

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0498

September Term, 2014

NAYIRI K. POOCHIKIAN

v.

VICKEN K. POOCHIKIAN

Eyler, Deborah S.,
Meredith,
Berger,

JJ.

Opinion by Meredith, J.

Filed: May 8, 2015

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Nayiri Poochikian (“Wife”), appellant, and Dr. Vicken Poochikian (“Husband”), appellee, were married in August 1982 and separated in 2007. On September 21, 2010, the Circuit Court for Montgomery County entered a judgment granting the parties an absolute divorce. In June 2010, before the divorce was finalized, the parties entered into a written “Voluntary Separation and Property Settlement Agreement” (“the Settlement Agreement”) that required Husband to pay Wife \$8,000 per month in indefinite alimony, subject to reconsideration once the marital residence sold. In May 2013, Husband filed a motion in the circuit court seeking to modify the alimony payments. The court held a bench trial on the matter on March 4–6, 2014. On April 9, 2014, the court granted Husband’s motion, and decreased the alimony obligation to \$5,000 per month. In this appeal, Wife challenges the circuit court’s order reducing Husband’s monthly alimony obligation.

QUESTIONS PRESENTED

Appellant presented three questions for our review, which we have consolidated into a single question and rephrased as follows: Did the circuit court commit legal error or abuse its discretion by decreasing Husband’s monthly alimony obligation from \$8,000 to \$5,000?¹

¹ Appellant submitted the following questions for our review:

1. Did the trial court err when it decreased alimony on the premise that Ms. Poochikian could and should derive additional income from investments or by investing differently.
2. Was the trial court clearly erroneous in effectively eliminating any allocation for Ms. Poochikian’s housing cost by reducing the alimony by \$3000.
3. Did the trial court abuse its discretion by decreasing the alimony payable to Ms. Poochikian and effectively forcing Ms. Poochikian to reduce her standard of living from that established during the marriage.

Because we answer that question in the negative, we will affirm the judgment of the Circuit Court for Montgomery County.

BACKGROUND

Husband is currently 67 years old, and has worked as a physician since 1986. Wife is 56 years old and has not been employed since 1992. The couple have two adult children. In 2007, Wife was diagnosed with Stage IV kidney cancer, and her long-term prognosis is poor. During the marriage, the parties accumulated a number of valuable assets, including a house in Potomac, Maryland, a condominium in Washington, D.C., and substantial liquid financial assets.

At the time of separation, the parties owned and resided in a four bedroom, single-family home located on Palatine Drive in Potomac, Maryland (“the Palatine residence”). In June 2010, prior to the entry of the judgment of divorce, the parties entered into the Settlement Agreement, which provided:

The Husband shall pay to the Wife as indefinite modifiable alimony, the sum of \$8,000.00 per month. . . . Said alimony payments are subject to recalculation at such time as the Palatine residence . . . is sold, as the alimony amount takes into account the fact that the Wife is making the mortgage payments.

In August 2011, both parties filed motions to modify the alimony arrangement. In October 2012, after holding a hearing on the matter, the court denied both motions, concluding that a modification “would be premature and not as circumstances and justice require.”

On February 26, 2013, the Palatine residence sold for \$1,357,888. Pursuant to the Settlement Agreement, Husband received approximately \$454,000 from the sale of the home,

and Wife received approximately \$374,000 (in addition to having \$86,200 held in escrow to address a separate dispute).

On February 27, 2013, Wife purchased a home on Arrowood Drive in Bethesda, Maryland (“the Arrowood residence”), where she currently resides. Husband currently resides in a condominium in Chevy Chase, Maryland, that he purchased for approximately \$525,000 in 2010.

In May 2013, after the Palatine residence had been sold, Husband filed a second motion seeking to modify his alimony obligation. The circuit court conducted a bench trial on the matter on March 4–6, 2014, the Honorable Steven Salant presiding. The evidence presented at trial showed that Wife purchased the Arrowood residence for \$1,048,000, and that she had paid over \$493,000 to cover the down payment and closing costs. The Arrowood house has five bedrooms and is accompanied by a saltwater pool, which Wife testified that she uses to relieve the pain from cancer. After purchasing the house, Wife spent an additional \$82,000 making repairs and renovations to the property. Wife testified that she rents out one of the bedrooms in the house for \$800 per month, and that she rents out the condominium in Washington, D.C. for \$1,600 per month. Other than the rental income from the two properties, Wife has no additional income. The evidence showed that Wife’s monthly mortgage payment on the Arrowood residence is \$3,550.

When asked about her reasons for purchasing the Arrowood residence, Wife testified:

Well, number one, I needed to have a place to live. Number two, it was a good financial decision. Number three, it was much smaller and on the — on one level, instead of — our old house used to be two levels and the basement. This is only one level and the basement. And the bedroom is on the main floor, so

I wouldn't need to go up and down the steps. And the location was near my sister and my daughter and very close friends that are my support network. And also I figure I would like to keep my expenses the same so I could rent a room and get some money towards the expenses, you know, that — towards the mortgage amount that had increased so I could get some rent to reduce that.

After hearing closing arguments on March 6, 2014, the court advised the parties:

Let me say that this matter is going to be taken under advisement. Clearly, I want to put the time into it that I did last time, and review many of the documents, all of the documents that have been given to me.

The alimony provision of the agreement said that the alimony payments are subject to recalculation at such time as the Palatine residence is sold, so that means they can either be modified, or they can[]not be modified. The — as counsel has cited, the standard is really as circumstances and justice require. And what that means is really looking at everything. It means looking at income, it means looking at assets, it means looking at the parties, it means looking at all of these things to come out with a just decision. So I will be considering everything that I've heard.

On April 9, 2014, the court announced its ruling from the bench. Judge Salant's oral explanation of his ruling consumes 37 pages of transcript. The court made extensive, detailed factual findings regarding each party's assets and financial circumstances. The court concluded that Wife had approximately \$883,000 in assets, including the equity in her home, and that she had a monthly budgetary shortfall of approximately \$8,000 per month. The court concluded that Husband had approximately \$13,000 per month in income and \$8,000 in expenses, although the court expressed skepticism regarding Husband's evidence and testimony, stating: "Looming over this analysis like a dark cloud is the lack of credibility, is the belief that [Husband's] financial statements are erroneous, and that [Husband] is not being truthful." The court noted that it was possible that Husband had other assets and income that were not disclosed to the court. But the court found Wife's expert witness

persuasive, and assumed a monthly income figure for Husband that was within \$300 of the amount computed by Wife's expert.

Finally, the court explained its reasons for granting the modification as follows:

This case does provide a difficult issue for the court and [sic] that the court has to consider all of the circumstances on both sides. It's not the court's job in determining whether to modify alimony to punish one side or the other for their behavior. That's not what the court is going to do. The fact that the court has found [Husband's] presentation less than credible doesn't mean that therefore there should be no modification. The fact that the court disagrees with the choices made by [Wife] is no reason to deny the modification. The fact of the matter is the court has to consider all of the circumstances here including the income that I am aware of as well as the assets of the parties, and the fact that it is clear to me in their written agreement that alimony was going to be recalculated when the house was sold. That language is significant to the court, not that it was a mandatory recalculation but it said alimony will be subject to recalculation when the Palatine residence is sold as alimony takes into account the fact that the wife is making the mortgage payment. Clearly it is a reasonable inference that the parties envisioned that when the house was sold, a significant asset with a significant amount of equity, that that would moderate the terms of alimony. It is clear to me that [Wife, upon] receiving that substantial asset had the ability to contribute to her support more than she did previously, yet she chose to put it away out of reach for her support by putting it in the house.

Now, the defendant [sic] received the asset too, but that clearly was envisioned by the parties when they sold the house because they were going to divide the proceeds. Does [Husband] have the ability to pay the amount of alimony? Well, yes if you include even his known assets he does. If we just look at the income as he shows it would be difficult, but I can't trust the income that he just shows. **And on the other hand [Wife] chooses to reduce the available assets to her. She chooses to somehow remain living at the income level and at the expense level and standard of living that she did before the house was sold, and there's no guarantee of that.** There's no requirement that both parties continue to live at the same standard of living they did prior.

Now, if [Wife] wants to invest her money that way that is her right, **but the court does need to take into account the fact that she has put away support that could be used to help her, to assist her with her own support.**

Could she have moved into her condominium in the District of Columbia? Maybe. Could she have bought something less expensive? Certainly. **The sale of the house as I said and based on the parties' agreement it can reasonably be inferred that some of that was supposed to be used to help pay for her support.**

After the consideration of all of the evidence the court finds that the circumstances and adjustments require that there be a modification of alimony commencing and accounting with May 1[.] [Husband] shall continue to pay indefinite alimony to [Wife] in the amount of \$5,000 per month.

(Emphasis added.)

The court also ordered Husband to pay Wife \$26,724 toward her expert fees, and \$25,000 toward her attorney's fees. This timely appeal followed.

STANDARD OF REVIEW

“An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong.” *Tracey v. Tracey*, 328 Md. 380, 385 (1992). We “accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Id.* Accordingly, “absent evidence of an abuse of discretion, the trial court's judgment ordinarily will not be disturbed on appeal.” *Solomon v. Solomon*, 383 Md. 176, 196 (2004).

DISCUSSION

Wife contends that the circuit court abused its discretion and committed multiple legal errors by reducing Husband's alimony obligation from \$8,000 per month to \$5,000 per month. First, she argues that the court erred because the decision to reduce the alimony award was “based on the unsupported presumption that [Wife] could have derived additional or increased income from her investments or from investing the sales proceeds from the

former marital home.” Second, she contends that the circuit court effectively “eliminate[ed] any allocation for [her] housing cost” based on the unsound conclusion that the Arrowood residence was unnecessarily large and expensive. Finally, Wife asserts that the court abused its discretion because Husband had the ability to pay \$8,000 per month in alimony and because the reduction in the award forced Wife to reduce her standard of living from the standard she enjoyed during their marriage. We will address these claims of error in turn.

I. Investment Income

Wife argues that the court erred by reducing the alimony award, because the ruling was premised on the “unsupported presumption” that Wife could have generated enough income to support herself by buying a smaller home and investing the proceeds from the sale of the Palatine residence, rather than purchasing the Arrowood residence. Wife takes issue with the court’s observation that: “And then [Wife] says ‘When [Husband] retires I have equity in the house and sell for greater equity to live off.’ Well, that may be true, but also if she didn’t entangle or encumber all that money in the house that could be invested.” Wife argues that the court “essentially imputed income . . . without any legal or factual basis, assuming that [Wife] could derive more income from investments or investing her assets differently.” This argument distorts the court’s analysis and is without merit.

When we consider all 37 pages of Judge Salant’s explanation for his ruling, it is clear that the court’s decision to reduce the alimony award was not dependent upon any assumption that Wife could have earned a substantial amount of investment income if she had purchased a more modest home. When announcing the ruling, Judge Salant repeatedly

emphasized that the parties had agreed that the alimony issue would be revisited after the sale of the Palatine residence, and that Wife had used proceeds from the sale to purchase an unnecessarily large and expensive home. The court explained:

Clearly it is a reasonable inference that the parties envisioned that when the house was sold, a significant asset with a significant amount of equity, that that would moderate the terms of alimony. It is clear to me that [Wife] receiving that substantial asset had the ability to contribute to her support more than she did previously, yet she chose to put it away out of reach for her support by putting it in the house.

The court agreed that Wife needed some amount of support from Husband, but was persuaded that the parties intended that Wife would use the proceeds of the sale of the Palatine residence to become more self-supporting, and would therefore need less support from Husband.

In context, the court's single reference to "money in the house that could be invested" simply reflects that the court gave some consideration — as permitted, if not required, by FL § 11-106(b)(11) — to Wife's ability to use the proceeds from the sale to support herself, rather than a finding of fact that Wife could generate a substantial amount of income by investing the sale proceeds. The court did not make a finding of fact that Wife could earn a substantial amount of investment income, and the court made no other mention of investing the proceeds from the sale of the marital home.

Further, despite Wife's indication to the contrary, the court did not impute additional income to her. As Husband points out in his brief, the court found that Husband's monthly income was \$13,074. After paying the modified amount of alimony to Wife, Husband would have \$8,074 remaining. Wife, on the other hand, would have monthly income of \$7,400

(including \$5,000 in alimony and \$2,400 in rental income). Because Wife’s monthly income would be 91% of Husband’s monthly income, the parties’ relative incomes — after the modification of alimony — were not unconscionably different.

Under the circumstances, we are not persuaded that the court’s decision to reduce alimony was based either wholly or in part on the premise that Wife could have generated substantial investment income by investing the proceeds from the sale of the Palatine residence.

II. Allocation for Wife’s Housing Cost

Wife also contends that the circuit court erred because it “effectively eliminat[ed] any allocation for Ms. Poochickian’s housing cost.” She argues that, by reducing the alimony award from \$8,000 per month to \$5,000 per month, the court implicitly found that Wife was not entitled to any support from Husband to pay for her housing, and the court improperly punished her because she had purchased an unnecessarily large and expensive home. Wife argues that this was clearly erroneous because there was no evidence showing that she could have purchased a less expensive home. She contends that the court “essentially chose to penalize [her] for choosing to remain in the area where her family and friends resided and in a single family home for the remainder of her life as had been established during the course of the marriage.” We are not persuaded.

As Wife points out, Husband did not present evidence showing specifically that Wife did not need a five-bedroom house, or that it is possible to purchase a residence in Montgomery County for less than \$1,000,000. Although Husband did not directly present

any evidence to this effect, he did testify that he lived in a condominium in Chevy Chase that he had purchased for approximately \$525,000, which would support a finding that a single adult who formerly resided in Potomac can find an appropriate residence in the area for less than \$1,000,000. Furthermore, trial judges are entitled to use “their common sense, powers of logic, and accumulated experiences in life to arrive at conclusions from demonstrated sets of facts.” *In re Gloria H.*, 410 Md. 562, 577 (2009). We are persuaded that Judge Salant’s ruling was not tainted by a clearly erroneous finding that a single woman in her fifties can purchase a suitable home in southern Montgomery County for less than \$1,000,000.

III. Abuse of Discretion

Finally, Wife argues that the court’s ruling reducing the alimony award constituted an abuse of discretion because Husband has the ability to pay \$8,000 per month in alimony, and because the reduction will force Wife to reduce her standard of living to “subsistence level [sic].” In her view, because Husband has the ability to pay an alimony award that would allow her to maintain the standard of living she had enjoyed during their marriage, the court must, under FL § 11-106(c)(2), award that amount of alimony. Again, we disagree with Wife’s argument regarding the law relative to alimony.

FL § 11-106(c)(2) provides that the circuit court “may” award indefinite alimony if the court finds that, “even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.” To constitute an unconscionable disparity in the parties’ *post-divorce* standards of living, their circumstances must be

“fundamentally and entirely dissimilar,” such that one spouse’s standard of living is “so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court.” *Karmand v. Karmand*, 145 Md. App. 317, 336–37 (2002). This analysis focuses on the difference between the parties’ standards of living after the divorce. Although FL § 11-106(b)(3) provides that one factor for the court to “consider” is “the standard of living that the parties established during their marriage,” there is no authority to support Wife’s contention that, as a matter of law, the circuit court *must* award her sufficient alimony to maintain her pre-divorce standard of living.

We are satisfied that the circuit court considered the factors set forth in FL § 11-106 and FL § 11-107(b), and perceive no abuse of discretion in the court’s decision to reduce the amount of alimony.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**