Circuit Court for Montgomery County
Case No.: 160496FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 372

September Term, 2022

JEFFREY BOHLING

v.

JENNIFER SEGREE

Reed,
Beachley,
Zic,

JJ.

Opinion by Reed, J.

Filed: April 29, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following the grant of an absolute divorce, appellee, Jennifer Segree, petitioned the Circuit Court for Montgomery County for an order adjudicating appellant, Jeffrey Bohling, in contempt and seeking enforcement of the parties' financial settlement agreement. Ms. Segree alleged that Mr. Bohling had failed to pay her for the full value of liquidated stock units realized after the divorce. Following a hearing, the circuit court granted Ms. Segree's request for enforcement of the agreement. The court also awarded her attorney's fees and expert witness fees.

Mr. Bohling appeals, presenting the following questions for our review, which we have consolidated and rephrased as follows:

1. Did the circuit court err in finding that the parties' agreement was unambiguous and in declining to consider parol evidence to determine the intent of the parties?

2. Did the circuit court err or abuse its discretion in awarding Ms. Segree attorney's fees and expert witness fees?

For the following reasons, we answer the first question in the negative and affirm in part. We vacate the awards of attorney's fees and expert witness fees, and remand in part for further proceedings on those issues.

FACTUAL & PROCEDURAL BACKGROUND

Ms. Segree filed a complaint for limited divorce in 2019. Mr. Bohling responded by filing a counter-complaint for absolute divorce. At that time, Mr. Bohling was employed by Perspecta. In the course of his employment, he received stock awards called restricted stock units ("RSUs") and performance stock units ("PSUs").

In January 2021, the parties executed a Final Agreement Term Sheet ("Agreement"), resolving the distribution of the parties' assets, including Mr. Bohling's RSUs and PSUs from his employment with Perspecta. Specifically, the Agreement obligated Mr. Bohling to pay to Ms. Segree 42% of the after tax value of the marital portion of the RSUs and PSUs on an "if, as, and when" basis. On March 8, 2021, the Agreement was incorporated, but not merged, into the judgment of absolute divorce.

On or about May 7, 2021, Perspecta was acquired by and merged with another company, Veritas, which caused an accelerated vesting of all Perspecta RSUs and PSUs. On May 11, 2021, Mr. Bohling received "PSU cash distributions" and "stock plan dividends" in the amount of $1,439,172.24 for the value of the RSUs and PSUs. On or about June 18, 2021, Mr. Bohling issued a check to Ms. Segree in the amount of $249,592.11, representing the amount he had calculated as her portion of the marital share of the RSUs and PSUs, pursuant to the Agreement.

On November 1, 2021, Ms. Segree filed a petition for contempt and enforcement of the parties' Agreement, arguing that Mr. Bohling had violated the terms of the Agreement by paying her $249,592.11. Ms. Segree argued that pursuant to the formula set forth in paragraph 1(c) of the Agreement, 42% of the marital share of the RSUs and PSUs was $403,289. Mr. Bohling opposed the petition, arguing that he had properly calculated Ms. Segree's portion of the marital share of the stock units pursuant to the terms set forth in the Agreement.

At the hearing on the contempt petition, the court granted the parties' request for a bifurcated proceeding. In the first stage of the proceeding, the court was tasked with

deciding whether the Agreement was ambiguous. Only upon a finding by the court of an ambiguity in the Agreement would the parties introduce parol evidence of the parties' intent.

The provision of the Agreement at issue, paragraph 1(c), provides:

> Perspecta RSUs and PSUs: Mr. Bohling shall transfer to Ms. Bohling 42% of the liquidated value of the after tax portion of marital portion of the RSUs, PSUs and their associated dividends, (listing of these instruments are attached as Exhibit 1) on an if, as and when basis. Within forty-five (45) days of each tranche vesting, Mr. Bohling shall provide to Ms. Bohling the payment along with the account and unit statements evidencing the vesting of that tranche.
>
> The marital portion of each tranche of RSUs, PSUs and their associated dividends shall be determined by the following fraction. The numerator shall be the number of months from the date of grant for each tranche to the date of the signing of this Term Sheet, and the denominator shall be the number of months from the date of grant for each tranche to the date of vesting.
>
> The foregoing fraction shall be the marital portion, which shall be multiplied by the value of each tranche as of the date of vesting. As of the date of this Term Sheet all of the tranches are taxed as ordinary income and the liquidated value shall then be reduced by 46% (Mr. Bohling's deemed income tax rate for purpose of this calculation), subject to a truing-up. Mr. Bohling shall be obligated to liquidate the shares upon vesting.

Also at issue, Exhibit 1 to the Agreement, consists of the following one-page chart:

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Perspecta Restricted Stock Units and Performance Units

	Type	Grant Date	Vest Date	(A) Mos. Prior To Term Sheet Date	(B) Mos. Prior To Vest Date	(C) = (A) / (B) Marital Portion	(D) = .42 x (C) 42% Of Marital Portion	(E) Total Units	(F) = (D) x (E) Jennifer Bohling Share
1	RSU	06/03/20	06/03/23	8	36	22.22%	9.33%	6,123	571.28
2	RSU	06/03/20	06/03/22	8	24	33.33%	14.00%	6,123	857.22
3	RSU	06/03/20	06/03/21	8	12	66.67%	28.00%	6,123	1,714.44
4	RSU	06/11/19	06/11/22	20	36	55.56%	23.33%	2,587	603.55
5	RSU	06/11/19	06/11/21	20	24	83.33%	35.00%	2,588	905.80
6	RSU	10/11/18	10/11/21	28	36	77.78%	32.67%	1,883	615.18
7	PSU	06/03/20	07/01/23	8	37	21.62%	9.08%	4,593	417.04
8	PSU	06/03/20	07/01/23	8	37	21.62%	9.08%	4,593	417.04
9	PSU	06/03/20	07/01/23	8	37	21.62%	9.08%	9,183	833.82
10	PSU	06/11/19	07/01/22	20	37	54.05%	22.70%	3,397	771.12
11	PSU	06/11/19	07/01/22	20	37	54.05%	22.70%	3,397	771.12
12	PSU	06/11/19	07/01/22	20	37	54.05%	22.70%	6,794	1,542.24
13	PSU	06/11/19	07/01/22	20	37	54.05%	22.70%	1,133	257.19
14	PSU	06/11/19	07/01/22	20	37	54.05%	22.70%	1,133	257.19
15	PSU	06/11/19	07/01/22	20	37	54.05%	22.70%	2,263	513.70
16	PSU	10/11/18	07/01/21	28	33	84.85%	35.64%	2,473	881.38
17	PSU	10/11/18	07/01/21	28	33	84.85%	35.64%	2,473	881.38
18	PSU	10/11/18	07/01/21	28	33	84.85%	35.64%	4,945	1,762.40
19	PSU	10/11/18	07/01/21	28	33	84.85%	35.64%	824	293.67
20	PSU	10/11/18	07/01/21	28	33	84.85%	35.64%	824	293.67
21	PSU	10/11/18	07/01/21	28	33	84.85%	35.64%	1,649	587.70

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Ms. Segree called Kristopher Hallengren, a Certified Public Accountant, to testify as to the calculations of Ms. Segree's marital portion of the RSUs and PSUs, based upon his understanding of the Agreement. Mr. Hallengren testified that he prepared a document "relative to [his] interpretation of the agreement and the application of the shares that are

applicable to Ms. [Segree]." He was "asked to look at the calculation performed by Mr. Bohling and the check associated with that calculation and [he] compared it to [his] calculation." According to Mr. Hallengren, "[t]he originally expected vest dates were no longer applicable as this was an instance of accelerated vesting with everything vesting as of May 11, 2021." The only difference between Mr. Hallengren's calculation and Mr. Bohling's calculation was that Mr. Hallengren used the actual vest date and Mr. Bohling utilized the "expected" vest date set forth in column 2 on Exhibit 1 to the Agreement.

Mr. Bohling's counsel questioned Mr. Hallengren regarding the services he provided in recalculating the value of the RSUs and PSUs using the actual vest date:

> Q. Mr. Hallengren, to confirm, you used the same schedule that was outlined in Exhibit 1, other than adjusting the vesting date and the resulting calculations, correct?
>
> A. I corrected the vest date that was in the schedule, which was originally provided and attached to the agreement. That's the only difference between my calculation and the – Mr. Bohling's calculation.

Mr. Bohling argued that the parties had defined, and agreed upon, established "vest dates," for the respective RSUs and PSUs, set forth in Exhibit 1 to the Agreement, and Ms. Segree's portion of the marital share of the RSUs and PSUs was accurately calculated using the vest dates set forth in Exhibit 1.

At the conclusion of the first day of proceedings, the circuit court ruled that the Agreement was not ambiguous. The court explained:

> Clearly, the date of vesting changed – not by anybody's – it wasn't anybody's fault, but the date of vesting changed, and I therefore think that the proper way to do the calculation is to change the date of the vesting. And so I find that the agreement is clear. And that it is not ambiguous.

The court held a hearing on attorney's fees on March 24, 2022. At that hearing, Ms. Segree argued that she was entitled to an award of attorney's fees in the amount of $34,657.38 and expert witness fees in the amount of $12,200.50. In support, she submitted an affidavit of counsel and copies of invoices of counsel and her expert witness, Mr. Hallengren. Ms. Segree argued that Mr. Hallengren's services were necessary and reasonable, as there were significant mathematical calculations at the heart of the parties' dispute.

Ms. Segree asserted that she was entitled to all of her attorney's fees pursuant to the fee-shifting provision in the Agreement. Alternatively, she argued that she was entitled to attorney's fees and expert witness fees pursuant to Section 8-214 of the Family Law Article ("FL") (1984, 2019 Repl.Vol., 2022 Supp.) of the Maryland Code because the court had found in her favor with respect to enforcement of the Agreement.

Mr. Bohling argued that he neither breached nor defaulted under the Agreement. Rather, he asserted that the parties disputed the terms of the Agreement and, consistent with his understanding of the Agreement, he paid Ms. Segree what he believed was the correct amount due to her. Mr. Bohling also challenged the reasonableness and necessity of the attorney's fees and expert witness fees submitted by Ms. Segree. He argued that Mr. Hallengren's fees of $12,200.50 were excessive for the work he performed in essentially updating "a chart that he had previously reviewed and confirmed." He also challenged Mr. Hallengren's invoice entries for "trial prep," which he claimed lacked explanation of the work performed, and entries for six hours of "stock unit analysis" and review of "summary calculations" performed by Mr. Hallengren's associates.

With respect to Ms. Segree's claim for attorney's fees, Mr. Bohling argued that there were several charges showing multiple senior attorneys billing their time, and multiple entries for "research" that did not indicate what research was done and whether it related to the enforcement of the Agreement. Mr. Bohling stipulated to his financial ability to pay attorney's fees. Mr. Bohling argued that Ms. Segree also had the ability to pay her attorney's fees based on the money she would receive from the RSUs and PSUs, the "close to half a million dollars" he previously paid her, her salary of $15,000 per month, excluding her bonuses and stock awards, and her real estate worth over $1.3 million dollars. Mr. Bohling argued that, because both parties had the ability to pay their own attorney's fees, the court should deny Ms. Segree's request for attorney's fees.

In response, Ms. Segree argued that a significant portion of her attorney's fees related to preparation of materials in response to Mr. Bohling's request that the court consider parol evidence. She asked the court to review the expenses she incurred to support her adult children as well as her financial statement showing net assets of $610,000, as compared to Mr. Bohling's net assets of $7.4 million.

At the conclusion of the hearing, the court took the matter under advisement. The court issued a written order on March 31, 2022. With respect to attorney's fees and expert witness fees, the court ruled:

> **ORDERED,** that [Mr. Bohling] is not found to be in contempt of this Court as this matter arose from a dispute between the parties as to how to calculate the amount due [Ms. Segree] by [Mr. Bohling] for her share of the Perspecta RSUs and PSUs; and it is further
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> **ORDERED,** that [Mr. Bohling] is not found in breach of the parties' Final Agreement Term Sheet dated January 21, 2021, as this matter arose

> from a dispute between the parties as to how to calculate the amount due [Ms. Segree] by [Mr. Bohling] for her share of the Perspecta RSUs and PSUs. [Mr. Bohling] timely paid the amount he believed to be due; and it is further
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> **ORDERED,** that [Mr. Bohling] shall pay to [Ms. Segree] for her reasonable and necessary attorney's fees the amount of $25,000.00 within thirty (30) days of entry of this Order based on consideration of (1) the financial resources and financial needs of both parties; and (2) each parties' substantial justification for prosecuting and defending [the] proceeding; and it is further
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> * * *
>
> **ORDERED,** that [Mr. Bohling] shall pay to [Ms. Segree] for her reasonable and necessary suit money and court costs the amount of $9,933.00 for her expert within thirty (30) days of entry of this Order based on consideration of (1) the financial resources and financial needs of both parties; and (2) each parties' substantial justification for prosecuting and defending [the] proceeding[.]

On April 29, 2022, Mr. Bohling noted this appeal.

STANDARD OF REVIEW

When an action is tried without a jury, we review the case on both the law and evidence and accept the trial court's findings of fact unless clearly erroneous. Md. Rule 8-131(c); *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 388 (2019). We accord no deference, however, to the trial court's "determinations of legal questions" and "conclusions of law based upon findings of fact." *Elderkin v. Carroll*, 403 Md. 343, 353 (2008) (citations and quotation marks omitted). The interpretation of a written contract, and determination of whether a contract is ambiguous, are ordinarily questions of law, subject to *de novo* review. *Credible Behavioral Health, Inc.*, 466 Md. at 392; *Frederick Classical Charter Sch., Inc. v. Frederick Cnty. Bd. of Educ.,* 454 Md. 330, 414-15 (2017); *accord Sang Ho Na v. Gillespie*, 234 Md. App. 742, 749 (2017) (explaining that, in

reviewing a ruling on a motion to enforce a settlement agreement, we review the circuit court's legal conclusions *de novo*.).

DISCUSSION

I.

Interpretation of the Agreement

Mr. Bohling argues that the circuit court erred in concluding that he owed Ms. Segree $403,289, rather than $249,592.11, under the Agreement. He contends that while paragraph 1(c) of the Agreement sets forth the method for calculating Ms. Segree's marital share of the RSUs and PSUs, the chart contained in Exhibit 1 of the Agreement establishes the exact numbers and outcome of the calculations (except for the share price) to be used when calculating the payment that was due under the Agreement. Thus, Mr. Bohling asserts that his view prevails under a "plain language" interpretation. Alternatively, he contends that "to the extent this Court concludes error is not established based on the plain language of the contract the circuit court erred when it declined to consider parol evidence." He argues that the circuit court erred in failing to consider parol evidence to resolve the parties conflicting interpretations and to determine if there was a mutual mistake by the parties in drafting the Agreement.

Ms. Segree argues that the circuit court correctly concluded that the Agreement was unambiguous. She asserts that the language of paragraph 1(c) makes clear that the formula for calculating the marital portion of the stock options was based on "the actual date of vesting" and that Exhibit 1 was incorporated into the Agreement "solely [as] a 'listing of these instruments' to define which [s]tock [o]ptions were subject to this calculation." She

contends that parol evidence was not warranted based on the circuit court's conclusion that the Agreement was unambiguous. She further asserts that Mr. Bohling's argument that the court erred in declining to consider parol evidence to determine whether there was a mutual mistake is unpreserved because he did not raise that argument before the circuit court.

Generally, settlement agreements are "enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts." *4900 Park Heights Ave. LLC v. Cromwell Retail 1*, *LLC*, 246 Md. App. 1, 18 (2020) (citation omitted). Maryland courts adhere to the "'objective approach to contract interpretation, according to which, unless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation.'" *Frederick Classical Charter Sch.*, *Inc.*, 454 Md. at 414-15 (quoting *Ocean Petroleum*, *Co. v. Yanek*, 416 Md. 74, 86 (2010)). This objective approach requires that we "restrict our inquiry to the four corners of the agreement and ascribe to the contract's language its customary, ordinary, and accepted meaning." *Id*. (citation and quotation marks omitted). Additionally, "we will give effect to the plain meaning of an unambiguous term, and will evaluate a specific provision in light of the language of the entire contract." *Weichert Co. of Md., Inc. v. Faust*, 419 Md. 306, 324 (2011) (citing *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 447-48 (2008)).

Ultimately, "[t]he cardinal rule of contract interpretation is to give effect to the parties' intentions." *Dumbarton Improvement Ass'n., Inc. v. Druid Ridge Cemetery Co*., 434 Md. 37, 51 (2013) (citation and quotation marks omitted). "[T]he primary source for determining the intention of the parties is the language of the contract itself." *County*

Com'rs for Carroll County v. Forty West Builders, *Inc.*, 178 Md. App. 328, 376 (2008) (internal quotation marks and citation omitted). "The 'clear and unambiguous language of an agreement will not give way to what the parties thought the agreement meant or intended it to mean.'" *Soc'y of Am. Foresters v. Renewable Nat. Res. Found.*, 114 Md. App. 224, 234 (1997) (quoting *Bd. of Trs. of State Colls. v. Sherman*, 280 Md. 373, 380 (1977)). In resolving a contract dispute, we do not seek to "discern the actual mindset of the parties at the time of the agreement, but rather, to 'determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.'" *Dumbarton Improvement Ass'n., Inc*, 434 Md. at 52 (quoting *General Motors Acceptance v. Daniels*, 303 Md. 254, 261 (1985)).

Mr. Bohling and Ms. Segree each offer a different interpretation of the significance of Exhibit 1. Ms. Segree asserts that Exhibit 1 was attached to the Agreement for the express purpose of "listing" the RSUs and PSUs referenced in the Agreement, and that the "vest dates" referenced in the chart in Exhibit 1 show the dates that the parties *expected* the RSUs and PSUs to vest. Mr. Bohling argues that Exhibit 1 is an integral part of the Agreement and the "vest dates" in column 2 of the chart represented the vest dates that the parties had agreed upon as the dates to be used for purposes of valuing the stock units upon distribution.

"It is settled that where a writing refers to another document that other document, or so much of it as is referred to, is to be interpreted as part of the writing." *Ray v. William G. Eurice & Bros., Inc.*, 201 Md. 115, 128 (1952); *see also Patton v. Wells Fargo Fin. Md. Inc.*, 437 Md. 83, 109 (2014) ("Under Maryland law, the parties to a contract may

voluntarily agree to define their contractual rights and obligations by reference to documents or rules external to the contract."). In cases "[w]here the contract comprises two or more documents, the documents are to be construed together, harmoniously, so that to the extent possible, all of the provisions can be given effect." *Rourke v. Amchem Prods., Inc.,* 384 Md. 329, 354 (2004).

"A contract is not ambiguous merely because the parties do not agree as to its meaning." *Phoenix Services Ltd. P'ship v. Johns Hopkins Hosp*., 167 Md. App. 327, 392 (2006) (citing *Fultz v. Shaffer*, 111 Md. App. 278, 299 (1996)). A court must "attempt to construe [a] contract as a whole, to interpret [its] separate provisions harmoniously, so that, if possible, all of them may be given effect." *Walker v. Dep't of Human Resources*, 379 Md. 407, 421 (2004). Absent some evidence that the parties attributed a special or technical meaning to the terms of the contract, each term is construed consistent with its ordinary meaning. *Phoenix Services Ltd. P'ship*, 167 Md. App. at 392.

In determining whether a particular term in a contract is subject to more than one meaning, a court's "first resort is to a general dictionary[.]" *Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 781 (1993); *accord Credible Behavioral Health, Inc.*, 466 Md. at 394-95 (noting that the Court consults the dictionary definition of terms to "supply contractual language with its 'ordinary and accepted meanings'") (citation omitted); *Sierra Club v. Dominion Cove Point LNG, L.P*., 216 Md. App. 322, 335 (2014) ("[W]e … begin with the dictionary definition to determine whether there is any ambiguity in the phrase."). In *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 161 (2003),

the Supreme Court of Maryland[1] considered the issue of whether a lease agreement that afforded the building owner "the right to limit the number of employee parking spaces to be provided," authorized the building owner to eliminate all parking offered to the tenant. In deciding whether the contract was ambiguous, the Court began by consulting the dictionary definition of the word "limit," meaning to define something's extent or "to quantify it." *Id.* at 168. The Court determined that, applying the ordinary meanings of the words, "the right to limit" did not mean "right to eliminate." *Id.* at 169. The Court remanded the case to the trial court to determine what limit was acceptable under the contract. *Id*. at 169.

In *Dennis v. Fire & Police Employees' Retirement System*, 390 Md. 639, 642 (2006), the Court considered whether the language in two divorce judgments containing Qualified Domestic Relations Orders ("QDROs") requiring former police officers to pay their former spouses 50% of their "pensions" included deferred retirement option plan ("DROP") benefits that became available to the officers after their respective divorces were finalized, but before they retired. Upon their retirement, the officers were notified that their DROP benefits would be considered pension payments and their former wives would be entitled to one-half of their respective DROP benefits. *Id*. at 644-45. The officers challenged the classification of the DROP payments as pension payments, arguing that the QDROs did not specifically reference DROP payments. *Id*. at 650. The Court rejected the

[1] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

officers' arguments, concluding that the operative language in the QDRO identifying which payments were subject to division was unambiguous, and noting that DROP payments were included as pension payments for federal tax and pension purposes. *Id*. at 651-52. The court gave "effect to the clear terms of agreements regardless of what the parties may have intended by those terms at the time of contract formation." *Id.* at 656.

We begin by reviewing the Agreement as a whole to determine if the language is clear and unambiguous. Paragraph 1(c) provides that Mr. Bohling is to "transfer to [Ms. Segree] 42% of the liquidated value of the after tax portion of marital portion of the RSUs, PSUs and their associated dividends," followed by the parenthetical explaining that the "(listing of these instruments are attached as Exhibit 1)." The formula to be used for calculating Ms. Segree's portion of the liquidated stock units turns on the parties' dispute as to the date the units "vest." As indicated, Ms. Segree's share was to be calculated by dividing the number of months from the date that each stock unit was granted to the date of the signing of the Agreement by the number of months from the date of the grant for each stock unit to the date of vesting, and the resulting number was to "be multiplied by the value of each tranche as of the date of vesting." Paragraph 1(c) further provided that "[w]ithin forty-five (45) days of each tranche *vesting*, Mr. Bohling shall provide to [Ms. Segree] the payment along with the account and unit statements evidencing the *vesting* of that tranche." (emphasis added).

The term "vesting" was not defined in the Agreement. In ordinary language, the term is defined as "the conveying to an employee of inalienable rights to money contributed by an employer to a pension fund or retirement plan especially in the event of termination

of employment prior to the normal retirement age." *See Vesting*, Merriam-Webster, https://www.merriam-webster.com/dictionary/vesting (last visited on June 22, 2023). Similarly, the term "vest" is defined in Black's Law Dictionary as meaning, in relevant part, "[t]o confer ownership (of property) on a person"; or "invest (a person) with the full title to property" or "give (a person) an immediate, fixed right of present or future enjoyment." VEST, Black's Law Dictionary (11th ed. 2019).

We agree with the trial court's determination that the Agreement was not ambiguous. The term "vesting," was used in the ordinary sense of the word, meaning that the "date of vesting" was the date that the full monetary value of the RSUs and PSUs conveyed to Mr. Bohling. There is no dispute that the RSUs and PSUs became available to Mr. Bohling on May 11, 2021 in the amount of $1,439,172.24, as evidenced by his Fidelity account statement. Based on the language of the Agreement, a reasonable person would interpret the Agreement to provide for the vesting of the RSUs and PSUs on the actual day they became available to Mr. Bohling, not the expected vesting dates identified in Exhibit 1, some of which were dated up to two years beyond the actual vesting date. *See Credible Behavioral Health, Inc*, 466 Md. at 397 ("As a bedrock principle of contract interpretation, Maryland courts consistently 'strive to interpret contracts in accordance with common sense.'") (quoting *Brethren Mut. Ins. Co. v. Buckley*, 437 Md. 332, 348 (2014)). Indeed, our reading of the Agreement is supported by Mr. Bohling's payment to Ms. Segree of the entirety of what he calculated as her 42% of the marital portion of the stock units on June 18, 2021, or within 45 days of the stock units vesting on May 11, 2021,

as required by paragraph 1(c).[2] Furthermore, the "if, as and when" language in paragraph (c), means to this court that Mr. Bohling's obligation to pay accrued on May 11, 2021, because that is "when" he received the money.

The plain language of paragraph 1(c) indicates that Exhibit 1 was attached to the Agreement for the limited purpose of listing the RSUs and PSUs that were the subject of the post-divorce distribution. Accordingly, the reference in the Agreement to Exhibit 1 was a partial incorporation of Exhibit 1 for purposes of "listing of the instruments" that does not extend to the remainder of the information provided in Exhibit 1. *See* 11 *Williston on Contracts* § 30:25 (4th ed.) (explaining that when considering the incorporation by reference of material into a contract, "it is important to note that when incorporated matter is referred to for a specific purpose only, it becomes a part of the contract for that purpose only, and should be treated as irrelevant for all other purposes."); *see also Fix v. Quantum Indus. Partners LDC*, 374 F.3d 549, 553 (7th Cir. 2004) (holding that a "change in control" provision in an employment agreement incorporated only the definition of change in control set forth in a separate employment rewards program, not the terms of the program regarding its purpose and intent); *Bode & Grenier, LLP v. Knight*, 808 F.3d 852, 862 (D.C.

[2] Paragraph 1(c) provided that "[w]ithin forty-five (45) days of each tranche *vesting*, Mr. Bohling shall provide to [Ms. Segree] the payment … evidencing the *vesting* of that tranche." (emphasis added). If, as Mr. Bohling suggests, the vesting dates set forth in Exhibit 1 controlled the calculation of Ms. Segree's share, he would not be obligated to pay her until 45 days after each of the various vesting dates contained in Exhibit 1. This was not the case. Accordingly, Mr. Bohling's payment to Ms. Segree on June 18, 2021 was consistent with an understanding that the stock units vested, for purposes of the Agreement, on May 11, 2021.

Cir. 2015) (holding that counsel's retention letter incorporated the terms of a promissory note for the limited purpose of referencing the payment schedule, and did not extend to the choice-of-law and attorney's fees provisions in the promissory note).

We also note the absence of any further reference to Exhibit 1 in the Agreement beyond the "listing" of the RSUs and PSUs. Had the parties intended the information in Exhibit 1 to constitute the entirety of the calculation of Ms. Segree's 42% marital share of the stock units, certainly Exhibit 1 would be identified as something more than a "listing." The absence of any further mention of Exhibit 1 in the Agreement, in conjunction with the detailed formula to be used for calculating the 42% marital portion set forth in paragraph 1(c) of the Agreement, leads us to the conclusion that a reasonable person reading the Agreement would conclude that Exhibit 1 constituted a "listing" of the RSUs and PSUs to be used in the formula set forth in Paragraph 1(c) and the expected vesting dates included in Exhibit 1 were included for demonstrative purposes only. As the circuit court found, the expected vesting dates in Exhibit 1 changed, and became irrelevant, when the RSUs and PSUs vested on May 11, 2021. The court properly calculated Ms. Segree's portion of the marital share of the RSUs and PSUs using the actual vesting date of May 11, 2021.

We conclude that the circuit court did not err in determining that the Agreement was unambiguous and in declining to consider parol evidence of the parties' intent. We note that Mr. Bohling's argument that the court should have considered extrinsic evidence of the parties' intent to determine whether there was a mutual mistake in the Agreement was not argued before the circuit court and therefore the argument is not preserved for review.

II.

Attorney's Fees and Expert Witness Fees

The court awarded Ms. Segree attorney's fees of $25,000 and expert witness fees of $9,933. Mr. Bohling contends that the circuit court erred in awarding attorney's fees, given its finding that he did not breach the terms of the Agreement. He further contends that to the extent that the circuit court awarded attorney's fees and expert witness fees pursuant to FL § 8-214, the court erred because it failed to make any findings as to how the financial needs and resources of the parties weighed in favor of an attorney's fee award, as required under FL § 8-214. However, he did not argue that the court failed to make any findings as to the reasonableness of the attorney's fees. With respect to the expert witness fees, he argues that the amount of the award was excessive for the amount of work provided by Mr. Hallengren.

Ms. Segree argues that the circuit court conducted the requisite statutory analysis under FL § 8-214 and did not abuse its discretion in awarding her attorney's fees and expert witness fees. She further asserts that the court's award of expert witness fees was reasonable.

The Agreement included a provision requiring the payment of the other party's attorney's fees, expert witness fees and costs in the event of breach or default of the Agreement, specifically:

> **Attorney's Fees**: Each party waives any claim for attorney's fees, expert fees, suit money and court costs incurred through the date of entry of this Term Sheet. If either party *breaches or defaults* in regard to any provision[] of this Term Sheet, the breaching or defaulting party shall be responsible for

> paying for all attorney's fees incurred by the other party as a result of the breach or default.
>
> (Emphasis added).

In the portion of the court's order addressing attorney's fees and expert witness fees, the court stated that Mr. Bohling was not in breach of the Agreement "as this matter arose from a dispute between the parties as to how to calculate the amount due [Ms. Segree]" and Mr. Bohling "timely paid the amount he believed to be due[.]" Based on the court's finding that Mr. Bohling was not in breach of the Agreement, Ms. Segree was not entitled to an award of fees, as provided under the fee-shifting provision of the Agreement.

FL §8-214 provides for an award of "reasonable and necessary expense[s]," including attorney's fees, suit money and costs, in marital property disposition cases. FL § 8-214(a). Before making an award, the court must consider "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding." FL § 8-214(c).

An "award of attorney's fees by the court is a factual matter which lies within the sound discretion of the trial judge and will not be overturned unless clearly erroneous." *Rauch v. McCall*, 134 Md. App. 624, 638 (2000) (quotation marks and citations omitted). In assessing whether the court properly exercised its discretion in awarding fees, we evaluate "the judge's application of the statutory criteria … as well as the consideration of the facts of the particular case. Consideration of the statutory criteria is mandatory in making the award and failure to do so constitutes legal error." *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (internal citations omitted).

Before making an award of attorney's fees pursuant to a contract or statute, the trial court must consider the reasonableness of the fees requested. *Sang Ho Na*, 234 Md. App. at 756 (explaining that the trial court must analyze the reasonableness of the attorney's fees under a fee-shifting contract provision, even where the provision does not include the specific word "reasonable"); *accord Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 333 (2010). "'When the case permits attorney's fees to be awarded, they must be reasonable, taking into account such factors as labor, skill, time, and benefit afforded to the client, as well as the financial resources and needs of each party.'" *Collins v. Collins*, 144 Md. App. 395, 447 (2002) (quoting *Petrini*, 336 Md. at 467). The court should also consider "(1) whether the [award] was supported by adequate testimony or records; (2) whether the work was reasonably necessary; (3) whether the fee was reasonable for the work that was done; and (4) how much can reasonably be afforded by each of the parties." *Sczudlo v. Berry*, 129 Md. App. 529, 550 (1999) (quoting *Lieberman v. Lieberman*, 81 Md. App. 575, 601-02 (1990)).

Here, the court's order stated that the awards were "based on consideration of (1) the financial resources and financial needs of both parties; and (2) each part[y's] substantial justification for prosecuting and defending [the] proceeding[.]" The court provided no explanation, however, as to how it determined the amount of fees it awarded. "Absent the court stating the basis for its determination, this Court cannot properly review the decision." *Ledvinka v. Ledvinka*, 154 Md. App. 420, 433 (2003). *See also Painter v. Painter*, 113 Md. App. 504, 529 (1997) ("'In a case in which bills for legal services are

challenged, [the trial court] ought to state the basis for [her] decision so it can be reviewed, if necessary, on appeal.'") (quoting *Randolph v. Randolph*, 67 Md. App. 577, 589 (1986)).

In *Collins*, which was cited by the appellant, we considered an award of attorney's fees in a divorce proceeding where the court awarded wife most, but not all, of her attorney's fees. 144 Md. App. at 447. Husband argued that the trial court had erred in failing to consider the statutory factors and the parties' financial positions in making the award. *Id*. at 445. In its order, the trial court found that wife's attorney's fees were caused primarily because husband had litigated the case in two jurisdictions and refused to cooperate in the Maryland case. *Id*. at 448. We noted that despite the fact that the trial court made no specific finding regarding the parties' financial resources, the record suggested that husband was capable of paying attorney's fees and wife was capable of paying a portion of her fees. *Id*. at 448-49. The court failed, however, to address the reasonableness of the fees. *Id*. at 449. We vacated the award and remanded the case, explaining that "[i]n light of the amount of the fees awarded in this case, … some express discussion regarding the reasonableness of the fees in light of such factors as labor, skill, time, and benefit received is necessary." *Id.*

In this case, unlike in *Collins*, the reasonableness of the court's attorney's fee finding was not challenged. Although the trial court stated that it had considered the financial resources of the parties, the court failed to articulate how the parties' respective financial needs and resources weighed in its attorney's fees award. On remand, the court should provide more specificity as to how the FL § 8-214(c) factors justify an attorney's fee award. Finally, because the court made no specific findings regarding the

reasonableness of the expert fees, it should do so on remand. We shall vacate the attorney's fees and expert fees awards and remand for further proceedings.

JUDGMENT AFFIRMED IN PART, VACATED IN PART; CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY APPELLEE.