that income and these assets, he had a demonstrated need for postmarital support payments from DiPaolo. I readily agree that the trial court acted reasonably in concluding he did not, and I therefore concur in the decision to affirm.

Gregory K. Orme, Judge