

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2558

September Term, 2015

JON SCOTT SHILLING

v.

HEATHER SHILLING

Woodward,
Berger,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: December 23, 2016

*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.

This case is before us on appeal from an order of the Circuit Court of Dorchester County entering a judgment of absolute divorce. Jon Scott Shilling (“Husband”) appeals the alimony and child support awards, the method of payment of the monetary award, and various other aspects of the circuit court’s ruling. Child custody is not an issue on appeal.

Husband presents eight questions for our consideration on appeal, which we have rephrased as follows:

1. Whether the circuit court abused its discretion by reducing to judgment the sum of \$416,686.00, representing a significant portion of the monetary award, and the sum of \$160,000.00, representing the attorney’s fees award.
2. Whether the circuit court erred or abused its discretion by ordering Husband to pay alimony in the amount of \$3,500.00 per month for the first four and one-half years, child support in the amount of \$3,000.00 per month, and the costs of the marital home in the amount of \$5,545.00 per month until the sale of the marital home based upon Husband’s ability to pay.
3. Whether the circuit court erred by awarding alimony in the amount of \$3,500.00 per month for the first four and one-half years and then \$1,500.00 per month for the subsequent four years.
4. Whether the circuit court erred with respect to its child support calculation and ruling.
5. Whether the circuit court abused its discretion by ordering Husband to pay Wife’s attorney’s fees.
6. Whether the circuit court erred by ordering Husband to pay off a loan on the Toyota Camry the court ordered Husband to transfer to Wife.

7. Whether the circuit court erred by ordering Husband to obtain Wife’s release from a Small Business Association loan.
8. Whether the circuit court erred in determining the amount of the monetary award.

Heather Shilling (“Wife”) has moved to dismiss the husband’s appeal in part, with respect to the seventh issue only. For the reasons explained herein, we shall grant Wife’s motion to dismiss and otherwise affirm the judgment of the circuit court.

BACKGROUND

Husband and Wife were married on July 8, 2000. Two children were born as a result of their marriage, one in June 2002 and one in September 2006. The parties separated in July 2013. On April 23, 2014, Husband filed the divorce complaint which gives rise to the instant appeal. Wife filed an answer and counterclaim on June 6, 2014. Following extensive discovery and the filing of various pleadings, the case proceeded to trial over a period of four days in July and September of 2015.

On November 4, 2015, the circuit court issued a comprehensive memorandum opinion addressing issues relating to the parties’ two minor children. The court additionally issued a *pendente lite* custody and visitation order. On December 10, 2015, the circuit court issued a second memorandum opinion and judgment of absolute divorce.¹ The court’s ruling consisted of a 28-page opinion, 9-page judgment of absolute divorce, and thirty-two pages of exhibits. The exhibits included an analysis of Husband’s income,

¹ The circuit court’s order is dated December 9, 2015, was docketed December 10, 2015, and was re-docketed December 15, 2015.

a marital and non-marital property analysis, a child support guidelines analysis, and a visitation calendar. On December 18 2015, Wife filed a motion to alter or amend. Husband noted his appeal on January 11, 2016. On January 19, 2016, the court denied Wife’s motion to alter or amend and entered a judgment in favor of Wife in the amount of \$418,686, representing the monetary award and attorney’s fees award.

We shall present various other facts and proceedings as necessitated by our discussion of the issues on appeal.

MOTION TO DISMISS

One of the issues raised by Husband in his appeal is that the circuit court erred by ordering him to obtain Wife’s release on a loan. Wife has moved to dismiss Husband’s appeal as to this issue, arguing that the issue is moot.

In December 2010, Husband’s business obtained a Small Business Administration (“SBA”) loan in the amount of \$1,000,000.00 from Easton Bank and Trust. The successor in interest to Easton Bank is 1880 Bank. Husband and Wife personally guaranteed the loan and pledged their interest in the marital home as security for the SBA loan. The circuit court ordered the following with respect to the marital home and the SBA loan:

The parties agree that a trustee shall forthwith be appointed to sell the marital home. There is no dispute as to the value of the home nor is there a dispute as to the amount of the first mortgage. Upon sale, the proceeds shall be divided equally between the parties. The parties personally guaranteed an SBA loan to BCC (Bay Country Communications) and pledged their home as collateral for this loan. As a result, the property is subject to a junior lien. The proceeds from the sale of the house, for the purposes of this proceeding, shall be unaffected by this junior lien. [Husband] shall immediately undertake any necessary steps to release the property from the

operation and effect of the SBA lien; the loan is business related and not personal to the parties. It is clear from the evidence that [Husband] has the ability to secure the release of this lien, but has chosen not to do so. The relief set forth herein is predicated on [Wife] receiving half of the net proceeds of the sale without any reduction related to the SBA loan.

On appeal, Husband asserts that the circuit court’s order requiring him to obtain Wife’s release was improper for three reasons: (1) the circuit court lacked the legal authority to order Husband to obtain Wife’s release; (2) the circuit court improperly rewrote the terms of the contract between the parties and Easton Bank and Trust; and (3) Easton Bank and Trust was a necessary party. Wife asserts that this issue is moot, and we agree.²

Following the entry of the judgment of divorce, the parties sought Wife’s release from the SBA loan. In two separate letters dated January 29, 2016, one which was sent to Wife and one which was sent to Husband, 1880 Bank agreed to release the marital home from the collateral pool. Each letter provided that, “[p]ursuant to your request, 1880 Bank has agreed to grant a release” of the marital home “from its collateral pool.” The correspondence to Wife provided:

Upon consummation of a sale of the aforementioned marital property, the net proceeds . . . shall be divided equally. Your 50% interest in the net proceeds shall be paid to you at closing. As such, you no longer would have an interest in the SBA loan to Bay Country Communications, Inc.

² Wife additionally presents substantive arguments in response to the issues raised by Husband. Because we conclude that this issue is moot, we shall not address the substantive arguments.

The correspondence to Husband did not release Husband’s obligation to repay the SBA loan.³

The trustee appointed to sell the marital home entered into a contract of sale for the marital home on June 27, 2016. On August 16, 2016, the trustee filed a motion for court approval of sale. The motion provided that the sale would close on or before October 1, 2016. The circuit court ratified the contract of sale on September 14, 2016. The court waived approval and ratification of the sale, subject to the trustee filing a report of sale within ten days of closing. The trustee filed the report of sale on September 30, 2016.

Because Wife’s obligation under the SBA loan has been released by the bank and the bank authorized payment of Wife’s share of the net proceeds of the marital home to Wife, and because the marital home has been sold, the SBA loan issue is now moot. “Generally, appellate courts do not decide academic or moot questions. A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Attorney Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass’n, Inc.*, 286 Md. 324, 327 (1979); *Adkins v. State*, 324 Md. 641, 646 (1991) (“The test of mootness is whether, when it is before the court, a case presents a controversy between the parties for which, by way

³ The correspondence to Husband provided that upon the sale of the marital home, Husband’s 50% share would be paid against the principal of the SBA loan as a curtailment, be invested into a new primary residence which would subsequently and simultaneously be re-pledged as substitute collateral for the SBA loan, be held in escrow until Husband invested in a new home that would ultimately be re-pledged as substitute collateral, or be pledged as cash collateral against the SBA loan.

of resolution, the court can fashion an effective remedy.” (citations omitted)). Even if we were to agree with Husband’s position that the circuit court improperly ordered him to obtain Wife’s release,⁴ there is no remedy that we could order. The release has been obtained and the home has been sold.⁵ Accordingly, we grant Wife’s motion to dismiss Husband’s appeal as to the SBA loan issue.

DISCUSSION

I.

The first issue before us on appeal is whether the circuit court abused its discretion by ordering that the \$416,686 monetary award and the \$160,000 attorney’s fees award be reduced to judgment if still unpaid thirty days after the entry of its order. Husband asserts that the circuit court abused its discretion because he was unable to pay the awards due to lack of liquidity of assets.

A. Method of Payment of Monetary Award

We review a trial court’s decision regarding the method of payment of a monetary award applying the abuse of discretion standard. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 242-43 (2000). We have explained:

It is well established that the method of payment of a monetary award is committed to the sound discretion of the trial court. *Deering v. Deering, supra*, 292 Md. [115] at 131, 437 A.2d 883 [(1981)]; *Caccamise v. Caccamise*, 130 Md. App. 505, 522–23, 747 A.2d 221 (2000) . . . To be sure, the

⁴ This opinion should not be read as suggesting that we are persuaded by any of the substantive arguments raised by Husband with respect to the SBA loan issue.

⁵ Indeed, in his reply brief, Husband has withdrawn his argument with respect to this issue.

“terms of the payment must be fair and equitable,” *Caccamise*, 130 Md. App. at 523, 747 A.2d 221, and the court should consider the method of payment in light of the payor’s ability to pay. *Rosenberg [v. Rosenberg]*, *supra*, 64 Md. App. [487] at 523, 497 A.2d 485 [(1985)].

Innerbichler v. Innerbichler, 132 Md. App. 207, 242-43 (2000). In this case, Husband urges us that the circuit court abused its discretion by failing to properly consider Husband’s ability to pay the monetary award in the method prescribed.

A trial court has various options when determining the method of payment for a monetary award. A trial court “may order a party to pay a fixed sum of cash . . . [or] it may establish a schedule for future payments of all or part of the award.” *Doser v. Doser*, 106 Md. App. 329, 351 (1995). A party’s ability to borrow in order to pay a monetary award is a proper consideration for the trial court. *Rosenberg, supra*, 64 Md. App. at 523.

In the present case, the circuit court found that Husband’s annual income for 2014 was \$214,961.00. The circuit court further determined that the parties owned jointly titled property with a value of \$146,234.98. The court found that Husband owned marital property with a value of \$857,905.82 and non-marital property with a value of \$1,113,168.00. The circuit court found that Wife owned marital property with a value of \$20,532.87, as well as an unvalued retirement account, which was partly non-marital. Husband is the owner Bay Country Communications, Inc. (“BCC”). The circuit court found Husband’s income to be \$19,360 per month. Wife is employed as a teacher at Saints Peter and Paul School, where she earns \$3,504 per month.⁶

⁶ Because Wife is employed at the school, the parties’ children attend Saints Peter and Paul at a reduced cost.

Husband co-owned BCC with his brother, Jeffrey Shilling (“Jeffrey”), who passed away on November 16, 2014. Husband was named as the sole legatee in Jeffrey’s will. At the time of trial, Jeffrey’s estate remained open. The circuit court explained that no inventory of the estate had been filed although the deadline for filing an inventory had “long since passed.” The circuit court observed that Jeffrey’s estate had been handled at a “glacial pace” and commented that “the glacial pace of the estate” could be “an attempt to gain a strategic advantage,” particularly given Husband’s “‘hide the ball’ strategy during discovery.” The circuit court observed that real property in Husband’s deceased brother’s estate was valued at \$317,000, but was subject to a mortgage in an unknown amount. The court found that Husband was “in the best position to produce the amount of this mortgage but he failed to do so.” The circuit court concluded that Husband would “[i]n the near future . . . inherit valuable assets from his brother’s estate.” The circuit court further explained that Husband would receive his brother’s fifty percent interest in BCC, which would “enhance the value of the fifty percent (50%) interest that [Husband] currently holds” because “the current interest will no longer be subject to discounts for lack of control and lack of marketability.”

Given Husband’s income level and the inheritance he will receive from Jeffrey’s estate, we cannot say that the trial court’s determination regarding the method of payment was an abuse of discretion. An abuse of discretion occurs when the decision under consideration is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997). This is not such a case.

Indeed, the circuit court’s determination that the monetary award should be reduced to a judgment after thirty days was reasonable given the court’s findings that Husband was not forthright concerning his financial affairs and had been, at points, “obstructionist.” Permitting the monetary award to be reduced to a judgment allowed the parties finality and prevented future litigation if Husband failed to cooperate with a payment schedule in the future. As we explained, Husband had significant income which would allow him to pay the monetary award.⁷

Section 8-205 of the Family Law Article expressly provides that a “court may reduce to a judgment any monetary award made under this section, to the extent that any part of the award is due and owing.” Md. Code (1984, 2012 Repl. Vol.), § 8-205 of the Family Law Article (“FL”). Indeed, we have emphasized that the decision whether to reduce a monetary award to a judgment is within the discretion of the circuit court. *Quinn v. Quinn*, 83 Md. App. 460, 473-74 (1990) (rejecting an argument that an award was “too harsh” when it required a party to liquidate his retirement fund and other assets to satisfy the judgment and emphasizing that “[t]he fact that the result is ‘harsh’ on [a party] may be cause for chagrin, but it does not constitute grounds for reversal.”). Accordingly,

⁷ We note that Husband likely would have been able to obtain a loan in order to pay the monetary award. Husband had previously received a loan in the amount of \$650,000 from his sister. Husband had also obtained the previously discussed SBA loan, as well as automobile financing and mortgages. When a party “ha[s] access to several proven lending sources from which he had borrowed significant sums of money in the past,” *Solomon v. Solomon*, 383 Md. 176, 194 (2004), the party can borrow to pay a monetary award. Husband’s borrowing ability, however, was not considered by the trial court, and we shall not consider it on appeal.

perceiving no error, we hold that the circuit court did not abuse its discretion by ordering Husband to pay the monetary award within thirty days.

B. Attorney’s Fees

Husband further contends that the circuit court failed to consider the financial status and needs of the parties in order to determine Husband’s ability to pay the attorney’s fees award. The record clearly reflects that the circuit court considered appropriate factors prior to making its attorney’s fees determination.

The circuit court observed that, according to Husband, Husband had incurred \$124,459.00 in attorney’s fees and \$7,500.00 in accounting fees. The court found that Husband anticipated additional accounting fees in the amount of \$10,000.00. The court found that Wife contended that she had expended \$153,453.00 in legal fees and \$69,814.00 in accounting fees. The court commented that Wife had borrowed \$207,247.00 from her parents in order to pay for her legal and accounting expenses. The court observed that Husband had borrowed \$5,000.00 to cover some of his expenses but had “otherwise covered [his] expenses out of pocket and from liquidating marital property.”

After setting forth the expenses incurred by both parties, the circuit court explained that “the parties’ respective financial resources and circumstances [had been] detailed elsewhere in this opinion and are incorporated herein.”⁸ The court emphasized that Husband had utilized a “hide-the-ball strategy during discovery as it relate[d] to assets and his income.” The circuit court was well within its discretion to consider Husband’s

⁸ We further discuss the financial status of the parties in our analysis of the circuit court’s alimony award, monetary award, and attorney’s fees award.

credibility, as well as the effect of Husband's conduct during discovery, when ordering Husband to pay the attorney's fees award within thirty days. Furthermore, as discussed *supra*, the circuit court reasonably concluded that Husband had the ability to pay the award. Accordingly, we reject Husband's contention that the Husband failed to properly consider the parties' financial resources and ability to pay.

II.

Husband's next contention is that the alimony award must be reversed because Husband lacks the ability to pay the alimony award in light of the other payments ordered by the circuit court. We disagree.

A circuit court is required to take twelve factors into consideration when making an alimony award determination. FL §11-106(b). The factors enumerated in FL § 11-106(b) are:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;
- (4) the duration of the marriage;
- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (6) the circumstances that contributed to the estrangement of the parties;
- (7) the age of each party;

- (8) the physical and mental condition of each party;
- (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
- (10) any agreement between the parties;
- (11) the financial needs and financial resources of each party, including:
 - (i) all income and assets, including property that does not produce income;
 - (ii) any award made under §§ 8–205 and 8–208 of this article;
 - (iii) the nature and amount of the financial obligations of each party; and
 - (iv) the right of each party to receive retirement benefits; and
- (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health–General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

On appeal, Husband does not contend that the circuit court failed to properly consider the overwhelming majority of the factors. Indeed, the circuit court expressly considered each factor at length. Husband’s challenge to the circuit court’s alimony determination is quite limited. He contends that the circuit court failed to properly consider the ninth factor, namely, the ability of Husband to meet his own needs while meeting the needs of Wife.

With respect to the ninth factor, the circuit court found as follows:

As discussed *supra*, the evidence supports a finding that [Husband’s] average monthly income is \$19,360. [Husband’s] Financial Statement dated July 16, 2015 . . . shows expenses of \$11,057 per month, including expenses for the children and

double housing expenses (i.e., expenses for the marital home and for [Husband's] rental property). Even using [Husband's] inflated expense numbers, the evidence supports [Wife's] contention that [Husband] can afford to pay \$7,857 per month in combined alimony and child support. Moreover, the evidence indicates that since the parties' separation, [Husband] has been able to meet his own needs with relative ease while paying direct support of \$1,000 per month and indirect support of \$5,545 per month.^{9]}

Husband does not dispute the circuit court's finding that his monthly gross income is \$19,360.00. He contends, however, that he will be left with a monthly deficit of \$3,208.76 after paying income taxes in the amount of \$5,011.76, alimony in the amount of \$3,500.00, child support in the amount of \$3,000.00, and his own monthly expenses of \$11,057.00, which includes the expenses associated with the marital home until its sale.

First, we observe that although Husband asserts that he will be required to pay income taxes in the amount of \$5,011.76 per month, in fact, Husband was not paying state or federal income taxes on cash and other income he received through his position with BCC. At trial, Husband admitted that he never deposited cash payments from BCC customers. Over a three-year period, the cash payments totaled \$188,000.00. Furthermore, evidence presented at trial established that Husband received at least \$26,500.00 per year in checks from BCC that he did not report on his annual tax return. The forensic accountant further determined that many of BCC's financial records had been deleted and that BCC

⁹ The circuit court included a footnote, which we do not set forth verbatim, which indicated that although the court was not inclined to award \$7,857.00 in child support and alimony, the court found that Wife's contention that Husband's income would permit him to pay this amount while also covering his own expenses was based upon a "sound" calculation and "supported by credible data."

paid for many of Husband's personal expenses through Husband's use of a personal credit card, which was paid by the company and included in the company's expenses.

Furthermore, even if we were to assume *arguendo* that Husband did incur tax liability in the amount of \$5,011.76 per month, Husband could reduce any deficit by making various cuts to budgets listed on Husband's financial statement.¹⁰ For example, Husband could cut his recreation and entertainment allowance of \$675 per month and his personal food allowance of \$750 per month. The circuit court was in a better position than this Court, on appeal, to consider the detailed financial information submitted by the parties and determine a reasonably alimony award in light of each party's income and expenses.

In reality, Husband need not make cuts to his personal budgets, however, given that he no longer incurs expenses associated with the marital home. Husband's financial statement included \$3,559.32 of expenses associated with the marital home. Husband ceased paying the mortgage on the marital home in June of 2016. Moreover, the circuit court ratified the contract of sale for the marital home on September 14, 2016, and the trustee's report of sale was filed on September 30, 2016. Husband's actual expenses are now \$3,559.32 less than set forth in the financial statement due to the sale of the marital home. With the \$3,559.32 in marital home expenses subtracted for Husband's budget, he

¹⁰ Wife contends that the expenses listed on Husband's financial statement for the children's health insurance should additionally be eliminated because BCC pays for the children's health insurance. Based upon our review of the record, we are unable to determine one way or another whether BCC or Husband has paid the children's health insurance expenses. This, however, is irrelevant to our determination given that Husband can easily afford to make the alimony payments regardless of the health insurance expense.

would be left with a monthly surplus of \$2,659.08 -- even if we were to assume that Husband's estimate of monthly taxes in the amount of \$5,011.76 is correct.

The circuit court was not convinced by Husband's attempts to manipulate financial figures in a manner that would benefit his position. The circuit court expressly commented on Husband's "lack of candor," "obfuscation of evidence," and "general failure to provide discovery in a good faith manner." Similarly, we will not be misled by Husband's attempts to manipulate the financial figures in order to depict a scenario that would render the alimony award unreasonable in light of Husband's ability to pay. The circuit court was entitled to consider Husband's credibility when evaluating his ability to pay. *See Sharp v. Sharp*, 58 Md. App. 386, 398-99 (1984) (noting that a trial court had commented that it "deem[ed] incredulous [a husband's] ability to survive such financial plight over the years, and f[ound] his ability to pay the alimony ordered secreted among the allowances for depreciation and farm expenses.").¹¹ Indeed, our review of the record indicates that the circuit court's determinations with respect to Husband's ability to pay the alimony award were reasonable under the facts and circumstances of this case. Accordingly, we reject Husband's assertion that the circuit court failed to properly consider Husband's ability to meet his own needs in light of the alimony award.

¹¹ Husband further asserts that the circuit court failed to consider monthly interest payments he would incur on the monetary award and attorney's fees award after they were reduced to judgment. The interest on the judgment is not a monthly expense. Furthermore, as discussed *supra*, Husband has the ability to pay the judgment and cease accruing interest.

III.

In addition to challenging the alimony award based upon his ability to pay, Husband asserts that the alimony award was improper because there was no evidence to support an alimony award of \$3,500.00 per month for the first four and one-half years and \$1,500.00 per month for the subsequent four years. Husband questions whether Maryland law permits a rehabilitative alimony award of two different amounts for different periods of time. Husband further asserts that, assuming that different amounts are permissible, there was not sufficient evidentiary support to support the adjustment. In our view, the circuit court’s alimony award was consistent with the needs of the parties and supported by the evidence presented.

We review a trial court’s alimony award for abuse of discretion, and we uphold the factual findings of the trial court unless clearly erroneous. *Solomon, supra*, 388 Md. at 197. “[A]n alimony award will not be disturbed unless the court’s discretion was arbitrary or [the court’s] judgment was clearly wrong.” *Benkin v. Benkin*, 71 Md. App. 191, 205 (1987).

First, we reject Husband’s contention that a rehabilitative alimony award which changes in amount during the award period is impermissible under Maryland law. In *Benkin, supra*, we reversed a trial court’s rehabilitative alimony award which provided for declining amounts during a five-year period of time.¹² We explained that “[t]here [wa]s

¹² The five-year alimony award in *Benkin* required the husband to pay the wife \$750.00 per month during the first year, \$650.00 per month the second year, and \$500.00 per month the subsequent three years.

nothing in the record to support a rationale for the declining amounts awarded.” *Id.* at 204. We have never held that declining amounts of alimony are *per se* impermissible. Rather, they must be supported by the evidence. As we shall explain, in the present case, evidence supports the circuit court’s alimony award, which was based upon Wife’s varying financial needs during the first four and one-half years following divorce and during the subsequent four years.

In the present case, the circuit court provided a clear explanation for the declining award, based upon the evidence. The circuit court explained that the decrease in alimony was designed to coincide with the graduation of the parties’ older child from high school. Rehabilitative alimony would terminate altogether at the time the parties’ younger child graduated from high school. The circuit court explained:

This schedule provides a payment stream at the higher amount through [the older child’s] graduation from high school, and a payment stream at the lower amount through [the younger child’s] graduation from high school. In setting this schedule, the [c]ourt is not conflating alimony and child support, but rather it is attempting to establish and maintain [a] reasonable and appropriate standard of living for [Wife] while the children are primarily in her care and custody while she transitions away from the marriage. The [c]ourt has no reservation in finding that [Wife] will be wholly self-supporting and living at a comfortable and fair standard of living.

This was a reasonable consideration for the circuit court. It was sensible for the circuit court to consider that, as the parties’ children grew older, Wife would have more time available to take steps toward becoming self-sustaining as the children required less hands-on parenting and, eventually, were no longer in her care and custody.

Contrary to Husband’s assertions, the circuit court was not required to make specific findings regarding Wife’s income at various points in time. Husband points to the case of *Coviello v. Coviello*, 91 Md. App. 638, 648 (1992), for the principle that the differing awards must be based on “existing evidence as to a future adjustment.” Critically, *Coviello* involved an award of indefinite alimony rather than rehabilitative alimony. We have repeatedly explained that a prediction as to potential income is required in the context of indefinite alimony. *See, e.g., Lee v. Lee*, 148 Md. App. 432 (2002); *Roginsky v. Blake Roginsky*, 129 Md. App. 132, 146 (1999). This specific requirement is inapplicable to an award of rehabilitative alimony.

The circuit court considered the enumerated factors set forth in FL § 11-106(b) prior to awarding Wife alimony for a period of eight and one-half years. The circuit court considered Husband’s monthly income of \$19,360.00 and Wife’s net monthly income of \$2,635.00. The court considered the expenses claimed by Wife and determined that her expenses were \$5,676.00, leaving a monthly deficit of \$3,040.00.¹³ Having considered the requisite factors and applied the factors to the facts and circumstances of the present case, the circuit court crafted an award which reflected the time that Wife would reasonably need to become self-sustaining. Accordingly, we perceive no error in the circuit court’s alimony award.

¹³ Wife claimed monthly expenses in the amount of \$5,892.00. The circuit court subtracted \$92.00 per month for replacement appliances, \$25.00 per month for home security, and \$100.00 per month for pool expenses.

IV.

We next consider Husband’s assertion that the circuit erred by ordering the Husband pay child support in the amount of \$3,000.00 per month. Husband contends that the circuit court failed to allocate any of the children’s expenses to Wife and instead ordered Husband to pay approximately 100% of the children’s expenses.

Because the parties combined incomes exceed \$15,000.00 per month, this is an above-guidelines case. *See* FL § 12–204(d). In an above-guidelines case, “the court may use its discretion in setting the amount of child support.” *Id.* The Court of Appeals has set for the following guiding principles which apply in above-guidelines cases:

While awards made under § 12-204(d) will be disturbed only if there is a clear abuse of discretion, a reviewing court must also be mindful that the federal call for child support guidelines was motivated in part by the need to improve the consistency of awards . . . [T]he guidelines do establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule. Beyond this the trial judge should examine the needs of the child in light of the parents’ resources and determine the amount of support necessary to ensure that the child's standard of living does not suffer because of the parents’ separation. Further, the judge should give some consideration to the Income Shares method of apportioning the child support obligation.

Voishan v. Palma, 327 Md. 318, 331-32 (1992).

Wife requested child support in the amount of \$3,757.00 per month, arguing that this award would be appropriate based upon her financial statement, which allocated expenses of \$3,757.00 per month to the children. The court determined that certain expenses were not properly considered part of the children’s expenses, and adjusted the

monthly figure from \$3,757.00 to \$2,912.00. The circuit court observed, however, that these expenses were incurred while Wife had primary physical custody, and that the custody arrangement going forward afforded Husband additional contact and overnights which qualified as shared custody under the guidelines. The circuit court performed two guidelines analyses based upon Wife having primary physical custody and the parties having shared physical custody, and determined that the guidelines for primary physical custody to the Wife yielded \$2,458.00 per month while the guidelines for shared custody yielded \$1,745.00 per month.

The court noted, however, that “this case does not fall within the mandatory application of the Guidelines.” The court ordered that Husband pay child support in the amount of \$3,000.00 per month. The court further ordered Husband to pay the children’s counseling expenses, maintain health insurance for the children, and contribute seventy percent (70%) of all uninsured health expenses and extracurricular activities. The court ordered that Husband would be entitled to claim the children as dependents for tax purposes.

Husband asserts that the circuit court failed to properly apply the “income shares model,” which is the principle that the child support obligation should be divided between the parents “in proportion to their adjusted actual incomes.” *Voishan, supra*, 327 Md. at 330. In our view, the circuit court neither erred nor abused its discretion. This is a case in which the parents earn significantly more than the maximum amount for which the guidelines provide. Father’s support obligation should not be based merely upon specific, articulated financial needs. Indeed, the Court of Appeals has specifically rejected the

argument that a child’s “needs” should determine the appropriate amount of child support. *Gladis v. Gladisova*, 382 Md. 654, 672 (2004). Rather, the Court of Appeals has emphasized that a child’s “needs” “depend on the parents’ economic position.” *Id.* The Court explained that “[t]he advantages of [a parent’s] economic strength . . . should flow to his child[.]” *Id.* We have explained that in the context of particularly wealthy families, the court cannot consider only the basic needs of the children:

A child of a multi-millionaire generally expects a lifestyle of unusual privilege and advantage. Indeed, the Court of Appeals has recognized that there are a “multitude of different options for income expenditure available to the affluent.” *Voishan*, 327 Md. at 328, 609 A.2d 319. Similarly, we have said that children of wealth “are entitled to every expense reasonable for a child of . . . affluence.” *Bagley v. Bagley*, 98 Md. App. [18] at 38, 632 A.2d 229 [(1993)]. Thus, child care that is not work related, private school, summer camp, lessons, luxury vacations, designer clothes and shoes, toys, travel, cultural and recreational activities, and other material privileges are among the extravagances enjoyed by families of substantial wealth.

Smith v. Freeman, 149 Md. App. 1, 32-33 (2002). We further commented in *Smith, supra*, that “[n]umerous decisions from other jurisdictions reflect the view that, with respect to child support, ‘need’ is an elastic concept that varies with the particular economic circumstances of the parties.” *Id.* at 31.

In this case, it was not erroneous for the circuit court to order Husband to pay child support in an amount roughly equivalent to the children’s enumerated needs. The circuit court was in a better position than this Court to consider the persuasiveness of the parties and determine what amount of child support would appropriately permit the children to benefit from Husband’s privileged financial position. Furthermore, contrary to Husband’s

assertions, the circuit court did not require Husband to pay all of the children’s expenses. The circuit court ordered Husband to pay seventy percent of all uninsured health expenses and extracurricular activities. As a result of this ruling, Wife was obligated to pay the remaining thirty percent of these expenses. Perceiving no error, we affirm the circuit court’s child support award.

V.

Husband’s next allegation of error pertains to the circuit court’s award of attorney’s fees. We review a circuit court’s award of attorney’s fees in a domestic case for abuse of discretion. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002); *Petrini v. Petrini*, 336 Md. 453, 468 (1994). Pursuant to FL § 12-103, a circuit court is required to consider certain factors prior to awarding costs or attorney's fees: (1) “the financial status of each party;” (2) “the needs of each party;” and (3) “whether there was substantial justification for bringing, maintaining, or defending the proceeding.”

In this case, the record reflects that the circuit court clearly considered the requisite factors. As discussed *supra*, the circuit court observed that, according to Husband, Husband had incurred \$124,459.00 in attorney’s fees and \$7,500.00 in accounting fees. The court found that Husband anticipated additional accounting fees in the amount of \$10,000.00. The court found that Wife contended that she had expended \$153,453.00 in legal fees and \$69,814.00 in accounting fees. The court commented that Wife had borrowed \$207,247.00 from her parents in order to pay for her legal and accounting expenses. The court observed that Husband had borrowed \$5,000.00 to cover some of his

expenses but had “otherwise covered [his] expenses out of pocket and from liquidating marital property.”

The court additionally incorporated its previous discussion of the parties’ financial resources. Elsewhere in the circuit court’s opinion, the court found that the parties “enjoyed a comfortable standard of living during their marriage,” “resided in a nice home with a pool,” and “took regular vacations and sent the children to private school.” The court found that Husband’s “significant income” afforded the family to maintain a high standard of living. After the parties’ separation, Wife was able to maintain a standard of living “at a reasonable and comfortable level with [Husband’s] monetary support.” The circuit court found that Husband was “the primary breadwinner,” but that Wife’s employment as a teacher rendered her “partially self-supporting with the capacity to become fully self-supporting.”

With respect to whether there was substantial justification for bringing, maintaining, or defending the proceeding, the court commented that Husband had utilized a “hide-the-ball strategy during discovery as it relates to assets and his income.” The court found that Husband’s “complaints of excessive legal and accounting fees ring hollow in the context of his own behavior.” The circuit court emphasized that “[t]here is no doubt that [Husband’s] obfuscation of evidence and his general failure to provide discovery in a good faith manner resulted in an increase in legal and accounting fees.”

The circuit court commented that “[s]ome of [Wife’s] positions concerning custody and visitation issues were inflexible.” The court found that Wife’s “request for child counsel was not timely and not supported by the facts,” and Wife’s “repeated efforts to

revisit this issue were time consuming and simply not justified.” The court found, however, that in light of these two specific instances, Wife had substantial justification for prosecuting and defending the proceeding and, “subject to the foregoing qualifications,” the fees incurred by Wife were “fair, reasonably and generally necessary.” After considering the factors set forth in FL § 12-103, the circuit court ordered Husband to reimburse Wife in the amount of \$110,000.00 for attorney’s fees and \$50,000.00 for accounting fees.

On appeal, Husband does not contend that the circuit court generally failed to consider the requisite factors. Instead, Husband argues that Wife failed to prove the reasonableness of the attorney’s fees she incurred with sufficient specificity because the affidavit and invoices she submitted to the court did not contain a breakdown of services performed or other information regarding the nature of the work performed. Husband further asserts that the circuit court failed to prove a basis for its conclusion that Wife’s fees were fair, reasonable, and generally necessary. Critically, this issue was not raised before the circuit court.

Pursuant to Maryland Rule 8-131(a), this Court “will not decide any . . . issue [other than the issue of subject-matter jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court . . .” Wife submitted the affidavit of her attorney’s fees to the circuit court along with timesheets and an accounting of expenses incurred. Husband lodged no objection to the affidavit and accompanying documents.

Husband addressed the issue of attorney’s fees in his closing memorandum. He argued that the four days of trial and significant attorney’s fees incurred in this case were

“incomprehensible.” He argued that his own fees were largely incurred due to the “outrageous number of motions filed by [Wife’s] counsel.” Husband argued that he should be awarded attorney’s fees, or, “at the very least,” the court should take into consideration the fees paid by Husband when determining the monetary award, arguing that “[a]n award of attorney’s fees should be made to [Husband], and **none** to [Wife].” (Emphasis added.) Husband never argued that Wife should be denied attorney’s fees on the basis of insufficient specificity in the provided documentation.

Indeed, this perfectly illustrates one of the general purposes of the preservation requirement. As the Court of Appeals has explained, the purpose of Maryland Rule 8-131(a) “is two-fold,” the reasons being: “(a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.” *Maryland State Bd. of Elections v. Libertarian Party of Maryland*, 426 Md. 488, 517 (2012) (internal quotation and citations omitted). Assuming *arguendo* that there were any deficiencies with the documentation provided by Wife, if Husband had raised the issue below, Wife would have had the opportunity to supplement the documentation as needed. Husband did not do so. Husband cannot now, on appeal, complain about an issue which would have been easily remedied if it had been timely raised before the trial court.¹⁴

¹⁴ Even if the issue were preserved for our review, we note that there is no authority which suggests that expert testimony is necessary to establish the reasonableness of attorney’s fees. *Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 438 (2000). (continued...)

VI.

We next turn our attention to Husband’s contention that the circuit court improperly ordered him to pay off a lien on a Toyota Camry which the circuit court ordered Husband to transfer to Wife. Wife responds that the court acted within its discretion when it ordered Husband to pay the lien. We agree with Wife.

In Husband’s closing memorandum, Husband indicated that he was “agreeable to transferring the ownership of the Toyota Camry to” Wife. The vehicle was titled solely in Husband’s name but was driven by Wife. At the time, Husband was responsible for a lien on the vehicle.¹⁵ The circuit court ordered that Husband “shall convey the 2014 Toyota Camry to Defendant, free and clear of any liens.”

On appeal, Husband argues that the court did not have the authority to order him to pay off the lien on the vehicle. In support of this assertion, Husband cites various cases for the principle that a court does not have the authority to order a party to pay debts of another party or to pay the joint debts of the parties. *See, e.g., Coutant v. Coutant*, 86 Md. App. 581, 592 (1991); *Bricker v. Bricker*, 78 Md. App. 570, 580-81 (1989). Critically, in this case, the circuit court did not order Husband to pay Wife’s debt, nor did the circuit court order Husband to pay a joint debt.

Furthermore, based upon evidence regarding the “complex and lengthy nature of [legal] services performed,” a fact-finder can “properly infer, with reasonable certainty, that the fees charged were appropriate” even when the fact-finder is not presented with “an hourly breakdown of the work done and the rates charged.” *Id.* at 437.

¹⁵ At trial, Husband testified that the outstanding balance on the car loan was \$15,207.60. A billing statement dated August 21, 2015 reflects an outstanding balance of \$14,313.00.

The circuit court ordered Husband to transfer the vehicle to Wife free and clear of any liens. This necessarily required Husband to pay off a debt for which Husband himself was solely responsible. As such, the authority relied upon by Husband is inapposite. Section 8-208(c)(2) of the Family Law Article provides that a “court may order or decree that either or both of the parties pay all or any part of . . . any indebtedness that is related to” family use personal property. Furthermore, FL § 8-205 permits a court to transfer ownership of family use personal property. The circuit court’s order ordering Husband to transfer the Toyota Camry to Wife, free and clear of any liens, was permitted by the statute. Accordingly, we reject Husband’s assertion that the circuit court’s order was improper.

VII.

Husband’s final contention is that the circuit court erred in determining the amount of the monetary award. The circuit court explained that it was dividing marital property equally between the parties. Husband asserts that the circuit court erred because the court’s award to Wife of the Toyota Camry rendered the division of marital property unequal. We are unpersuaded that the monetary award was improper.

When reviewing a circuit court’s “ultimate decision of whether to grant a monetary award, and the amount of such an award, a discretionary standard of review applies.” *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007). As we shall explain, our review of the record indicates that the circuit court knowingly considered the requisite factors when determining an appropriate monetary award and subsequently granted a monetary award consistent with the court’s intention.

Husband does not dispute that the circuit court addressed the requisite factors set forth in FL § 8-205(b).¹⁶ The circuit court found that the total value of marital property

¹⁶ Pursuant to FL § 8-205(b), the circuit court must consider the following factors when determining that amount and method of payment of a monetary award:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;
- (3) the economic circumstances of each party at the time the award is to be made;
- (4) the circumstances that contributed to the estrangement of the parties;
- (5) the duration of the marriage;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
- (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
- (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
- (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

was \$1,024,673.00. The circuit court explained that “a fifty percent (50%) award in the amount of \$512,336¹⁷ is fair, equitable, and appropriate.” The court awarded that the marital home be sold and the net proceeds divided between the parties, that all joint accounts be liquidated and the joint proceeds be divided equally between the parties, and that Husband pay Wife a monetary award in the amount of \$418,686.00. After setting forth the components of the marital award, the circuit court further found that “equity dictates [certain] additional provisions,” including the transfer of the Toyota Camry from Husband to Wife, free and clear of any liens. The circuit court additionally ordered that Husband retain two other vehicles and that certain items of furniture be conveyed to Husband, with the remainder of household furnishings to be retained by Wife.

We perceive no error in the circuit court’s marital award determination. In this case, the circuit court’s detailed memorandum opinion demonstrates that the circuit court knowingly and intentionally awarded the Toyota Camry to Wife in addition to awarding Wife half of the value of marital property. Accordingly, we reject Husband’s assertion that the award of the Toyota Camry renders the circuit court’s monetary award an abuse of discretion.

**MOTION TO DISMISS APPEAL AS TO THE SBA
LOAN ISSUE GRANTED. JUDGMENTS OF THE
CIRCUIT COURT FOR DORCHESTER COUNTY
OTHERWISE AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

¹⁷ The \$512,336.36 marital award was made up of: (1) the \$418,686.00 monetary award; (2) \$2,782.49 in jointly held accounts and furnishings; (3) \$20,532.87 in marital property titled to Wife; and (4) \$70,335.00, representing half of the equity in the marital home.