

IN THE UTAH COURT OF APPEALS

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Kenneth J. Warner,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20040915-CA
v.)	
)	F I L E D
Colleen C. Warner,)	(October 6, 2005)
)	
Respondent and Appellee.)	2005 UT App 424

Third District, Salt Lake Department, 024903459
The Honorable Timothy R. Hanson

Attorneys: Brian T. Hunt and Justin T. Ashworth, Salt Lake City,
for Appellant

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Kenneth J. Warner appeals from a Decree of Divorce. Mr. Warner alleges that the district court improperly considered the income of third parties in making the determination of the amount of alimony to be paid to Ms. Warner. Mr. Warner also alleges that the district court erred by failing to consider Mr. Warner's ability to pay in awarding attorney fees to Ms. Warner. We affirm.

Mr. Warner claims that the district court erroneously considered income of third parties in determining the amount of his alimony payments in contravention of Utah Code section 30-3-5(8)(g)(iii) (Supp. 2005). However, a review of the record demonstrates that the district court did not consider such information. Mr. Warner's argument is premised on the following finding of fact (as well as similar language in the district court's memorandum decision):

[Mr. Warner] was able to find employment, for a period of months, which on an annual basis would have provided him with annual income of approximately \$60,000. With this income, the assistance of his girlfriend, and the assistance of his family, [Mr. Warner] has

been able to meet his expenses, and pay his attorney's fees of approximately \$20,000.

Such finding does not support the conclusion that the district court relied upon the income of Mr. Warner's girlfriend, or any family member, in determining the amount of alimony. The finding merely discusses Mr. Warner's possible income and observes that because of the generosity of others, a substantial debt he otherwise would have owed was resolved.

The record itself is devoid of any facts discussing the income of Mr. Warner's girlfriend, or any person other than Mr. Warner and Ms. Warner. The record does reflect that Mr. Warner was living rent free at the residence of his girlfriend; however, this fact does not establish that the court relied upon the income of Mr. Warner's girlfriend in setting his alimony obligations. What this does demonstrate is that Mr. Warner's expenses were substantially less than an individual who had to pay for housing.

The district court, among other things, based its award of alimony on income it imputed to each spouse. Specifically, it found that Mr. Warner was voluntarily underemployed and imputed income to him in the amount of \$50,000--well below what he earned in his last position. The court could only impute minimum wage to Ms. Warner because she has very few workplace skills and has significant health problems. It was the difference in these imputed incomes that led to the alimony award.

Mr. Warner next contends that the district court erred in failing to consider his ability to pay when awarding attorney fees to Ms. Warner. A district court may award attorney fees and costs in divorce proceedings. See Utah Code Ann. § 30-3-3 (Supp. 2005). The district court has broad discretion in determining whether such fees should be granted; however "[t]he trial court must base the [attorney fee] award on evidence of the receiving spouse's financial need, the payor spouse's ability to pay, and the reasonableness of the requested fees." Davis v. Davis, 2003 UT App 282, ¶14, 76 P.3d 716 (quotations and citations omitted). While the district court failed to make specific findings concerning the attorney fees issue, its findings of fact coupled with its written memorandum decision demonstrate that the district court considered all relevant factors and did not abuse its discretion in awarding attorney fees to Ms. Warner. See Woodward v. Fazzio, 823 P.2d 474, 478 (Utah Ct. App. 1991) (concluding that there is no need to remand when record "clearly and uncontrovertedly supports" the trial court's decision).

First, the district court found that Ms. Warner was not currently employed, had very few workplace skills, and had

significant health problems. Because of this, the district court found that Ms. Warner had only the ability to earn the federal minimum wage. Accordingly, the district court's findings support the determination that Ms. Warner had financial need. Second, the district court found that Mr. Warner had the ability to pay by finding that Mr. Warner was voluntarily underemployed and imputing income to him in the amount of \$50,000 per year. Based upon such imputed income, coupled with the fact that he testified that he lived rent free and that friends and family had relieved him of his own obligations to pay his attorney fees, the record supports the conclusion that Mr. Warner had the ability to pay less than \$1,700 in attorney fees. Finally, in regard to the reasonableness of the attorney fees, the record reflects that during the course of the litigation Mr. Warner spent approximately \$20,000 in attorney fees while Ms. Warner's total fees were less than \$3,500. Based these such facts and the statements of counsel for both parties concerning the reasonableness of their attorney fees, the record reflects that the amount of attorney fees was reasonable.

Affirmed.

Judith M. Billings,
Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge