

IN THE UTAH COURT OF APPEALS

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Kristyna Diane Rose,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner, Appellee, and)	
Cross-appellant,)	Case No. 20050409-CA
)	
v.)	F I L E D
)	(August 31, 2006)
Donovan T. Rose,)	
)	<u>2006 UT App 358</u>
Respondent, Appellant,)	
and Cross-appellee.)	
_____)	
)	
State of Utah, Office of)	
Recovery Services,)	
)	
Intervenor.)	

Third District, Salt Lake Department, 034903379
The Honorable J. Dennis Frederick

Attorneys: Paige Bigelow, Salt Lake City, for Appellant
 J. Keven Hofeling, Salt Lake City, for Appellee

Before Judges McHugh, Orme, and Thorne.

THORNE, Judge:

Donovan T. Rose (Husband) appeals from a decree of divorce awarding alimony and sole physical custody of the parties' minor child to Kristyna Diane Rose (Wife). Husband also contests the trial court's failure to impute Wife's income for purposes of determining child support. We affirm all but the alimony award, which we reverse and remand for the entry of additional findings.

Husband first contends that the trial court's findings are inadequate to support its award of sole physical custody of the parties' child to Wife. Specifically, he asserts that the trial court placed undue weight on maintaining consistent child care arrangements and the additional child care needed due to Husband's full-time employment. Considerable discretion is given

to the trial court in making custody decisions. See Sigg v. Sigg, 905 P.2d 908, 916 (Utah Ct. App. 1995).

The trial court considered and incorporated into its Findings of Fact the custody evaluation reports submitted by two separate evaluators. The reports complied with rule 4-903 of the Utah Rules of Judicial Administration and evaluated the needs of the child, as well as the moral character, ability to parent and provide visitation, duration and desire for custody, and surrogate care needs of both Husband and Wife. See Utah R. Jud. Admin. 4-903 (establishing uniform guidelines for custody evaluations). The evaluators concluded that both parents had the ability and desire to provide for the child, neither party had poor moral character, and both required surrogate care. Although Wife did not agree with the evaluators' recommendations for joint physical custody, the parties did not otherwise dispute the major findings of the custody evaluations.

The trial court set forth its reasons for awarding custody to Wife in both its oral and written findings. Specifically, the trial court agreed with the conclusions of the custody evaluators and adopted the recommendations, except for the joint custody recommendation.¹ The trial court also discussed other factors it considered in finding that custody with Wife was in the best interest of the child, including consistency of care provider arrangements and surrogate care. We do not find that the trial court placed undue weight on these factors. Moreover, these findings together with the conclusions adopted by the trial court from the custody evaluations are sufficient to support its award of custody to Wife.

Husband also argues that the trial court erred in awarding alimony because it failed to make adequate findings regarding Wife's need and Husband's ability to pay. A trial court's determination of alimony is reviewed for an abuse of discretion. See Griffith v. Griffith, 1999 UT 78, ¶17, 985 P.2d 255. In determining whether to award alimony and in setting the amount, the trial court must consider three factors: the financial needs and ability of the receiving spouse to provide for him or herself, as well as the ability of the payor spouse to provide support. See Cox v. Cox, 877 P.2d 1262, 1267 (Utah Ct. App. 1994). "Accordingly, the trial court must make sufficiently detailed findings of fact on each factor to enable a reviewing

¹The trial court found that the parties' emotional resentments and disagreements would affect their ability to cooperate and get along to the extent required for a joint physical custody order.

court to ensure that the trial court's discretionary determination was rationally based upon these three factors." Bell v. Bell, 810 P.2d 489, 492 (Utah Ct. App. 1991).

In the instant case, other than Wife's testimony regarding her monthly income and rental expense, no additional information was provided to show her financial condition.² The trial court based its conclusion that Wife had a need for alimony on her testimony that she required food stamps and received welfare supplements, without requiring a current and detailed financial declaration of her income and expenses to support these assertions. Additionally, the court assessed Husband's ability to pay by averaging the monthly expenses provided in his financial declarations³ and found that this amount far exceeded any disposable income available to Wife. The trial court did not make detailed findings of fact regarding either Husband or Wife's financial condition. See Cox, 877 P.2d at 1267 ("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." (quotations and citation omitted)). Thus, the trial court's findings are insufficient to support an award for alimony. We reverse the trial court's alimony award and remand for entry of more detailed findings. See Bell, 810 P.2d at 492 ("If 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.").

Finally, Husband alleges that the trial court erred in failing to impute full-time income to Wife because of her role in caring for the parties' child. "[T]rial courts have broad discretion in selecting an appropriate method of assessing a spouse's income and will not be overturned absent an abuse of discretion." Griffith, 1999 UT 78 at ¶19. After hearing testimony related to Wife's employment history, the trial court was not persuaded that she was underemployed, and determined that she should continue to care for the child. The trial court did not err in finding that Wife was not underemployed because her drop in earnings was not voluntary. See Hall v. Hall, 858 P.2d

²It appears that the financial declaration submitted to the court in her certificate of compliance was prepared by Wife on June 8, 2004, approximately one year prior to the award. However, no testimony regarding Wife's current expenses other than rent were provided to the court.

³Apparently, Husband submitted two financial declarations, one on September 15, 2003, and one on April 27, 2004.

1018, 1026 (Utah Ct. App. 1993) (stating that in determining whether to impute income due to underemployment, findings must address whether the drop in earnings was voluntary). Wife's part-time employment was pursuant to an arrangement made by the parties when the child was born and was merely a continuation of that arrangement.⁴

In summary, we affirm the trial court's custody determination, concluding that the trial court's findings are adequate to support its award of sole physical custody of the parties' child to Wife. Likewise, the trial court did not err in concluding that Wife was not underemployed, and declining to impute full-time income to her. However, because the trial court's findings were not adequate to support its alimony award, we reverse and remand for reconsideration of the alimony award and entry of detailed findings supporting an appropriate award. "We do not intend our remand to be merely an exercise in bolstering and supporting the conclusion already reached." Woodward v. Fazzio, 823 P.2d 474, 479 (Utah Ct. App. 1991) (quoting Allred v. Allred, 797 P.2d 1108, 1112 (Utah 1990)). Rather, on remand the trial court is to make detailed findings based on the evidence presented and make its alimony award determination by drawing the legal conclusion that properly flows from those findings.

William A. Thorne Jr., Judge

WE CONCUR:

Carolyn B. McHugh, Judge

⁴This is not to say that Wife may not become voluntarily underemployed should circumstances change, such as the child's full-time enrollment in school. And, should circumstances change, Husband may initiate further proceedings to address the matter.

Gregory K. Orme, Judge