

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Robert Resendes,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20050364-CA	
v.)		
)	F I L E D	
Tamara Joy Resendes,)	(October 5, 2006)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2006 UT App 402</td></tr></table>	2006 UT App 402
2006 UT App 402			

Sixth District, Richfield Department, 024600138
The Honorable Paul D. Lyman
The Honorable K.L. McIff

Attorneys: Lorie D. Fowlke and Paul Waldron, Provo, for
Appellant
Douglas L. Neeley, Manti, for Appellee

Before Judges Bench, McHugh, and Thorne.

BENCH, Presiding Judge:

Robert Resendes (Husband) appeals the trial court's divorce decree awarding Tamara Joy Resendes (Wife) alimony. Before a trial court awards alimony it "'must consider the needs of the recipient spouse, the earning capacity of the recipient spouse, the ability of the obligor spouse to provide support, and the length of the marriage'". Kelly v. Kelly, 2000 UT App 236, ¶26, 9 P.3d 171 (quoting Rehn v. Rehn, 1999 UT App 41, ¶6, 974 P.2d 306).

Husband argues that the trial court abused its discretion pursuant to Utah Code section 78-45-7.5(7)(c) in basing Wife's imputed income on her working seventy-two hours per month as a nurse, and not on a forty hour work week. See Utah Code Ann. § 78-45-7.5(7)(c) (Supp. 2006). Section 78-45-7.5(7)(c), however, requires that an imputed income be based on a forty hour work week only when the parent has no recent work history or the occupation is unknown. See id. In this case, the record shows

that the trial court made an appropriate inquiry into Wife's relevant work history and known occupation, thereby rendering section 78-45-7.5(7)(c) inapplicable.

Husband also contends that the trial court should have imputed Wife's income pursuant to Utah Code section 78-45-7.5(7)(d). See id. § 78-45-7.5(7)(d). Husband, however, misinterprets this subsection. Subsection (7)(d) outlines four factors that preclude a trial court from imputing income to a party, and does not, as Husband contends, require imputing a full-time income in the absence of those factors. See id. Here, because the enumerated factors are not present, section 78-45-7.5(7)(d) is inapplicable.

Finally, Husband claims that the trial court abused its discretion by considering the age and number of minor children living with Wife in its calculation of the imputed income. Specifically, Husband claims that because the couple's youngest child would soon be attending school, the trial court was required to impute full-time income to Wife without considering specific family circumstances. However, Utah courts have consistently held that factors not directly related to a spouse's employability, such as the number and age of minor children at home and the historical caregiving roles of each parent, may be considered by trial courts when imputing income to a party. See Fletcher v. Fletcher, 615 P.2d 1218, 1223 (Utah 1980) (calculating an alimony award based on custodial parent's part-time work schedule was not an abuse of discretion); Rehn, 1999 UT App 41 at ¶6; Reinhart v. Reinhart, 963 P.2d 757, 758 (Utah Ct. App. 1998). In this case, the record shows that the trial court determined that the amount of time needed to care for five school-age children at home would prevent Wife from working as a full-time nurse. The imputed income reflects the trial court's careful balancing of Wife's role as primary caregiver to the children, and the need for Wife to increase her financial contribution to the family. Therefore, we conclude that the trial court did not abuse its discretion.

Wife requests an award of attorney fees incurred on appeal. "[W]here the trial court has awarded attorney fees and the receiving spouse has prevailed on the main issues, we generally award fees on appeal." Rosendahl v. Rosendahl, 876 P.2d 870, 875 (Utah Ct. App. 1994). As the trial court awarded partial attorney fees, and Wife has prevailed here, she is entitled to at least some of the attorney fees she has incurred on appeal. See Hill v. Hill, 869 P.2d 963, 967 (Utah Ct. App. 1994).

We therefore affirm the trial court's award of alimony and remand the case for a determination of attorney fees reasonably incurred by Wife on appeal.

Russell W. Bench,
Presiding Judge

WE CONCUR:

Carolyn B. McHugh, Judge

William A. Thorne Jr., Judge