



3 of 5 DOCUMENTS

**Lana Gean Anderton, Petitioner and Appellee, v. Carl Lyle Anderton, Respondent  
and Appellant.**

Case No. 20060704-CA

## COURT OF APPEALS OF UTAH

2008 UT App 92; 2008 Utah App. LEXIS 91

March 13, 2008, Filed

**NOTICE:** NOT FOR OFFICIAL PUBLICATION

resolved under existing law.

**PRIOR HISTORY:** [\*1]

Eighth District, Roosevelt Department, 054000065. The Honorable John R. Anderson.

**CORE TERMS:** alimony, imputing, market value, citation omitted, underemployment, self-employment, imputed, marital, impute

**COUNSEL:** Diana J. Huntsman, Salt Lake City, for Appellant.

Matthew C. Brimley, Provo, for Appellee.

**JUDGES:** Gregory K. Orme, Judge. WE CONCUR: Pamela T. Greenwood, Presiding Judge, Russell W. Bench, Judge.

**OPINION BY:** Gregory K. Orme**OPINION**

## MEMORANDUM DECISION

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." *Utah R. App. P. 29(a)(3)*. Moreover, the issues presented are readily

It was not improper for the trial court to impute income to Appellant. A trial court "may impute gross income" to a spouse after "determin[ing] that underemployment . . . exists." *Hill v. Hill*, 869 P.2d 963, 964-65 (Utah Ct. App. 1994). Such a determination or "finding" of underemployment need not be explicitly stated. Rather, it may be implied where it is reasonable to assume that the trial court actually considered the controverted evidence and made a finding but merely neglected to record its factual determination. *See Hall v. Hall*, 858 P.2d 1018, 1025 (Utah Ct. App. 1993). On review of the record, [\*2] it is clear that the trial court considered Appellant to be underemployed. Therefore, the trial court did not abuse its discretion by imputing income.

Appellant also argues that even if income was properly imputed, the trial court erred in imputing an additional \$ 30,000 without making specific findings as required by law. *See Utah Code Ann. § 78-45-7.5(7)(b)* (Supp. 2007). Appellant's urged construction of the statute is too strict. The Utah Supreme Court has allowed such "findings" to be implied based upon the "nature of the work . . . regularly performed [in the past]." *Reese v. Reese*, 1999 UT 75, P 15, 984 P.2d 987. A trial court may, as it did here, look at a party's prior work history and take note of his or her wages in making its findings. *See Mancil v. Smith*, 2000 UT App 378, P 21, 18 P.3d 509.

We do, however, share Appellant's concern about the

amount of income imputed. Our statute requires that "[g]ross income from self-employment . . . be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts." Utah Code Ann. § 78-45-7.5(4)(a) (Supp. 2007). There is no indication that the trial court took into account the expenses [\*3] necessary to operate C & M Firewood. The absence of appropriate findings in this respect necessitates remand to the trial court.

We see no merit in Appellant's argument that it was reversible error to allow Ms. Benson to testify as to the market value of the marital home. "Qualification of a person as an expert witness . . . is in the discretion of the trial court." *Patey v. Lainhart*, 1999 UT 31, P 15, 977 P.2d 1193 (omission in original) (citation omitted). "The critical factor in determining the competency of an expert is whether that expert has knowledge that can assist the trier of fact in resolving the issues before it." *Id.* (citation omitted). Given Ms. Benson's experience, the trial court was well within its discretion in allowing her to testify as an expert on *market* value.

Appellant argues that alimony was inappropriate in this case. We disagree. The trial court heard considerable evidence concerning each of the mandatory factors for determining alimony. See *Utah Code Ann. § 30-3-5(8)(a)* (2007). In its financial findings, the court discussed the income of the parties, Appellant's ability to pay, and Appellee's ability to support herself. However, given the

possible error [\*4] in imputing Appellant's income, we cannot necessarily say that the amount of alimony awarded was proper. Therefore, we remand this case to the trial court to correctly determine Appellant's income attributable to the C & M Firewood business and to adjust the alimony award, if appropriate.<sup>1</sup>

<sup>1</sup> Appellant also alleges a math error made by the trial court in calculating the value of the marital home. On remand, the trial court should remedy this problem if Appellant's point is well-taken and make such related adjustments as may then be necessary.

Given our disposition, it cannot be said that Appellee prevailed on all of the main issues on appeal. Therefore, we deny her request for attorney fees incurred on appeal. See *Reinhart v. Reinhart*, 963 P.2d 757, 760 (*Utah Ct. App.* 1998).

Gregory K. Orme, Judge

WE CONCUR:

Pamela T. Greenwood,

Presiding Judge

Russell W. Bench, Judge