

LEXSEE 2001 UT APP 327

Jeanny Louise Davis, Petitioner and Appellee, v. Johnny Mack Davis, Respondent and Appellant.

Case No. 20010226-CA

COURT OF APPEALS OF UTAH*2001 UT App 327; 2001 Utah App. LEXIS 402*

November 1, 2001, Filed

NOTICE: [*1] NOT FOR OFFICIAL PUBLICATION**SUBSEQUENT HISTORY:** Subsequent appeal at *Davis v. Davis*, 76 P.3d 716, 2003 UT App 282, 2003 Utah App. LEXIS 82 (2003)**PRIOR HISTORY:** Eighth District, Vernal Department. The Honorable John R. Anderson**DISPOSITION:** Vacated and remanded.**COUNSEL:** James H. Woodall, Salt Lake City, for Appellant

Rosemond G. Blakelock, Provo, for Appellee

JUDGES: Russell W. Bench, Judge. I CONCUR: Norman H. Jackson, Associate Presiding Judge. I CONCUR IN THE RESULT: Judith M. Billings, Judge**OPINION BY:** Russell W. Bench**OPINION**

MEMORANDUM DECISION

Before Judges Jackson, Bench, and Billings.

BENCH, Judge:

Appellant (Husband) first challenges the trial court's alimony award to Appellee (Wife). *Utah Code Ann.* § 30-3-5(7)(a) (Supp. 2001) establishes the factors that a trial court must consider in awarding alimony. "Failure to consider these factors constitutes an abuse of discretion." *Rehn v. Rehn*, 1999 UT App 41, P 6, 974 P.2d 306 (citation omitted). Proper consideration requires trial courts to make detailed findings of fact with respect to each factor. *See id.* The findings of fact should "include enough subsidiary facts to disclose the steps by which

the ultimate conclusion on each factual issue was reached." *Id.* (citation omitted).

Here, the trial court concluded that "alimony [*2] of \$ 1,000 per month is appropriate," without entering findings of fact with respect to any of the required factors. Consequently, we must reverse "unless pertinent facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment." *Id.* (citation omitted). The record in this case is both unclear and controverted, especially in regard to the parties' incomes and reasonable expenses. Accordingly, we vacate the trial court's alimony award and remand for a determination of alimony that is supported by detailed findings of fact. On remand, "the trial court should move beyond merely considering their incomes and inquire more fully into their financial situations." *Williamson v. Williamson*, 1999 UT App 219, P 11, 983 P.2d 1103.

Husband next challenges the trial court's division of the parties' retirement accounts. "The major purpose of a property division, in conjunction with an alimony award, is to achieve a fair, just, and equitable result between the parties." *Haumont v. Haumont*, 793 P.2d 421, 424 (*Utah Ct. App.* 1990) (citation omitted). An equitable division of marital property is not purely [*3] an independent determination, but must be made in light of the alimony, if any, that is awarded. *See Newmeyer v. Newmeyer*, 745 P.2d 1276, 1279 n.1 (*Utah* 1987). Because we vacate and remand the alimony award, we also vacate and remand the marital property division for further consideration. By way of reminder, we point out that each party is generally entitled to fifty percent of the marital property, but the trial court may in its discretion order an unequal division if it finds that exceptional circumstances exist. *See Bradford v. Bradford*, 1999 UT App 373, PP 26-27, 993 P.2d 887. Further, a determination that exceptional circumstances exist should be supported by "commendably detailed findings" of fact. *Thomas v. Thomas*, 1999 UT App 239, P 23, 987 P.2d 603.

Finally, Husband challenges the trial court's award of attorney fees to Wife. An award of attorney fees must be based on "sufficient [factual] findings addressing the financial need of the recipient spouse; the ability of the other spouse to pay; and the reasonableness of the fees." *Rehn, 1999 UT App 41 at P22*. Here, the trial court failed to enter [*4] factual findings on any of the three required factors. Looking to the record, the trial court did state that \$ 2,500 was a reasonable amount for attorney fees. However, the trial court's reference to the disparity in the parties' respective abilities to earn income is insufficient for us to infer that Wife has a current need for attorney fees. Thus, we vacate the award of attorney fees and re-

mand for a determination of attorney fees that is supported by detailed factual findings.

The case is therefore remanded for further consideration consistent with this decision.

Russell W. Bench, Judge

I CONCUR:

Norman H. Jackson, Associate Presiding Judge

I CONCUR IN THE RESULT:

Judith M. Billings, Judge