

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Kaylene Wilcox,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20060369-CA
v.	)	
	)	F I L E D
W. Craig Wilcox,	)	(September 13, 2007)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 295</span>

-----

Third District, Salt Lake Department, 044902703  
The Honorable Joseph C. Fratto Jr.

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant  
Terry R. Spencer, Sandy, for Appellee

-----

Before Judges Greenwood, Davis, and McHugh.

DAVIS, Judge:

Kaylene Wilcox (Wife) appeals the trial court's award of child support and alimony. Wife argues that the trial court failed to enter adequate findings regarding W. Craig Wilcox's (Husband) income and failed to appropriately consider requisite factors in determining alimony. Wife further argues that the trial court erred in denying her Motion for New Trial, or, in the Alternative, to Amend or Make New Findings of Fact and Conclusions of Law. We affirm.

First, although Wife does not challenge the trial court's findings, she argues that the findings are inadequate to support the court's determination of Husband's income for the purposes of awarding child support and alimony. "[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 v. Griffith, 1999 UT 78, ¶19, 985 P.2d 255. Notwithstanding this discretion, "the trial court must make detailed findings on all material issues, . . . which 'should . . . include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.'" Rehn v. Rehn, 1999 UT App 41, ¶6, 974 P.2d 306 (second omission in original) (quoting Stevens v. Stevens, 754 P.2d 952, 958 (Utah Ct. App. 1988)).

The trial court included in its findings a detailed discussion supporting the income attributed to Husband. The court found that Husband was currently unemployed and that his previous employment contract had ended "at the instigation of the company." Because the trial court found that Husband's large income from the prior year was "an abnormality" and because the court was presented with no evidence as to his future earning capacity, the court looked to his historical income.<sup>1</sup> The court determined that during this most recent contract, Husband "was making substantially more tha[n] he normally had been" and, therefore, used the highest income Husband had received prior to entering into this contract, which income also included "some substantial overtime." Further, the court found that Husband was not obligated to accept an existing job offer that would require him to move away from his family and would result in a "substantial" reduction of wages--with Husband possibly receiving even less income than that which the court ultimately attributed to him. Based on these detailed findings, we cannot say that the trial court failed to provide adequate findings or otherwise abused its discretion when assessing Husband's income potential.

Next, Wife argues that the trial court's findings are inadequate with respect to the alimony award because the court failed to consider several requisite factors.<sup>2</sup> Specifically,

---

1. Wife argues in her brief that the trial court did not consider historical income, but she seems to instead be complaining that the court considered too much historical income by looking beyond the prior three years to also consider Husband's income at other jobs. At any rate, she points to no authority--nor are we aware of any--that would limit the trial court's consideration of historical income in such a manner.

2. Under Utah law, the trial court is required to consider each of the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of minor children requiring support;
- (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
- (vii) whether the recipient spouse directly contributed to any increase in the payor

(continued...)

Wife contends that the trial court failed to give "due consideration" to the length of the marriage and to the fact that she had custody of the parties' minor child. Wife further contends that the trial court ignored the fact that she contributed to the increase in Husband's business skills by attending to the home and to the needs of the parties' children.

The trial court's findings show that the court considered each of the applicable factors. The findings reference both the length of the marriage and the fact that Wife has custody of, and is receiving child support for, the parties' minor child. Wife argues that the trial court should have given more weight to these factors; however, the pertinent statute does not mandate that a certain weight be given to any of the listed factors. See Utah Code Ann. § 30-3-5(8)(a) (Supp. 2007). Instead, as long as "these factors have been considered, 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." Kelley v. Kelley, 2000 UT App 236, ¶26, 9 P.3d 171 (quotations and citation omitted). Respecting Wife's argument that the trial court failed to consider the fact that her care of the home and children allowed Husband to increase his business skills, this argument is misplaced. The subsection of the statute that Wife references in support of her argument addresses the situation in which one spouse supports the other spouse through school, but does not address the situation in which one spouse attends to the home and to the needs of the children while the other spouse increases his or her business skills. See Utah Code Ann. § 30-3-5(8)(a)(vii). Thus, because the trial court considered all statutorily required factors and because we find no serious inequity in the alimony award, we conclude that the trial court did not abuse its discretion in determining alimony.

Finally, Wife asserts that the trial court erred when it denied her Motion for New Trial, or, in the Alternative, to Amend or Make New Findings of Fact and Conclusions of Law. Rather than argue the merits of her motion,<sup>3</sup> Wife contends that the trial court misinterpreted rule 59 of the Utah Rules of Civil

---

2. (...continued)

spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

Utah Code Ann. § 30-3-5(8)(a) (Supp. 2007).

3. Wife contests the correctness of the trial court's denial of her motion for the first time in her reply brief. "[W]e will not consider matters raised for the first time in the reply brief." Coleman v. Stevens, 2000 UT 98, ¶9, 17 P.3d 1122.

Procedure, as well as applicable case law, in concluding that the court could not grant a new trial or re-open the case for additional evidence. The trial court's interpretation of a rule of procedure is a question of law, which we review for correctness. See Ostler v. Buhler, 1999 UT 99, ¶5, 989 P.2d 1073.

In reviewing the trial court's reasoning, we see that the court did not misinterpret rule 59, but instead determined that under the circumstances the court could not give the relief requested. Wife based her rule 59 motion on newly discovered evidence, see Utah R. Civ. P. 59(a)(4), and the trial court recognized that in order to grant Wife's motion, the newly discovered evidence must be related to facts in existence at the time of trial. See Hancock v. Planned Dev. Corp., 791 P.2d 183, 185 (Utah 1990) ("Newly discovered evidence must relate to facts which were in existence at the time of trial and cannot be based upon facts occurring subsequent to trial."). The trial court determined that the only such evidence was insufficient to warrant a new trial. See In re S.R., 735 P.2d 53, 58 (Utah 1987) (stating that newly discovered evidence "must be of sufficient substance that there is reasonable likelihood that with it there would have been a different result").<sup>4</sup> Thus, it is clear that the trial court understood its authority under rule 59, but determined that under these circumstances there was no basis to grant a new trial or otherwise re-open the case.

Affirmed.

---

James Z. Davis, Judge

-----

WE CONCUR:

---

Pamela T. Greenwood,  
Associate Presiding Judge

---

Carolyn B. McHugh, Judge

---

4. We do not opine one way or another whether said evidence may or may not support a petition for modification.