

2004

Lori D. Batty v. Clark L. Batty : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LORI D. BATTY,)	APPEAL FROM THE EIGHTH
)	JUDICIAL DISTRICT COURT,
Petitioner and Appellant,)	UINTAH COUNTY, STATE OF UTAH
)	
vs.)	Trial Court Judge: John R. Anderson
)	
CLARK L. BATTY,)	Trial Court No. 024800017 DA
)	
Respondent and Appellee.)	Appellate Court No. 20040924-CA

BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

Jurisdiction of the Utah Court of Appeals in this matter is proper pursuant to Utah Code Annotated § 78-2a-3(2)(h).

ISSUES PRESENTED AND STANDARD OF REVIEW

ISSUE I

1). **Issue.** Did the Court error in reducing the appraised value of CL Welding when the parties had stipulated to the appraisal as the appropriate value to be given for each of the items of real property and as the proper value for each of the businesses?

i. **Determinative law.**

Mortensen v. Mortensen, 760 P.2d 304,

Elman v. Elman, 45 P.3d 176

Bradford v. Bradford, 993 P.2d 887

ii. **Standard of review.**

The Trial Court's property division and evaluation will be disturbed only when there is a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, the evidence clearly preponderance against the findings, or a serious inequity has resulted as to manifest a clear abuse of discretion. Elman v. Elman, 45 P.3d

ISSUE II

2). **Issue.** Did the Court error in reducing the value of CL Welding based upon the assumption that Mr. Batty was an integral part of the business and that it was through his welding skill and operational skills that gave additional value to that business when the appraisal was an “asset based appraisal”, where the appraiser specifically stated that he was not awarding any additional value to the assets for intangible assets or good will and particularly when the parties had agreed to the values as set out in the appraisals.

i. **Determinative law.**

Mortensen v. Mortensen, 760 P.2d 304,

Elman v. Elman, 45 P.3d 176

Bradford v. Bradford, 993 P.2d 887

ii. **Standard of review.**

The Trial Court’s property division and evaluation will be disturbed only when there is a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, the evidence clearly preponderance against the findings, or a serious inequity has resulted as to manifest a clear abuse of discretion. Elman v. Elman, 45 P.3d

176 (Utah Appeals 2002)

ISSUE III

3). **Issue.** Did the Court error in justifying the reduction in the value of CL Welding by ordering that Mr. Batty pay the second mortgage on the home and then obligate Mrs. Batty to reimburse Ms. Batty for the principal payments he makes towards the second mortgage out of the equity of the home.

i. **Determinative law.**

Mortensen v. Mortensen, 760 P.2d 304,

Elman v. Elman, 45 P.3d 176

Bradford v. Bradford, 993 P.2d 887

ii. **Standard of review.**

The Trial Court's property division and evaluation will be disturbed only when there is a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, the evidence clearly preponderance against the findings, or a serious inequity has resulted as to manifest a clear abuse of discretion. Elman v. Elman, 45 P.3d

176 (Utah Appeals 2002)

ISSUE IV

4). **Issue.** Did the court err in failing to consider the parties monthly

expenses in making its determination of Alimony.

i. **Determinative law.**

Rehne v. Rehne, 974 P.2d 306 (1999 Utah Appeals 41)

ii. **Standard of review.**

“In determining whether to award alimony and in setting the amount, a trial court must consider the needs of the recipient spouse; the earning capacity of the recipient spouse; the ability of the obligor spouse to provide support; and, the length of the marriage.” Rehn v. Rehn, 1999 UT App 41, ¶ 6, 974 P.2d 306; see Utah Code Ann. § 30-3-5(7)(a)(i)-(iv) (Supp. 1999). [FN9] “If 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.” “Childs v. Childs, 967 P.2d 942, 946 (Utah Ct.App. 1998) (omitting citations).

ISSUE V

5). **Issue.** Did the court err in only awarding \$1,000 per month in Alimony based upon a 26 year marriage, after finding that Mr. Batty’s gross monthly income to be \$9,200 and Mrs. Batty’s income to be \$1,666.

i. **Determinative law.**

Rehne v. Rehne, 974 P.2d 306 (1999 Utah Appeals 41)

ii. **Standard of review.**

“In determining whether to award alimony and in setting the amount, a trial court must consider the needs of the recipient spouse; the earning capacity of the recipient spouse; the ability of the obligor spouse to provide support; and, the length of the marriage.” *Rehn v. Rehn*, 1999 UT App 41, ¶ 6, 974 P.2d 306; *see Utah Code Ann. § 30-3-5(7)(a)(i)-(iv)* (Supp. 1999). [FN9] “If 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.’ “ *Childs v. Childs*, 967 P.2d 942, 946 (Utah Ct.App. 1998) (omitting citations).

The preservation of the issues of marital asset division and alimony was preserved in the following portion of the Trial Transcript:

THE COURT: Why don’t we hear from counsel as to then the issues that are involved. I guess the primary issues are division of marital property; what might be marital property; the post nuptial agreement on the Fly shop. As I understand it, there’s one child now that is under minority; is that correct? And I guess, attorney’s fees, alimony. What else:

MR. ALLRED: That is about it.

THE COURT: Okay. All right.

MR. SNYDER: That’s about it.

(R:373 page 5, lines 14-22)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Annotated Section 30-3-35(8)(a) states:

The Court shall consider at least 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;
- (vii) whether the recipient spouse directly contributed to an increase and the payors spouses skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

STATEMENT OF THE CASE

This is a divorce action having been commenced in the Eighth Judicial District Court by the filing of a Petition by Lori D. Batty on January 16, 2002. (R: 3-8).

Temporary orders were entered pursuant to an Order to Show Cause held April 16, 2002. (R: 44-45). The issues were heard before the Honorable John R. Anderson at a one day Bench Trial held on the 14th day of June, 2004. (R: 251). The matter was taken under advisement and a written ruling was issued by the Court on July 6, 2004. (R: 246-251).

Findings of Fact and Conclusions of Law were submitted to the Court by counsel for Mrs. Batty on September 20, 2004. (R: 256-275).

Counsel for Mr. Batty filed an objection to the entry of the proposed findings on September 21, 2004. (R: 276-295).

The Court ruled on the objections to the Findings of Fact and Decree of Divorce on the 28th of September, 2004 ruling that the proposed Findings of Fact, Conclusions of Law and Decree of Divorce filed by Mrs. Batty were a more accurate reflection of the Court's ruling. (R: 327).

The signed Findings of Fact, Conclusions of Law and Decree of Divorce were entered by the Court on September 20, 2004. (R: 256-275).

Notice of Appeal and Bond on Appeal were filed in the Eighth Judicial District Court on October 20, 2004. (R: 328-331).

STATEMENT OF FACTS

Lori Batty and Clark Batty were married on December 1, 1977. (R:373, page 19, L: 8-9). At the time of the marriage the parties had just recently graduated from high school. Lori Batty was 18 years of age when she got married and Clark Batty was 19 years of age. (R:373, page 19, lines 12-17). At the time of the trial held on June 14, 2004, the parties had been married for 26 years. (R:373, page 19, lines 10-11).

The parties are the parents of three children. (R:373, page 20, lines 17-18). At the time of trial, the parties oldest daughter had reached majority and was married. (R:373, page 21, lines 3-7). Timothy James Batty the parties' next oldest child was 19 years of age and had just graduated from high school just a couple of weeks prior to the trial. (R:373, page 21, lines 12-15).

The parties have one daughter who is still a minor born May 8, 1990 and was 14 years of age at the time of trial. (R:373, page 21, lines 22- page 22, lines 2).

The parties had acquired three large assets during the marriage namely the marital home located at 1819 North 3000 West in Vernal, Utah. (R:373 page 18, lines 6); a welding business entitled C.L. Welding, Inc. (R:373, page 28, lines - page 29, lines 11); and a fly fishing store called Big Foot Fly Shop located at 38 North 400 West, Vernal, Utah. (R:373, page 43, lines 5-21).

At the commencement of the Trial, the parties stipulated to the entry of appraisals completed on the home and respective businesses set out in the trial transcript as follows:

MR. SNYDER: I think we've stipulated to the appraisals of both parties' businesses and updated appraisals of my client's business. Oh, and the appraisal of the parties' home.

MR. ALLRED: Yes, your Honor. We have four appraisals that Dale Cameron did. The parties own a home, they own two businesses; one is a welding business that Mr. Batty operates called C.L. Welding, the other is Big Foot Fly Shop. We have an appraisal with C.L. Welding and two

appraisals of Big Foot Fly Shop, one of the building and land and the other of the business itself. We stipulated rather than have Mr. Cameron here as both parties used him. He's on call if we need him.

So Exhibit 1 would be the appraisal of the house, the property with five acres and the house. He appraised that as \$236,500.00.

Exhibit 2 would be the appraisal of the real estate and house and the lot on which the Big Foot Fly Shop is set. (unintelligible) Oh, \$110,000.00 - I was wrong on the page - is his value on it.

Exhibit 3 is the valuation of the business of Big Foot Fly Shop; basically things like inventory, accounts receivable, things like that. Its valued at \$60,000.00.

Exhibit 4 is the appraisal of C.L. Welding business; he valued that at \$93,000.00.

So we can deliver those to the court.

THE COURT: O.K. Those are the exhibits of Dale Cameron and both parties agree those are accurate appraisal figures; is that correct?

MR. ALLRED: Yes.

THE COURT: Okay.

MR. SNYDER: We - we agree that they are best he can under the circumstances...

(R:373 page 3, lines 13- page 4, lines 18)

The issues ripe for resolution before the Court were also addressed at the commencement of trial as follows:

THE COURT: Why don't we hear from counsel as to then the issues that are involved. I guess the primary issues are division of marital property; what might be marital property; the post nuptial agreement on the Fly shop. As I understand it, there's one child now that is under minority; is that correct? And I guess, attorney's fees, alimony. What else:

MR. ALLRED: That is about it.

THE COURT: Okay. All right.

MR. SNYDER: That's about it.

(R:373 page 5, lines 14-22)

The Court in its findings of fact resolved certain issues that are pertinent to the overall issues of marital property division and alimony which have not been challenged on appeal. Mrs. Batty was awarded the care custody and control of their minor child subject to Mr. Batty's reasonable rights of visitation. (R: 275). Mr. Batty was ordered to pay child support in the monthly sum of \$733.00. (R: 274). The parties marital home appraised at a value of \$236,500.00 and at the time of trial there was existing a first mortgage with a balance of \$26,694.78 and a second mortgage with a balance owing of \$60,999.92. (R: 265). Mr. Batty is capable of and is earning \$110,000.00 gross per year through C.L. Welding. (R: 264). Mrs. Batty is capable of and is earning \$20,000.00 gross income per year from the fly shop and other endeavors. (R: 264).

The Court made additional findings of fact which are pertinent and for which the appellant does not take issue on appeal.

14. Mrs. Batty's grandmother owned a home at 38 North 400 West, Vernal, Utah. After the grandmother's death, Mrs. Batty's mother who owned four-fifths of the property allowed Mrs. Batty to use the grandmother's home for an art studio and fly shop.

15. The parties through C.L. Welding, Inc. paid Ms. Batty's aunt \$2,000.00 for the remaining one-fifth interest in that property and Mrs. Batty's mother gifted the remaining four-fifths of the property to the petitioner.

16. Mrs. Batty has continued to sell fishing rods, tackle, and flies from that property and has named the business the Big Foot Fly Shop. There was a fire in 1997 that caused substantial damage. The building was

rebuilt with the insurance proceeds. The parties also added an addition at a cost of \$40,000.00. The \$40,000.00 was part of the second mortgage on the parties' home. (Findings of Fact 14-16, R: 264-265).

The parties' home was acquired in June of 1977 which was purchased by Mrs. Batty's father and in turn the parties made payments on the home and purchased additional adjoining acreage throughout the parties' marriage. (R:373, page 30 line 7 to page 31 line 14).

The first mortgage on the parties' marital home (at the time of trial) required a monthly payment of \$589 per month (see Trial Exhibit 12) with an outstanding balance of \$26,694.78.

On January 31, 2001 the parties took out a second mortgage identified as a home equity line of credit in the amount of \$75,000.00 with Zion's First National Bank. (Trial Exhibit 28). The second mortgage consisted of \$40,000.00 to pay off improvements on Big Foot Fly Shop; approximately \$15,000.00 for the purchase of a piano for their son, a purchase of a Mach I Mustang in the approximate amount of \$12,000.00 and the payment of certain payroll expenses of C.L. Welding, Inc. (R:373, page 51 lines 1-15). The monthly obligation on the second mortgage is \$780.00 per month (Trial Exhibit 12) and a balance owing as of the date of Trial of \$60,999.92. The Court determined that the parties' equity in the home to be \$148,805.30 which provides for \$74,402.65 to each

party. (\$236,500.00 minus \$60,999.92- second mortgage and minus \$26,694.78- first mortgage, divided by 2). (See Decree of Divorce paragraph 6, R:272). The Court awarded the home to Mrs. Batty but ordered that she pay Mr. Batty his equity plus 5% per annum payable when the Petitioner remarries, sells the home or when the parties' daughter graduates from high school whichever event occurs first. In addition, Mrs. Batty was ordered to reimburse Mr. Batty for any principle reduction on the second mortgage based on payments he makes on the second mortgage. (See paragraph 6 of the Decree of Divorce, R:272).

In 1980 the parties incorporated a welding business (C.L. Welding, Inc.) wherein the parties were each 50% shareholders in the business. (R:43, lines 5-21). Mr. Batty was the welder and Mrs. Batty was the bookkeeper (R:29, lines 1-24). The income generated from C.L. Welding, Inc. has been the parties' primary source of income throughout the marriage. (R:29, lines 23-24).

The appraisal conducted by Dale Cameron and submitted as Trial Exhibit 4 valued the business of C.L. Welding, Inc. at \$93,000.00 pursuant to an asset based formula. (Trial Exhibit 4). The appraiser determined that the more accurate method of valuation was the asset approach. (Trial Exhibit 4). At page 27 of the appraisal identified as Trial Exhibit 4 under the asset based formula approach, the appraiser stated:

ASSET-BASED FORMULA

The basic premise is straightforward. The tangible net worth of the company is valued by determining the market value of the assets and making a deduction for debt, accounts payable and any other obligations the company owes. The resulting total is what the company is worth by the asset based formula. Typically, a judgment must also be made as to whether the company value can justify an allowance for intangible assets or good will. In those cases where there are special licenses, patents, copyrights or secret/ proprietary formulas which are property of the company and intrinsic to the viability and profitability of the business, these intangible assets must also be valued and included. In the case of the subject business, no such special licenses, patents, copyrights, or secret/proprietary formulas were owned or included.

The schedule of assets and liabilities was listed at page 28 (a copy of the schedule is attached hereto as addendum A) of the appraisal which also identifies that there was no component or added value to the appraisal associated with Mr. Batty's operational and welding skills.

The Court in its ruling stated as follows:

C.L. Welding:

The Court will conclude, based on those differences and allocations, the entire value of the C.L. Welding business will be awarded to Mr. Batty. There is an appraised value on that business with its value of \$93,000.00. The entire award of C.L. Welding to Mr. Batty will compensate him for making the second mortgage payments on the balance of the home equity loan which is a second position on the home and real property. The Cameron appraisal of \$93,000.00 on C.L. Welding assumes that Mr. Batty is an integral part of that business. It is through his welding skill and operational skills that give additional value to that business. Therefore, as

a practical matter, the Court must discount the Cameron appraised value for the purpose of property division in this case. By awarding Mrs. Batty the entire fixtures and inventory in the Fly Shop, the Court feels justified in awarding the value of the C.L. Welding entirely to Mr. Batty.

This would also compensate Mrs. Batty for Mr. Batty's assumption of the second mortgage, minus the \$20,000.00 which he has already been given credit for toward the fly shop improvements. (R:248-249).

The nature of the business of Big Foot Fly Shop is a store which primarily sells fly fishing equipment. (R:373, page 42, lines 6-8).

Mrs. Batty became interested in tying flies at an early age (approximately age 12) and began tying flies and selling them to local businesses. (R:373, page 42, lines 8-23). After the parties were married, the business developed to the point where Mrs. Batty was selling the flies out of the trunk of her car. (R:373, page 43, lines 7-9). In 1991 Mrs. Batty opened the fly shop at its present location at 38 North 400 West, Vernal, Utah. (R:373, page 44, lines 5-13). Mrs. Batty's mother was the owner of four-fifths of the real property that she had acquired through an inheritance from her mother. (R:373, page 44, lines 19-21). The remaining one-fifth of the real property was owned by an aunt of Mrs. Batty's. (R:373, page 44, lines 19-21). The parties acquired the one-fifth interest from Mrs. Batty's aunt by payment of \$2,000.00 to acquire that interest. (R:373, page 45, lines 13-17). The four-fifth interest owned by Mrs. Batty's mother was then gifted to

Mrs. Batty. (R:373, page 45, lines 22-24). In 1997 there was an arson fire at the business and the business was rebuilt with insurance proceeds. (R:373, page 47, lines 3-7). The buildings were also improved by borrowing \$40,000.00 secured by the parties' home. (R:373, page 51, lines 1-4). Pursuant to the appraisals completed by Dale Cameron, the real property was appraised at \$110,000.00 (Trial Exhibit 2) and the appraised value of the inventories and fixtures based upon an asset based formula (which is the same method used for valuing C.L. Welding) was appraised at \$60,000.00. (Trial Exhibit 3). The Court determined that four-fifths of the real property was the separate property of Mrs. Batty received by gift through her mother and further that \$21,000.00 should be credited towards Mr. Batty which was one-half of the \$2,000.00 purchase price and one half of the \$40,000.00 improvements. (R:249).

With regard to the distribution of assets, the marital home was valued and the equity evenly divided. (R. 249). Mrs. Batty was obligated to pay Mr. Batty his share of the equity upon remarriage, sale of the home or the parties' daughter emancipation. (R. 249). In addition, Mrs. Batty was required to pay 5% interest to Mr. Batty's on his share of the equity. (R. 249). Mrs. Batty was awarded the Big Foot Fly Shop (four-fifths of the real property was awarded to her as her separate property.) and the welding business of C.L. Welding was awarded to Mr. Batty. (R:249-250). The life insurance owned by

the parties was not awarded to either party but rather it was ordered that the cash value in the policies would pay the premium until it ran out. (R:248). The penny stocks owned by the parties was equally divided. (R:248). Each of the parties were awarded the vehicles that were valued in their respective businesses. (R:247). The piano, two mustangs and Senoma truck were awarded to the parties' children. (R:247). The Mach I Ford Mustang, the boat and the bullet mustang were all ordered to be sold and applied to the second mortgage. (R:247). The remaining personal property of the marriage was not distributed but rather the court ordered the parties to try and work it out or to come back before the court. (R:247).

With regard to the distribution of the debts of the marriage, Mrs. Batty was ordered to pay the first mortgage on the home of \$26,694.78 payable in the monthly amount of \$589.00 per month. (R: 250; Petitioner's Trial Exhibit 12). Mr. Batty was ordered to pay the second mortgage of \$60,999.92 requiring a monthly payment of \$780.00 but further it was ordered that he be reimbursed his principle payments at the time the equity is paid in the marital home and further the Court ordered that two mustangs and the parties' boat be sold and applied to the second mortgage obligation. (R: 249) The only other two obligations ordered by the Court for Mr. Batty to pay was the reimbursement of \$734.24, being his share of one-half of the medical expenses for

the parties daughter and further was ordered to pay Mrs. Batty's attorney's fees. (R: 246-247).

With regard to the parties' respective needs and monthly expenses, Mrs. Batty submitted a financial declaration (Plaintiff's Trial Exhibit 12 a copy is attached as addendum B). Mr. Batty did not submit a financial declaration but did submit an accounting of the monthly expenses paid by C.L. Welding, Inc. which is Respondent's Trial Exhibit 25. (A copy is attached as addendum C). Trial Exhibit 25 is a combination of personal expenses and business expenses, (Trial Exhibit 25).

SUMMARY OF ARGUMENT

The parties stipulated to the entry of the appraisals and the values assessed by Cameron and Associates. The Court allocated full value of the ongoing business of the Big Foot Fly Shop which appraisal was based upon an evaluation of the actual assets minus liabilities and arriving at its \$60,000.00 value. The Court, however, in considering the value of C.L. Welding, Inc. discounted the value of the business claiming that a discount was appropriate because part of the \$93,000 appraised value was based upon the welding skills and operational skills of Mr. Batty and further justified a discount by stating that a lower figure was justified because Mr. Batty was ordered to pay the second mortgage on the parties' home. The appraisal on C.L. Welding was very

specific in that it excluded any component of the valuation of the business for the very things the Court found reason to discount. Specifically the approach taken was an asset based approach and the appraiser specifically determined that there was no component of the asset based appraisal for the operational or welding skills of Mr. Batty. The attachments in the appraisal itself identifies each of the assets (which are comprised of mostly tools and vehicles) and the value placed thereon which total the \$93,000.00. (See addendum A). The discount given by the court (using the stipulated appraised values) gives Mr. Batty a \$12,000 windfall that easily could have been offset with equity in the house.

Although it appears throughout most of the ruling that Mr. Batty was going to be made ultimately responsible for the payment of the second mortgage, the ruling in one sentence provides that Mr. Batty would be reimbursed his principle payments in addition to his equity in the home. In reality, the Court was obligating Mr. Batty to be responsible for the interest component of the second mortgage but by reimbursing him his principle payments, the ultimate obligation for the second mortgage is paid out of the equity in the home; hence, equally paid by both Mr. and Mrs. Batty.

The Trial Court also abused its discretion in only awarding \$1,000.00 per month in alimony when the Court by its own finding determined that Mr. Batty's income per

month was \$9,200.00 and Mrs. Batty's income was \$1,666.00. Although the Court ordered the \$1,000.00 per month payment of alimony as an "income equalization concept," the alimony award does not come close to equalizing the parties income. Further there was no corresponding disproportionate allocation of assets or debts which might otherwise justify a lower award of alimony.

Finally, there were a number of debts identified by Mrs. Batty in her financial declaration for which the Court made no determination or allocation among the parties. The Trial Court should have entered orders allocating the additional debts of the marriage.

ARGUMENT

I

THE TRIAL COURT IMPROPERLY DISCOUNTED THE APPRAISED VALUE OF C.L. WELDING

Although the case law is quite clear that the Court has broad discretion in allocating the debts and assets of a marriage and that the Court is not obligated to exact a 50/50 split of all of the marital assets, this case provides a quite different type of a scenario in that the parties specifically stipulated to the values of the three major assets of

the marriage, (i.e. the home at \$236,500.00; the value of C.L. Welding, Inc. \$93,000.00; the business enterprise of Big Foot Fly Shop \$60,000.00 and the real property of Big Foot Fly Shop \$110,000.00). The stipulation of the parties for the entry of the appraisals as Trial Exhibits and their acceptance of the values also accepts the basis upon which the appraiser made his valuation. Specifically C.L. Welding, Inc. was appraised at \$93,000.00 based upon the specific market value of the assets of C.L. Welding, Inc. minus its liabilities. Counsel does not believe that there is a serious dispute between the parties that the Court appropriately awarded the assets and real property of the Big Foot Fly Shop to Mrs. Batty nor that the Court awarded C.L. Welding, Inc. to Mr. Batty. Nor does counsel believe that there is significant dispute between the parties over the fact that the marital home was awarded to Mrs. Batty subject to the payment to Mr. Batty of his equity.

The difficulty Mrs. Batty has with the Court's discounting of C.L. Welding's appraised value is the basis upon which the Court relies in making such a determination. As set out in the Statement of Facts, the appraiser specifically stated that he was not adding any component of the appraised value for the operational and welding skills of Mr. Batty yet the Court used that very basis as the justification for discounting its appraised value. The Court additionally justifies a discounted value for the C.L. Welding

business based upon its assertion that a discount is justified by the obligation of Mr. Batty to pay the second mortgage which likewise would be okay with Mrs. Batty if the ruling of the Court truly obligated Mr. Batty to pay the second mortgage. Although Mr. Batty is ordered temporarily to make the payments on the second mortgage, he is specifically allowed reimbursement out of the equity of the home once their daughter turns 18 or graduates from high school or the home is sold or Mrs. Batty remarries.

The Court easily and equitably could have offset the amount of equity owed in the home to Mr. Batty by the differences in the values between C.L. Welding, Inc. and the Big Foot Fly Company i.e. \$12,000.00, or in other words the distribution of cash when one of the future events takes place referred to above. The \$12,000 windfall in favor of Mr. Batty is based upon a clear misconception of the court as it relates to the asset based formula used by the appraiser.

The Court's opinion is difficult to reconcile in other aspects. Mr. Batty is given a credit of \$21,000.00 as against the real property owned by the Big Foot Fly Company. The basis for which the Court arrives at the \$21,000.00 figure is that the Court determines that four-fifths of the value of the property was gifted to Mrs. Batty, the remaining one-fifth interest was purchased jointly by the parties for \$2,000.00 and the parties made improvements to the property in the amount of \$40,000.00 for a credit to

Mr. Batty of one-half or in other words \$21,000.00. The flaw in the Court's rationale, however, is that the \$40,000.00 referred to is not money the parties had and merely spent on the business but rather is borrowed money that is still owing and is not an asset of the marital estate but rather the \$40,000.00 building improvement is offset with a \$40,000.00 liability that is part of the second mortgage on the home.

No one has taken issue or appealed the Court's determination that four-fifths of the real property owned by the Big Foot Fly Company was given to Mrs. Batty as her separate property. Counsel has reviewed the file and transcript for some other means justifying the credit given of \$21,000.00 and perhaps a better view may have been that if one looks at the appraised value of \$110,000.00 that regardless of what the parties actually paid for their one-fifth interest that perhaps a better approach would have been that one-fifth of the appraised value equals \$22,000.00 and consequently the Court's \$21,000.00 credit to Mr. Batty is not particularly problematic.

If one considers the accounting based upon the Court's ruling which in essence awards to Mrs. Batty \$60,000.00 in value as the going concern for the Big Foot Fly Company plus \$21,000.00 as the marital portion of the real property for a total of \$81,000.00 and then compares it to Mr. Batty's marital asset in C.L. Welding, Inc. of \$93,000.00 leaves a \$12,000.00 offset, or in other words, Mr. Batty has received

\$12,000.00 more of the marital estate than Mrs. Batty. The \$12,000.00 equitably should be offset against the \$74,402.65 which was ordered to be paid as Mr. Batty's share of the equity in the home. The alternative would be for the Court to follow its own justification in assuming that Mr. Batty was to pay the second mortgage (which by the way would be reduced by the value of two mustangs and a boat) and if in fact Mr. Batty was ordered to pay the second mortgage without offset or reimbursement would justify discounting the appraised value of C.L. Welding.

The parties by stipulating to the values of the properties reasonably expected that they would be given full value of the appraised value as opposed to the Court arbitrarily discounting one of the assets without some offsetting factor in some other award.

II

THE ALLOCATION OF THE MARITAL ASSETS IS INTERTWINED IN THE COURT'S DETERMINATION OF ALIMONY. THE TRIAL COURT FAILED TO CONSIDER ALL FACTORS REQUIRED IN DETERMINING ALIMONY

Utah Code Annotated Section 30-3-35(8)(a) states:

The Court shall consider at least 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;
- (vii) whether the recipient spouse directly contributed to an increase and the payors spouses skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

The Utah Court of Appeals in Rehne v. Rehne, 974 P.2d 306 (1999 Utah Appeals

41) states in pertinent part as follows:

In determining whether to award alimony and in setting the amount, a trial court must consider the needs of the recipient spouse; the earning capacity of the recipient spouse; the ability of the obligor spouse to provide support; and, the length of the marriage. *See Utah Code Ann. § 30-3-5(7)(a)(i)-(iv)* (1998); *Jones v. Jones*, 700 P.2d 1072, 1075 (Utah 1985); *see generally Childs v. Childs*, 967 P.2d 942 (Utah Ct.App.1998). "Failure to consider these factors constitutes an abuse of discretion," *Stevens v. Stevens*, 754 P.2d 952, 958-59 (Utah Ct.App.1988), resulting in reversal "unless pertinent facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment." *Schaumberg v. Schaumberg*, 875 P.2d 598, 602 (Utah Ct.App.1994). Moreover, the trial court must make detailed findings on all material issues, i.e. the *Jones* factors, which "should ... include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." *Stevens*, 754 P.2d at 958 (citation omitted).

[4] **7 As to the first factor, we stated in *Baker* that a trial court may not "merely restate [the recipient spouse's] testimony [regarding] her monthly expenses...." *Baker v. Baker*, 866 P.2d 540, 546 (Utah Ct.App.1993). The court must state that "the calculation of monthly expenses is reasonable" and must explain how it arrived at the monthly amount, or at least from the record, allow us to make this determination ourselves.

This court also set out the standard in Kelley v. Kelley, 9 P.3d 171, (Utah Ct. App. 2000).

“In determining whether to award alimony and in setting the amount, a trial court must consider the needs of the recipient spouse; the earning capacity of the recipient spouse; the ability of the obligor spouse to provide support; and, the length of the marriage.” Rehn v. Rehn, 1999 UT App 41, ¶ 6, 974 P.2d 306; *see* Utah Code Ann. § 30-3-5(7)(a)(i)-(iv) (Supp. 1999). [FN9] “If 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.’ ‘Childs v. Childs, 967 P.2d 942, 946 (Utah Ct.App. 1998) (omitting citations).

No where in the ruling of the Court nor in the Findings of Fact, Conclusions of Law or Decree of Divorce does the Court discuss the monthly expenses or needs of either of the parties. Mrs. Batty submitted a financial declaration as Plaintiff’s Trial Exhibit 12 (attached as addendum B) which identifies monthly expenses of \$4,741.00 plus in addition a list of several debts. The Court did not make a determination as to which ones were reasonable monthly expenses nor did the Court rule on a distribution of the debts identified in her financial declaration except for the first and second mortgage on the parties’ marital home. To date the remaining debts identified on her financial declaration have remained undetermined by the court.

In all fairness to the Court, Mr. Batty did not submit a financial declaration at all,

however, he did present Trial Exhibit 25 (attached as Addendum C) which identified the monthly expenses of C.L. Welding. It is clear, however, that based upon Trial Exhibit 25 that some of the items are personal expenses and a number of the items are business expenses. The Court, however, did make a determination on a number of the factors required by the statutory provisions. Specifically, the Court found that Mrs. Batty's earning capacity or ability to produce income equaled \$1,666.00 per month. The Court determined that Mr. Batty's monthly income to be \$9,200.00 per month.

The testimony was undisputed that the parties had been married 26 years at the time of the divorce and further that Mrs. Batty was awarded the custody of one minor daughter which would require support.

The parties' daughter will graduate from high school and turn 18 as well, in May of 2008 at which time the parties' obligation to provide support at least pursuant to the statutory responsibilities will terminate.

Further the testimony is uncontroverted that Mrs. Batty provided bookkeeping services for C.L. Welding while Mr. Batty performed the welding services and further that primarily Mrs. Batty has been a homemaker and caretaker for the children throughout the marriage.

The transcript of the trial makes clear that neither of the parties are alleging that

they provided support while the payor spouse attended school during the marriage, nor have either party made an allegation of fault in determining alimony.

Pursuant to subparagraph (d) of Utah Code Annotated Section 30-3-5, the legislature provided that the Court may, under appropriate circumstances, attempt to equalize the parties respective standards of living. The Court in its ruling made a determination in awarding \$1,000.00 per month in alimony that the Court was doing it as an "income equalization concept." The awarding, however, of \$1,000.00 per month falls far short of equalizing the parties' respective incomes. Although there was substantial testimony with regard to the earnings or earning ability of each of the parties, the Court has made the determination that Mrs. Batty is capable of earning \$1,666.00 per month and that Mr. Batty earns or is capable of earning \$9,200.00 per month. That determination by the Court has not been challenged on appeal by either of the parties and equalization of the parties income is an easy calculation in that if one adds \$9,200.00 per month plus \$1,666.00 per month the parties combined gross incomes would total \$10,866.00 per month which when divided equally between the parties would produce a gross monthly income for each of them of \$5,433.00. Which in turn would equal an alimony payment by Mr. Batty to Mrs. Batty of \$3,767.00 per month (ie. She earns \$1,666 per month from her own employment). Both of the parties would have equal

gross income and consequently the tax consequences for both parties would be equal and each of them would have equal net disposable income.

It would appear that since Mrs. Batty is the custodial parent and is incurring the cost of the parties' minor daughter that it would justify an increase in more than half of the parties' disposable income not a decrease as is the case in the matter at hand. The parties' daughter, however, will only be in Mrs. Batty's care for two more years which is a particularly short period of time in relationship to the 26 years that the parties have actually been married.

Some of the other factors that the Court might have considered at trial in making the decision to leave more of the disposable income on Mr. Batty's side would have been if the Court had made the decision to give a substantially larger portion of the marital assets to Mrs. Batty. Such is not the case in this matter as set out above. In reality the Court gave Mrs. Batty, based upon the stipulated appraised values of the assets, a smaller \$12,000 smaller portion of the marital assets. Also interestingly enough, the remaining personal property of the marital estate which is not included in either of the businesses was either ordered to be sold and applied to the second mortgage; or was awarded to the parties' children. All of the remaining personal property was left undistributed for the parties to work out between themselves.

Another factor that the Court may consider in arriving at the decision to leave a larger portion of the disposable income in Mr. Batty's care would be if the Court ordered a substantial portion of the marital debt to be assumed by Mr. Batty. Again such is not the case in this matter. The only debts the Court assessed in this matter is the obligation for Mrs. Batty to pay the first mortgage on the home, that Mr. Batty pay the \$780.00 per month second mortgage on the home subject to him being reimbursed the amount of any principle reduction in the second mortgage payable at the time the parties' minor daughter turns 18 or graduates from high school or upon the remarriage or sell of the home. In addition, the Court obligated Mr. Batty to pay \$738.24 to reimburse Mrs. Batty for one-half of the medical expenses; the payment of Mrs. Batty's attorney's fees; the payment of \$1,000.00 per month in alimony and the payment of \$733.00 in child support.

An accounting is provided as follows as to the current income and obligations of the parties with the parties' minor daughter residing with Mrs. Batty as presently ordered by the court:

<u>Mrs. Batty</u>	
Monthly income	\$1,666.00
Alimony	1,000.00
Contribution towards minor child support	-133.00

First mortgage	<u>-589.00</u>	
Total	\$1,944.00	before payment of taxes
<u>Mr. Batty</u>		
Monthly income	\$9,200.00	
Alimony	-1,000.00	
Child support	-733.00	
Second Mortgage	<u>-780.00</u>	(however, Mr. Batty will be reimbursed the principle portion of this amount as explained above)
Total	\$6,687.00	before payment of taxes

One additional component the Court might consider, is that the foregoing amounts do not provide for Mr. Batty a home to reside in. Mr. Batty testified as follows:

Q: What do you reasonably expect would cost you to live in a home that would be comparable to the one that you use to live in?

A: Comparable to the one I use to live in? Or one that would be suitable for living standards? It is going to be close to \$800-900. (R373: lines 16-21).

Even if one gave Mr. Batty the benefit of the doubt and provided a home for him at \$900 per month which is his own estimate would leave for him \$5,787.00 of disposable income before taxes compared to Mrs. Batty's \$1,944.00.

The inequity of the Court's alimony determination becomes even more apparent when one considers the circumstances once the parties' daughter turns 18 and graduates from high school in two years in May of 2008. Assuming the same levels of income that the Court has determined at this time the accounting would be as follows:

Mrs. Batty's monthly income	\$1,666.00
Payment of alimony	<u>1,000.00</u>
Gross monthly income prior to taxes	\$2,666.00
Mr. Batty monthly income	\$9,200.00
Less alimony	<u>1,000.00</u>
Disposable income before taxes	\$8,200.00

In addition, Mr. Batty will have received his equity in the home of \$74,402.65 plus 5% interest from the entry of the Decree of Divorce. In addition, not only will Mr. Batty not have the monthly obligation on the second mortgage but will also be reimbursed the principle payments that he has made to date on the second mortgage. Mr. Batty will no longer have a child support obligation nor has Mr. Batty been assigned any other marital debt obligations. On the other hand, Mrs. Batty at that time will have to either sell the marital home or will have to refinance the home for an additional amount of money to cover the \$74,402.65 to repay equity, plus 5%, plus the principle payments on the second mortgage if it is her desire to stay in the marital home. Based upon the 26 year marriage where Mrs. Batty has primarily been a stay at home mom caring for the children, it would be unfair on its face for Mr. Batty to have an equal portion of all of the assets, allocation of no debts of the marriage and a monthly disposable income of \$8,200.00 while Mrs. Batty is required to subsist on \$2,666.00.

In the event that the court were to equalize the parties incomes (at least after all of

the children have reached majority) by awarding alimony of \$3,767 then court's failure to look at the parties reasonable living expenses might be less problematic. As set out above Mrs. Batty's financial declaration is attached as Addendum B and Mr. Batty's monthly expenses for C.L. Welding is attached as Addendum C. The portions of the trial transcript which address monthly expenses have been copied and are attached as addendum D.

CONCLUSION

Based upon the stipulated values set out in the appraisal for the marital home, the Big Foot Fly Shop and C.L. Welding, Inc., it is an abuse of discretion on the part of the District Court to discount the value of C.L. Welding on the basis that a discount is merited due to Mr. Batty's welding and operational skills when the appraisal specifically indicates that no value has been added for said skills. Mrs. Batty should be awarded an offset against Mrs. Batty's equity in the marital home in the amount of \$12,000.00 or in the alternative for an order requiring the District Court to make further findings justifying why the lower amount should be considered.

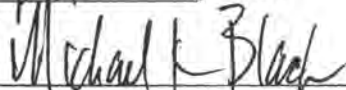
For this Court to reverse the determination of District Court and enter an award of alimony based upon a 26 year marriage by equally dividing the parties' combined gross income between them and further to take into consideration during the period until May

of 2008 while their daughter resides with the Petitioner that she be granted more than one-half of the combined gross incomes.

In the alternative for an order of the Court remanding the matter to the District Court to enter findings regarding the monthly needs and expenses of the parties and to adjust alimony accordingly. In addition, if the Court were to determine that an equitable resolution was to equally divide the combined gross incomes, then Mrs. Batty is more than willing to pay the second mortgage on the parties' home.

Mrs. Batty was awarded her attorney's fees in the Trial Court and would request that the costs and fees also be awarded for the appeal.

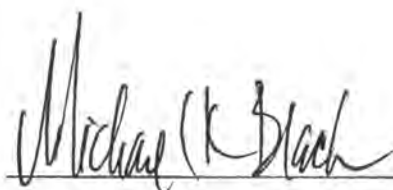
DATED this 27 day of April, 2006.


MICHAEL K. BLACK
Attorney for Appellee

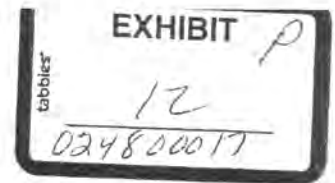
CERTIFICATE OF MAILING

I hereby certify that on the 27 day of April, 2006, I mailed a true and correct copy of the foregoing to the following:

Kent E. Snider, Esq.
Snider, Coggins & Larreau, P.C.
289 - 24th Street #150
Ogden, Utah 84401



ADDENDUM A



IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH
IN AND FOR UINTAH COUNTY

LORI D. BATTY,)	FINANCIAL DECLARATION
)	
Petitioner,)	
)	
VS.)	
)	
CLARK L. BATTY,)	Civil No. 024800017
)	Judge John R. Anderson
Respondent.)	
)	

Name: Lori D. Batty
Address: 38 North 400 West
Vernal, Utah 84078

Statement of Income and Expenses

Gross monthly income from salaries, wages, tips, overtime etc.		\$ 800.00
Monthly Income from all other sources (sheep)		80.00
Child support and alimony		?
Less deductions for:		
Taxes and FICA	\$	
Insurance	\$	
Retirement	\$	
Credit Union	\$	
Savings Plan	\$	
	TOTAL DEDUCTIONS	\$ 0
Net Monthly Income (Take Home Pay)		\$ 880.00

Monthly Expenses

1 st Mortgage Payment	\$ 589.00
2 nd Mortgage Payments	\$ 780.00
Utilities and Telephone	\$ 450.00

Property Taxes/ins	\$ 181.00
Food	\$ 400.00
Clothing	\$ 150.00
Laundry and Cleaning	\$ 100.00
Medical, Dental, Glasses	\$ 175.00
Medical Insurance	\$ 318.00
Car Payment	\$ 251.00
Car expense, include insurance	\$ 400.00
Installment Payments (complete schedule)	\$ 472.00
Entertainment	\$ 50.00
Incidentals (grooming, alcohol, tobacco, donations, including tithing)	\$ 50.00
T.J. Mission	\$ 375.00
TOTAL MONTHLY EXPENSES	\$4,741.00

LIST OF DEBTS

<u>Creditor</u>	<u>Amount</u>	<u>Purpose</u>	<u>Monthly Payment</u>
ZIONS BANK	1,130.07	Master Card	\$40.00
G E CAPITAL	1,237.60	Carpet	\$32.00
ZIONS BANK	4,283.95	1999 Ford	\$251.00
ZIONS BANK	11,375.99	2000 Dodge (Def. is paying)	
ZIONS BANK	26,694.78	First Mortgage	
ZIONS BANK	61,525.18	Second Mortgage	
KEY BANK	12,339.83	Master Card	\$300.00
T.J. BATTY	2,210.06	Property Tax	
TURNER LUMBER	558.49	Shed	\$100.00
DALE CAMERON	1,200.00 (est)	Appraisal.	
DR. HARTLE	513.21	My Bill	Trade

ADDENDUM B

C. L. WELDING, INC. ASSET/LIABILITY LIST

CURRENT ASSETS:

CASH	4,587
ACCOUNTS RECEIVABLE AT YEAR END 2003 SALES/12	26,018
INVENTORY & SUPPLIES, WELDING ROD, OTHER	3,500

OTHER ASSETS:

1991 DODGE WELDING TRUCK, BED, WINCH	8,500
FLAT BED TRAILER	800
CAMP TRAILER	8,000
97 LINCOLN WELDER	3,000
LITTLE WELDER	2,000
WELDER	1,000
2000 DODGE TRUCK	25,400
1970 WELDING TRUCK	2,500
99 FORD RANGER	8,000
COMPUTER & OFFICE EQUIPMENT	1,000
WELDING TOOLS, PLASMA CUTTER, GRINDERS, TORCH SETS, PIPE VISES, PIPE STANDS, ALUM. PIPE WRENCHES, HYDRAULIC WELL HEAD TESTER, LEADS, LAYOUT TOOLS, HAND TOOLS HAMMERS, PORTA POWER, IMPACT TOOLS, SOCKETS, PROPANE BOTTLES, UMBRELLA, HOIST & WINCH, WELDING BED AT HOUSE, WELLHEAD HOOKS, CHAINS & BOOMERS, WORK LIGHTS, PROPANE HEATERS, HEAVY EXTENSION CORDS, C-CLAMPS, ETC.	31,500

TOTAL ASSETS	\$125,805
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LIABILITIES

ACCOUNTS PAYABLE - & CURRENT LIABILITIES	20,235
LONG TERM DEBT	12,684

TOTAL LIABILITIES	\$ 32,919
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NET VALUE OF ALL ASSETS LESS LIABILITIES	\$ 92,886
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ADDENDUM C

MONTHLY EXPENSES
CL WELDING

HOUSING

\$1,668.52 Home Mortgage / Rent
Taxes
\$171.00 Insurance
Assessments
Maintenance
Out side help

\$1,839.00 TOTAL

UTILITIES

\$35.00 Electricity
\$150.00 Heating
\$70.00 Water & Sewer Lori
\$33.50 Cable TV
\$350.00 Phone
\$638.50 TOTAL

FOOD

\$250.00

CHILDREN

\$50.00 Clothing
\$100.00 Lessons
\$20.00 Allowances
\$375.00 Mission
\$50.00 Recreation
\$200.00 Allowance for TJ mission
\$795.00 TOTAL

PERSONAL EXPENSES

\$60.00 Clothing & shoes
\$150.00 Medical & Dental
\$50.00 Recreation
\$17.00 Hair Cuts
\$50.00 Travel
\$50.00 Cleaning & laundry
\$377.00 TOTAL

TRANSPORTATION

\$800.00 Gas & oil
\$100.00 Maintenance
\$456.00 Installment payments
\$454.00 Insurance
\$500.00 Mustang restoration
\$2,310.00 Total

INSURANCE

\$210.00 Life insurance
\$569.00 Health Insurance
\$712.00 General liability
\$1,491.00 TOTAL

MISCELLANEOUS

\$600.00 Contributions
\$200.00 Credit card payments
\$1,851.00 Pay Roll
\$695.50 pay 941
\$144.00 UT State tax com.
\$7.50 UT DEPT. work force
\$105.00 Worker Comp.
\$3,603.00 TOTAL

TOTAL MONTHLY EXPENSE
PAID BY CL WELDING
\$11,303.00



MONTHLY EXPENSES

Lori's Alimony \$750.00

Child support \$473.00

INSURANCE

Life insurance \$3.15

TRANSPORTATION

Installment payments

Bank loan payment \$203.79

Ford Credit \$448.59

TOTAL \$1,878.53

PAYED BY PERSONAL CHECKING

Clark Batty

ADDENDUM D

1 MR. SNIDER: Subject to my looking at it and reserving
2 my right to objection.

3 Q (By Mr. Allred) I want to show you Exhibit 12, a
4 Financial Declaration, and a copy for the Court. Do you
5 recognize Exhibit 12?

6 A Yes, I do.

7 Q What is Exhibit 12?

8 A It's a list of - it's a Financial Declaration and a
9 list of debts.

10 Q Now on there you're listing \$800 income, where does
11 that come from?

12 A From the Fly Shop in salary and trades and income that
13 the Fly Shop's made.

14 Q Which will be, what, 9600 a year?

15 A Yes, I hope so.

16 Q So it's consistent with your hope for 10,000 this
17 coming year?

18 A Correct.

19 Q That's a little higher than is reflected on your tax
20 return?

21 A Yes, because they took out the depreciation.

22 Q Okay. It also shows \$80 from sheep.

23 A Yes, I have -

24 Q - to be about another \$1,000?

1 A Correct.

2 Q What do you do with sheep?

3 A I traded for some sheep so I've got 14 ewes and 1 buck
4 and I - I only had one lamb that was stillborn this year and
5 they've all done well and hopefully they'll be ready for sell
6 soon.

7 Q Okay. And then on expenses we've got first and second
8 mortgages, that's what we've been talking about on the house?

9 A Correct.

10 Q Turn over to the second page list of debts showing the
11 first mortgage of 26,694; is that about what you knew was owed on
12 it?

13 A Oh, yes.

14 Q Who has been making the payment under the temporary
15 order?

16 A Clark has out of CL Welding,

17 Q And that's tied to the purchase of the home and
18 improvements?

19 A Correct.

20 Q Then the second mortgage -

21 MR. SNIDER: Your Honor, I'm going to object. First of
22 all, it was leading; and two, it is false. It's leading.

23 THE COURT: Well, I have heard the testimony from her
24 about what it was for. That's what it was for. Just - I guess

1 we'll just delete Mr. Allred's comment -

2 MR. SNIDER: Thank you.

3 THE COURT: - because it was -- it's been testified
4 about.

5 Q (By Mr. Allred) Then the second mortgage - that's the
6 one we talked about earlier - the 75,000 that was taken out.

7 A Correct. And that's - that was the balance that was
8 existing as of current, I think, I believe.

9 Q Okay. That went for a variety of sources we talked
10 about.

11 A That's correct.

12 Q And who's been making that payment?

13 A CL Welding has been.

14 Q Telephone, that's what you've been accruing monthly on
15 - there at your house?

16 A Yes. CL Welding has been paying for the phone bill
17 until about two weeks and it was disconnected.

18 Q Property taxes and insurance; what's that on?

19 A That's on the home.

20 Q So your insurance and taxes are not included in any of
21 the mortgages?

22 A No, it isn't.

23 Q Food, clothing, laundry, cleaning, medical, dental, are
24 those all the things that you're - average of what you occur on a

1 monthly basis?

2 MR. SNIDER: Objection, your Honor.

3 THE WITNESS: Yes.

4 THE COURT: I'm sorry. I didn't hear you.

5 MR. SNIDER: Again, he's leading.

6 THE COURT: Well, it's illustrative.

7 Q (By Mr. Allred) Now, you've got medical insurance.

8 Let's talk about that. Do you have medical insurance?

9 A On just Jessica and myself. We couldn't get TJ
10 insured, he's still on the State uninsurable list.

11 Q Is there also insurance through CL Welding?

12 A Yes, there is.

13 Q Who's covered on that?

14 A I believe all five of us are, or all four of us, Clark,
15 Lori, TJ, and Jessica.

16 Q Once divorced you're probably off of that?

17 A Yeah. And right now we've acquired this - the
18 insurance at CL Welding -

19 Q That was going to be my - let me -

20 A Okay.

21 Q - ask you a question first. So why have you acquired
22 your own insurance?

23 A CL Welding's insurance has \$5,000 deductible per
24 occurrence so basically the insurance we never received any

1 benefits from it. The policy I have is a Blue Cross Blue Shield
2 policy. It has a co-pay of \$5 on prescriptions and \$15 on office
3 calls, and it has paid where in the past I've had to pay for
4 everything out of pocket so I feel it's fairly good insurance.

5 Q Will it continue to cover you after your divorce?

6 A Yes, it will.

7 Q You've got a car payment of 251, what are you making -
8 what car are you making payments on?

9 A It's a 1999 Ford truck.

10 Q And who has been paying that under the temporary order?

11 A I have been.

12 Q Is that a vehicle you drive?

13 A Yes, it is.

14 Q And then we've got a list of installment payments.
15 What are you presently paying installments on?

16 A I was left with a credit card payment; one was for
17 carpet that is in the home, another one is for car parts - well,
18 the other two are for a lot of car parts and just general use
19 credit cards that we had. And the one credit card now has the
20 majority of the lawyer fees on it.

21 Q Which one is that?

22 A That one is - it's the Key Bank Account.

23 Q Are there any other debts that have increased since you
24 separated? The Key Bank one you say for legal fees; anything

1 else you've incurred?

2 A Dale Cameron that has to do with the appraisal; Turner
3 Lumber, in 2004 we built a shed and that's the balance that I owe
4 on the shed for materials we bought at Turner Lumber. And then
5 TJ, the property tax he's helped - he has paid the property tax
6 for the last two years.

7 Q Why has he paid the property taxes?

8 A Basically funds have been tight and he's helped me out.

9 Q What's your agreement with him?

10 A We need to get it paid back. He'd like me to have it
11 paid back by the time he gets home from his mission.

12 Q You've also got TJ mission up there on your list of
13 expenses; what's that?

14 A That's - the 375 is what the church would like us to
15 pay to send TJ on his mission.

16 Q Has there been a decision between you and Clark as to
17 how you're going to do that?

18 A I haven't talked to him, but on his expenses he did not
19 list the full amount to send him on the mission. He only listed
20 partial of it of \$200.

21 Q Do you believe Exhibit 12 accurately reflects the
22 income and expenses you have, particularly if you were requested
23 to pay those two first - two mortgages on the house?

24 A Yes, sir.

25 MR. ALLRED: I'd move to introduce Exhibit 12.

1 MR. SNIDER: No objection.

2 THE COURT: The Court will receive 12.

3 Q (By Mr. Allred) Have you incurred legal fees in this
4 action?

5 A Yes, sir, I have.

6 Q Have you been able to keep those paid?

7 A With the help of my credit card. They've been applied
8 to the MasterCard account.

9 Q And you've run that up to 12,000?

10 A Yes, sir.

11 Q We've been functioning under a temporary order; is that
12 correct?

13 A Yes, sir.

14 Q I'm going to show you Exhibit 13. (Inaudible) What is
15 Exhibit, is it 13?

16 A Yes, it is.

17 Q What is - what is Exhibit 13?

18 A This is a list of expenses that I've incurred that I
19 have not been reimbursed for.

20 Q The first one is medical costs.

21 A Correct. And the total is one-half, with the exception
22 of Clark told that he would - TJ he'd pay one visit to the
23 hospital in full.

24 Q Have you given Mr. Batty copies of these debts?

1 declaration, that you filed in 2002 when you still had TJ living
2 at home and Brooke living at home and Jessica living at home.

3 Because by your own testimony -

4 A I'm thinking we had ten days left with Brooke at home -
5 living at home.

6 Q Okay. Brooke actually moved out - Brooke got married
7 on the 26th of April, 2002; correct?

8 A Yeah. She had ten days so we didn't figure her in, I
9 don't think.

10 Q You filed this Financial Declaration -

11 A In April.

12 Q In April. And you basically project that your
13 utilities with four people living at home were \$379.76 per month;
14 is that correct?

15 A Yeah. I called the utilities and -

16 Q Huh?

17 A I called the utilities and got a years worth of bills
18 and averaged them out, divided by 12.

19 Q Okay. Divided by 12. That was in 2002 when you had
20 four people at home. Now your Financial Declaration, number 12,
21 that you filed with the court you list - now you've only have
22 projected two people at home, you and Jessica, \$450 a month.

23 A That's - what I can say. Prices have went up.

24 Q You have less people living at home, less food to feed
25 them -

1 A Food is other line.

2 Q - less clothing to buy - we're going to get to that in
3 just a second - and utilities are going up? That's - that's your
4 - that's the only way you can justify the difference between 379
5 and 450?

6 A 379 - the utilities are the same no matter who lives
7 there, how many people live there, you still have to pay -

8 Q Number - next one down; clothing for kids. Okay. You
9 list in your clothing \$150 per month. That's what you estimate
10 back in 2002. That's with four of you living there. Now you
11 list clothing 150 bucks a month. That's with only two people
12 living there.

13 A Well, sir. I would say the second answer is more
14 accurate.

15 Q Food for kids. You list food in your thing at \$450 a
16 month. You list food for just you and Jessica, because that's
17 what you projected - at 400 bucks a month. Now I've got seven
18 kids, I know that it doesn't cost the same to feed four as it
19 does two.

20 MR. ALLRED: Objection. I'd move to strike the
21 testimony as to counsel's living expenses.

22 MR. SNIDER: Okay. I'll rephrase the question. I
23 apologize.

24 Q (By Mr. Snider) So can you explain to the court why all
25 of a sudden you lose two kids and the amount of food that it.

1 costs only goes down 50 bucks a month?

2 A Well, number one, we projected it without Brooke being
3 in there so it was the three, not kids, but three of us; TJ, me
4 and Jessica. Because Brooke was going to get married in ten
5 days, I didn't want to say for the whole next however long that I
6 was going to feed her so we - actually as soon as TJ leaves on
7 his mission there will just be two of us.

8 Q Correct. So is it going to go down?

9 A I just - that's what I project from the records we've
10 been keeping. It's going to cost.

11 Q Car payment you list initially at \$244.42 per month.
12 What is that for? What vehicle is that for?

13 A That's for the Ford '99 pickup I drive.

14 Q F-250?

15 A Uh huh. (Affirmative)

16 Q That you pay out of your business?

17 A No, I don't pay that. I pay that out of my personal
18 account.

19 Q It's listed as a business asset. You depreciated it as
20 part of your income tax return.

21 A It's a sole proprietorship, sir.

22 Q So are we deducting - 'cuz I can look in your expenses
23 for your business, are we deducting the payments twice? We're
24 taking out of our business and we're also sitting over here and
25 saying it's part of my normal expenses?

1 A It comes out of my personal checking account, sir. You
2 can check with Zions Bank if you'd like.

3 Q How about your car expenses, including insurance? It's
4 \$400 a month is what you list now. It's 475 back then, but
5 you're not paying for Brooke and you're not paying for TJ; is
6 that correct?

7 A I wasn't paying for Brooke when we made this up, sir.
8 I keep explaining to you there was just TJ, Jessica, and I.

9 Q Okay.

10 A Insurance went up or - I just got quotes from Clark
11 Hall for insurances.

12 Q Your expenses in 2001 you show repair and maintenance
13 for vehicles - this is in your Financial Statement, number 3 -
14 part of your appraisal you list \$4,420 a year for repairs and
15 maintenance, but yet you're claiming -

16 A Where's that at, sir?

17 Q That's in plaintiff number 3. If you don't have that,
18 I've got a copy, the original the court has.

19 A Well, I wouldn't know what I stated if I don't have a
20 copy.

21 Q What I'm trying to get to is are you double dipping?
22 Are you claiming that the stuff you're paying and require for
23 monthly expenses for your business you're also listing as your
24 personal expenses?

25 THE COURT: Why don't you - I'm confused, too. Direct

1 THE COURT: What do you need?

2 THE WITNESS: A drink of water.

3 MR. SNIDER: Thank you again.

4 Q (By Mr. Snider) Mr. Batty, I'm going to show you what's
5 been marked as Exhibit Number 25 for the second time, and ask if
6 you can identify that document? Do you recognize that?

7 A Yes. Monthly expenses for CL Welding.

8 Q That's how much you're paying out of CL Welding; is
9 that correct?

10 A Yes.

11 Q Now there's things in here like clothing for the kids,
12 the mortgage on the first and second mortgage, plus your rent.

13 A Yes.

14 Q So there's CL Welding's and then you break them down in
15 to -

16 A All this right here is paid out of CL Welding.

17 Q Okay. Is this above and beyond the \$32,000 you take a
18 year as income, or is this part of it?

19 A This is above and beyond the 32,000.

20 Q You pay your child support out of the -

21 A Out of the personal.

22 Q Out of your personal account?

23 A Yes.

24 Q How about your monthly expenses for your rent?

1 A I pay it out of CL Welding.

2 Q Your - this \$1600 a month that you list here for
3 mortgage, rent, taxes, how much of that is for you?

4 A \$300.

5 Q You pay \$300 a month for lot rent?

6 A For rent.

7 Q Are you renting a trailer?

8 A Yes, I'm renting a trailer.

9 Q Describe for the court what kind of trailer you live
10 in.

11 A It's a two bedroom, two bathroom, living room, and a
12 small dining room, and a kitchen, and a little tiny utility room.

13 Q Compared to your - compare it to your home that you
14 were living in before you separated?

15 A On a scale from 1 to 10 it's like a 1, the home is a
16 10.

17 Q Is it the standard of living that you enjoyed while you
18 were married?

19 A No.

20 Q Is it something that you could continue to live in on a
21 long term basis?

22 A No.

23 Q Could you bring your children there and raise them and
24 feel comfortable raising them under the circumstances?

1 A No.

2 Q Why do you live there?

3 A It puts me out away from town. It's - it puts me in
4 the same ward as my brothers and the family.

5 Q Is that the best you can afford in the current
6 situation?

7 A No.

8 Q Can you afford a little better?

9 A Yes.

10 Q Okay. You're not asking the court to assess your
11 income - or assess your living expenses at 300 bucks a month, are
12 you? Pretty hard?

13 A I don't understand that question.

14 Q Right now you're paying \$300 a month for a trailer.

15 A Yes.

16 Q What do you reasonably expect it would cost you to live
17 in a home that would be comparable to the one you used to live
18 in?

19 A Comparable to the one I used to live in?

20 Q Or one that would be suitable for living standards.

21 A It's going to be close to 8 or \$900.

22 Q Okay. The utilities that you list here, electricity,
23 heating, water, cable, are those all for you personally, not the
24 shop?

1 A These are for the - the water and the sewer is Lori's.

2 Q So you're paying her water and sewer at her home?

3 A Yes.

4 Q Okay. Cable for your trailer?

5 A Yes.

6 Q How about the electricity?

7 A Yes.

8 Q Don't write on that document.

9 A Oh, okay. Yes.

10 Q The heating at 150 bucks a month, is that for the
11 trailer?

12 A Yes.

13 Q Okay. That doesn't - those aren't your expenses for
14 the shop then, those are all your personal expenses?

15 A The phone bill is expenses for the shop - for my
16 business.

17 Q Do you have a phone at your house?

18 A No.

19 Q Do you have a phone at your shop or do you just have a
20 cell phone?

21 A I don't have a shop. I just have a mobile cell phone.

22 Q Okay. And so the 350 a month is what you're paying for
23 your mobile phone?

24 A It was also paying Lori's bill - phone bill, too.

1 Q You were paying her phone bill until when?

2 A Until I didn't receive any more bills from UBET.

3 Q So after you stopped receiving the phone bill you

4 stopped the phone bill?

5 A I didn't have a - Jessica brought - last time I got a

6 bill my daughter Jessica brought it down and I paid it.

7 Q Okay.

8 A But I haven't received any more bills.

9 Q You haven't refused to pay the phone bill have you?

10 A No.

11 Q Are you court ordered to pay the phone bill?

12 A No.

13 Q Why have you been paying the phone bill then?

14 A So I could talk to my daughter.

15 Q And now that's been turned off?

16 A Yes.

17 Q The \$250 a month for food, is that just for you? You

18 don't have anyone else that lives with you, do you?

19 A Yeah, it's just for me.

20 Q Okay. Now it listed on here for children you've got

21 clothing \$50 bucks a month. You're paying for the kids clothing?

22 A I gave my daughter Jessica money to go - she's gone to

23 St. George and got clothes.

24 Q And that's above and beyond the child support that you

1 were ordered to pay?

2 A Yes.

3 Q How about the \$100 a month for lessons; is that for
4 Jessica and TJ?

5 A That is for Jessica.

6 Q 20 bucks a month for allowance. I don't suppose that's
7 for you, is that for Jessica?

8 A That's for Jessica.

9 Q The 375 a month for a mission, that's for TJ?

10 A Yes.

11 Q And if Lori lists that also you don't both have to pay
12 375 a month, do you?

13 A No.

14 Q Have you already made arrangements for that 375 a month
15 be paid through your ward?

16 A Yes.

17 Q The \$200 month allowance for TJ's mission, what's that?

18 A I put that in there. I don't know if he needs cash on
19 top of that or -

20 Q So that's something you're budgeting in with the idea
21 you may have to pay some additional monies for TJ?

22 A Yes.

23 Q And he's going where? I'm sorry.

24 A To St. Petersburg, Russia.

1 Q So we don't know if that's an expensive mission or a
2 cheap mission, we don't know?

3 A I do not know.

4 Q Okay. The medical and dental 150 you list there, is
5 that for health insurance or is that for medical bills? Nope, I
6 guess that's for - that's for medical and dental, that would be
7 for actual bills. What is that?

8 A For medical and dental?

9 Q Uh huh. (Affirmative)

10 A That's what I owed - I paid dental bills and I've been
11 working on getting it paid off.

12 Q Are you still paying for Jessica's glasses also?

13 A No. I haven't - I paid - I have paid for some to
14 Seitz, but I don't remember - Seitz Optical, but I don't remember
15 what that was.

16 Q Health insurance of 569 a month, that's for the family;
17 is that correct? Under insurance.

18 A You're skipping around. That is - that's health
19 insurance what was set up when we were together. It's still the
20 same health insurance. I have not changed it. I have not
21 changed a thing on it.

22 Q This Mustang restoration for 500 bucks, is that for you
23 or for one of the kids?

24 A That is for TJ.

25 Q It's a Mustang that's being restored?

1 A Yes.

2 Q You also have a Mustang that's being restored for
3 Brooke, too?

4 A It is. It's done. I think - I don't have any idea
5 what she's done with it.

6 Q The installment payments of 456, what's that?

7 A That's the payment on that Dodge Dually.

8 Q Okay. That's part of your business. That's the Dodge
9 that you drive as part of your business?

10 A Yes.

11 Q Mr. Batty, are you refusing to pay Ms. Batty alimony?

12 A No.

13 Q You understand she needs support?

14 A Yes.

15 Q On a temporary basis you've been paying her 750 bucks a
16 month; is that correct?

17 A Yes.

18 Q And child support of about 473 a month?

19 A Yes.

20 Q Now in your interrogatory - actually in Ms. Batty's
21 interrogatories she reports that you made in '99 about \$63,000
22 joint, is that about right?

23 A When?

24 Q '99.