Circuit Court for Howard County
Case No. C-13-FM-20-000785

CHILD ACCESS

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 641

September Term, 2022

AUSTIN HOWARD

v.

LARISSA HOWARD

Reed,
Leahy,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: April 6, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

After a five-day trial before Judge Timothy J. McCrone of the Circuit Court for Howard County, Austin Howard, Appellant, and Larissa Howard, Appellee, were granted a Judgment of Absolute Divorce. Judge McCrone also denied Mr. Howard's motion to take additional evidence, which was filed after he had orally ruled regarding the marital property and child access issues on April 15, 2022, but before a formal opinion and a judgment were entered on May 12, 2022.

Mr. Howard appeals the denial of his motion, as well as various portions of Judge McCrone's ultimate ruling, including the $3,270,006 monetary award granted to Ms. Howard; the schedule for visitation with the three children, who, at the time of trial, were 6, 4, and 3, as well as the edict that each party would pay half of the marital home's $5,980 monthly mortgage during Ms. Howard's three-year use and possession; and the final computation of child support assessed against Mr. Howard.

Mr. Howard presents us with four questions on appeal, which we have renumbered and summarized:[1]

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[1] Mr. Howard's questions, as presented, were:

I. Did the trial court err or abuse its discretion: 1) by failing to consider how and when specific marital property was acquired, including the effort expended by each party in accumulating the marital property, when granting Wife a monetary award of $3,270,006, which represented 55% of Husband's non-retirement marital property, where Wife made no monetary contribution to the marriage, and Husband made millions of dollars in monetary contributions, including $2,600,000 in pre-marital investment accounts that Husband was unable to adequately "directly trace" to a non-marital source based on the holding of *Wasyluszko v. Wasyluszko*; or 2) by punishing Husband for his behavior in connection with the breakdown of the marriage?

(continued…)

I. Whether the trial court erred by denying Mr. Howard's motion to take additional evidence, which was filed after Judge McCrone orally announced his ruling but before the Judgment of Absolute Divorce was entered?

II. Whether the trial court erred by granting Ms. Howard a $3,270,006 monetary award, which represented 55% of the marital property?

III. Whether the trial court erred by ordering Mr. Howard an access schedule of four overnights every two weeks, when the *Pendente Lite* Consent Order had granted him five overnights?

IV. Whether the trial court judge erred in his calculation of child support by failing to attach the Maryland Child Support Guidelines to the Judgment of Absolute Divorce and by including the cost of private school tuition and therapy expenses in his calculation, and by ordering each party to pay half the mortgage on the marital home?

For the reasons that follow, we shall affirm the decisions of Judge McCrone.

(…continued)

II. Did the trial court err or abuse its discretion by denying Husband's Motion to Take Additional Evidence, which was filed before the entry of the JAD, based on a decrease in the value of Husband's investment accounts as listed on the 9-207 and the value of the accounts three months later?

III. Did the trial court err or abuse its discretion by decreasing Husband's overnight access with the children from five overnights to four overnights every two weeks, where the court found that Husband was fit and proper and there were no relevant reasons articulated to support the court's decision?

IV. Did the trial court err or abuse its discretion in its calculation of child support: 1) by failing to attach child support guidelines to the Judgment of Absolute Divorce and by failing to make required findings regarding the child support amount; 2) by including the cost of private school tuition in its child support guidelines calculation when there was no evidence that any child had a particular educational need to attend private school; 3) by including the cost of one minor child's therapy in its child support guidelines calculation when there was no evidence that therapy expenses for the minor child were actually being incurred; and 4) by ordering Husband to pay one-half of the mortgage on the family home in addition to child support?

FACTS & PROCEDURAL HISTORY

Austin Howard and Larissa Howard were married on July 15, 2014 in California and had three minor children born in 2015, 2017, and 2019. From 2010 until December 2018, Mr. Howard was employed as a professional football player with the National Football League ("NFL").

On June 8, 2020, Mr. Howard filed a Complaint for Limited Divorce in the Circuit Court for Howard County, to which Ms. Howard filed a Counter-Complaint for Absolute Divorce. The parties, subsequently, entered into an *Interim* Consent agreement, which was reduced to a *Pendente Lite* Consent Order. The Order granted Mr. Howard access to his three children from Wednesday to Friday during the first week, and Friday to Monday, including a Tuesday night dinner, during the second week.

In December of 2021, Ms. Howard filed an Amended Counter-Complaint for Absolute Divorce, in which she asked the court to grant her sole legal and primary physical custody of her three children; to establish an access schedule of four overnights every two weeks with Mr. Howard and the children, without a Tuesday night dinner; child support in the amount of $1,915, which did not include private school tuition or therapy expenses; indefinite alimony; attorneys' fees; title to the marital home, or in the alternative, use and possession of the marital home for three years; as well as a monetary award granting her 60% of the marital property and an equitable division of retirement and pension plans. In response, Mr. Howard filed an Amended Complaint for Absolute Divorce, in which he asked the court for sole legal and primary physical custody of the children; that he pay the $5,980 monthly mortgage of the marital home during Ms. Howard's use and possession

period, in lieu of child support; a "2-2-5" access schedule, in which the children would spend Mondays and Tuesdays with Ms. Howard, Wednesdays and Thursdays with Mr. Howard, and every other weekend with each of them; a sale, in lieu of a partition, of all real and personal property; attorneys' fees; as well as that Ms. Howard receive 30% of the marital property as a monetary award.

On February 14, 15, 16, and 18, as well as April 15, 2022, a trial was held before Judge McCrone. On the first day of trial, Mr. and Ms. Howard submitted a Second Amended Joint 9-207 Marital Property Statement ("Joint 9-207"),[2] in which they listed, among other properties, that which they agreed was marital property, as well as its value. As marital property, they included Fidelity investment accounts titled under Mr. Howard's

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[2] Maryland Rule 9-207 provides: "[w]hen a monetary award or other relief pursuant to Code, Family Law Article, § 8-205 is an issue, the parties shall file a joint statement listing all property owned by one or both of them." As explained in *Fader's Maryland Family Law*,

> [B]oth parties are required to file a **JOINT** statement of marital and non-marital property. Yes, it must be a **JOINT** statement, which means that both sides have to produce the statement and sign it. Rule 9-207 requires **one statement, not two**.
>
> It is actually pretty simple. There are only three categories in this required statement.
>
> a. **Category one: we agree this is marital property**
>
> b. **Category two: we agree this is non-marital property**
>
> c. **Category three: we cannot agree**

Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-6 (7th ed. 2021) (emphasis in original).

name, including Accounts Numbered 5524 and 5528,[3] which they valued at $3,385,341 and $2,540,905, respectively.[4] On the fourth day of trial, Mr. Howard's counsel stipulated on the record that his client's non-marital portions of Fidelity Account 5524 were $54,169.13 and $51,526.70 for Account 5528, for a total of $105,695.83 in non-marital property attributable to Mr. Howard, to which the attorney for Ms. Howard agreed; the judge accepted the stipulation.

On April 15, 2022, the last day of trial, Mr. Howard introduced a *de bene esse* deposition of Mark Doman, Mr. Howard's financial advisor for his Fidelity accounts, taken on March 23, 2022. During the deposition, Mr. Doman identified various statements for Fidelity Accounts 5524 and 5528, beginning on January 1, 2014 until January 31, 2022. Mr. Doman related that Ms. Howard had no access to the Fidelity accounts without Mr. Howard's authorization.

On the last day of trial, Judge McCrone orally announced his decision. He granted the parties joint legal custody of the three minor children, with primary physical custody and tie-breaking authority to Ms. Howard. He also ordered that she receive a monetary award of $3,270,006, representing 55% of the marital property, to be reduced to a judgment if not paid within 30 days; 50% of the marital share of Mr. Howard's NFL 401K and NFL

[3] Mr. Howard also had a third investment account with Fidelity listed under the "marital property" section of the Joint 9-207, Fidelity Account 927, which the parties agreed was valued at $814, about which there was no dispute.

[4] In a footnote on the Joint 9-207, Mr. Howard "added" that on July 1, 2014, before the marriage, "Fidelity Account 5524 had a balance of $1,562,486" and "Fidelity Account 5528 had a balance of $1,069,122."

Capital Accumulation Plan[5] to be transferred, without creating a taxable event, to Ms. Howard; 50% of the marital share of Mr. Howard's NFL Pension "if, as, and when,"[6] to be transferred to Ms. Howard; an access schedule of four overnights every two weeks for Mr. Howard with his children, including a Tuesday night dinner; and ordered each party to pay half of the $5,980 monthly mortgage on the marital home during Ms. Howard's three-year use and possession period. Judge McCrone then adopted Ms. Howard's requested child support amount of $1,915 but asked that each party submit revised child support calculations to take into consideration his various decisions regarding the monetary award and the access schedule.[7]

On May 3, 2022, after Judge McCrone announced his oral ruling, but before he formally entered his judgment, Mr. Howard filed a "Motion to Take Additional Evidence"

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[5] A 401K and a capital accumulation plan are classified as "defined contribution" retirement plans. A "defined contribution" plan is one in which an individual account is maintained for each participant, to which the employer periodically contributes in specified amounts. *Rosenberg v. Rosenberg*, 64 Md. App. 487, 504-05 (1985).

[6] When a court divides a pension on an "if, as and when" basis, the non-employee spouse would receive a predetermined percentage of the employee spouse's pension as each payment is made to the employee spouse. *Dziamko v. Chuhaj*, 193 Md. App. 98, 111-12 (2010). The court will calculate the value of the pension to which the non-employee spouse is entitled to as "a fraction of which the number of years and months of the marriage [] is the numerator and the total number of years and months of employment credited toward retirement is the denominator[.]" *Id.* at 112 (quoting *Bangs v. Bangs*, 59 Md. App. 350, 356 (1984)).

[7] Ms. Howard, thereafter, submitted her proposed Judgment of Absolute Divorce which included a revised monthly child support request of $3,187, based upon a basic child support obligation of $1,928, as well as the $1,092 cost of private school tuition and the $975 cost of therapy for the eldest child. Mr. Howard also proposed a Judgment of Absolute Divorce, in which he disputed the addition of private school tuition and therapy costs in the child support calculation.

under Maryland Rule 2-311. Mr. Howard asked that Judge McCrone admit the February and March 2022 Fidelity statements for Accounts 5524 and 5528, as well as permit expert testimony to be adduced about the potential tax consequences of reducing the monetary award to a judgment, pursuant to Maryland Rule 2-534, to which Ms. Howard demurred.

On May 11, 2022, Judge McCrone denied Mr. Howard's motion, and on the following day, he entered the Judgment of Absolute Divorce, which mirrored in large part his oral rulings, and also included contribution for private school tuition and therapy expenses by Mr. Howard, for a total of $3,187 in monthly child support payments to be paid by him.

Mr. Howard filed this timely appeal.

DISCUSSION

Denial of Mr. Howard's Motion to Take Additional Evidence

Mr. Howard filed his motion to take additional evidence under Maryland Rule 2-311, which provides: "[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought." In his motion, Mr. Howard argued that Judge McCrone should reopen the case to receive additional evidence, pursuant to Maryland Rule 2-534, which provides:

> **Motion to alter or amend a judgment—Court decision**
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> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the

> announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

An appellate court reviews the denial of a motion to alter or amend a judgment for abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc*., 413 Md. 638, 673 (2010)). A court abuses its discretion "where no reasonable person would take the view adopted by the [trial] court" or when it acts "without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted). "With respect to the denial of a motion to alter or amend…the discretion of the trial judge is more than broad; it is virtually without limit." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). "Appellate review of a court's ruling on a 2-534 motion is typically limited in scope." *Rose v. Rose*, 236 Md. App. 117, 129 (2018).

Mr. Howard argues that Judge McCrone abused his discretion by denying his motion to take additional evidence of the February and March 2022 statements for Fidelity Accounts 5524 and 5528, which showed a reduction in value of both investment accounts, and the tax implications of liquidating the marital assets within thirty days, through the testimony of a tax expert.

In his motion and subsequent brief to this Court, Mr. Howard argued that the failure to introduce the statements and the expert testimony was "inadvertent" and that such proof was "material" to his case, citing *Della Ratta v. Dyas*, 183 Md. App. 344, 374 (2008), *aff'd*, 414 Md. 556 (2010) and *Cooper v. Sacco*, 357 Md. 622 (2000). At oral arguments, Mr. Howard's counsel clarified that the introduction of the evidence was necessitated by his

"surprise" at the fact that Judge McCrone had orally ordered that the $3,270,006 monetary award be "reduced to a judgment" if not paid within thirty days. "Surprise," though, is not an appropriate basis for the admission of additional evidence in the present case, and Judge McCrone did not err.

Section 8-205(c) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.),[8] provides that: "[t]he 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." In *Herget v. Herget*, 319 Md. 466, 471 (1990), our Supreme Court (then the Court of Appeals of Maryland[9]) explained, "[t]o the extent a monetary award is immediately due and owing, the court may enter a judgment reflecting it, thereby subjecting the property of the indebted party to lien and execution." 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). As a result, the possibility of a "reduction to judgment" of a marital award could not have been a "surprise."

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[8] All statutory references to the Family Law Article are to Maryland Code (1984, 2019 Repl. Vol.).

[9] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules, or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

Tax consequences of marital property awards have also been the subject matter of many cases in our appellate courts. *See Solomon v. Solomon*, 383 Md. 176, 187-92 (2004); *Innerbichler v. Innerbichler*, 132 Md. App. 207, 238-39 (2000); *Quinn*, 83 Md. App. at 473; *Rosenberg v. Rosenberg*, 64 Md. App. 487, 523-26 (1985). Our cases are clear that the trial court has the discretion to consider "tax liabilities" as "'other factors' for purposes of distributing a marital property award," pursuant to Section 8-205(b)(11) of the Family Law Article, provided the party seeking to receive the benefit of taxes offers "immediate and specific" evidence of such consequences. *Solomon*, 383 Md. at 191 (citing *Rosenberg*, 64 Md. App. at 523-26). As a result, tax consequences related to marital property awards could not have been "surprising" to counsel.

Mr. Howard had every opportunity to introduce the missing statements and the potential tax consequences of a reduction to judgment of the marital award before the end of trial.

Mr. Howard bore the burden to present evidence of a decrease in value of the Fidelity accounts, which he failed to do. *See Rock v. Rock*, 86 Md. App. 598, 623-24 (1991) (explaining that the evidence proffered in Mr. Rock's post-judgment motion to alter or amend and for new trial was available at the time of the hearing, and therefore, "the court was not required to grant a new trial or alter or amend the judgment. Any error was not that of the court."). Mr. Howard acknowledged in his motion that the February and March 2022 statements "presumably existed before the fifth day of trial on April 15, 2022," and he had the opportunity to introduce the statements when the *de bene esse* deposition, taken on

March 23, 2022, of Mark Doman, his financial advisor for his Fidelity accounts, was introduced.

Notably, Mr. Howard was the only party who had access to the February and March 2022 statements of the Fidelity accounts. Mr. Doman acknowledged during his testimony that Ms. Howard did not have access to the Fidelity accounts, absent Mr. Howard's authorization. If the court would have received the additional evidence, Ms. Howard would have been unfairly prejudiced as she had no prior access to the absent statements. *See Cooper*, 357 Md. at 637 (explaining that while courts have discretion to reopen a case to receive additional evidence, an abuse of discretion may occur when there is "'improper' prejudice against a party in reopening or not reopening a case.").

With respect to the introduction of expert testimony, Mr. Howard had not identified any expert to discuss tax consequences when required by the various scheduling orders in the case. To designate them after the end of the trial, obviously, would have precipitated further discovery and, potentially, more days in court.

To grant Mr. Howard's motion for additional evidence, then, would have provided him, essentially, a sixth day of trial, "in order to try the case better with hindsight." *Steinhoff*, 144 Md. App. at 484. Accordingly, Judge McCrone did not abuse his discretion in denying Mr. Howard's motion.

Monetary Award

Section 8-201(e)(1) of the Family Law Article defines "marital property" as "property, however titled, acquired by 1 or both parties during the marriage." Under Section 8-201(e)(3), however, marital property does not include property:

(i) acquired before the marriage;
(ii) acquired by inheritance or gift from a third party;
(iii) excluded by valid agreement; or
(iv) directly traceable to any of these sources.

Under Section 8-205 of the Family Law Article, "after the court determines which property is marital, and the value of the marital property, the court may… grant a monetary award…as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded." Pursuant to Section 8-205(b) of the Family Law Article, the trial court considers the following factors prior to determining "the amount and the 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.

The statute, essentially, requires that courts follow a three-step procedure when determining when a monetary award is appropriate:

> First, for each disputed item of property, the court must determine whether it is marital or non-marital. Second, the court must determine the value of all marital property. Third, the court must determine if the division of marital property according to title will be unfair; if so, the court may make an award to rectify the inequity.

Richards v. Richards, 166 Md. App. 263, 272 (2005) (quoting *Collins v. Collins*, 144 Md. App. 395, 409 (2002)).

In performing the first two steps of the marital award process, Judge McCrone identified each item of marital property and determined its value. Judge McCrone first listed the marital property that had been titled under Mr. Howard's name, as so identified under the "marital property" section of the Joint 9-207:

> [T]here's the Bank of America, account -0966, that has $8,102.00, a Chase checking -1987 that has $1,302.00, Chase checking -1995 has $14,329.00, a Fidelity -0927 has $814.00, Fidelity -5524 has $3,385,341.00 but I have to deduct $54,169.13 as being non-marital by agreement of the parties. With respect to the Fidelity Brokerage account -5528, it has $2,540,905.00 but again, non-marital portion of $51,526.70 that has to be deducted. [Mr. Howard] also has an M&T checking account -5293 that has $1,904.00, a Merrill Lynch account -- forgive me if I don't read this -- I think it's -6111 has $59,565.00. There's a Wells Fargo account -9002, a checking account, $350.00 and a Wells Fargo savings account, -6495 has $30.00 in [Mr. Howard's] name. There's an agreed-upon dissipation of $7,220.00 and I'm going to – I'm not going to find any additional dissipation.
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> [Mr. Howard] also would get the Yukon but I'm going to say it's worth $60,000.00 and the two Harley Davidsons, the Road King of $11,250.00 and the Street Glide of $14,050.00.

Judge McCrone then valued the marital property titled in Ms. Howard's name:

> On [Ms. Howard's] side of the ledger, she's got a Chase checking account with $66.00, a Chase checking account with $1,007.00, a Bank of America

> checking account with $3,536.00. And she's got the Infinity which is valued at $22,269.00.
>
> So, [Ms. Howard's] totals there would be $26,877.00. [Mr. Howard's], after deducting the non-marital shares of -5524 and -5528, would be, I believe, $5,945,466.00. And that's assuming that the three joint checking accounts would be divided fifty/fifty per agreement of Counsel.

Judge McCrone, finally, determined that a marital award to Ms. Howard was warranted:

> So, obviously, this is a tremendous disparity in marital property being titled vastly disproportionately in the name of [Mr. Howard]. And so, I do find that a marital division of property according to title would be unfair and that it's necessary and appropriate to make a monetary award to rectify the inequity of the division purely by title in terms of these properties that were acquired during the course of the marriage. And I'm going to award [Ms. Howard] $3,270,006.00. Did you get that? $3,270,006.00, which I think if you – if my math is correct, gentlemen, and I've been making some adjustments as we have been speaking here today in terms of what was previously—non-marital. That should be fifty-five percent of the $5,945,466.00.

Judge McCrone detailed the bases for his award, pursuant to the factors delineated in Section 8-205(b) of the Family Law Article:

- **The contributions, monetary and nonmonetary, of each party to the well-being of the family**. "The parties had a tremendous standard of living and almost all of the assets were generated by [Mr. Howard]. But there's no doubt in my mind that they both contributed mightily to the marriage, disproportionately [Mr. Howard] financially and maybe disproportionately [Ms. Howard] in terms of the children."
- **The value of all property interests of each party.** Judge McCrone incorporated his findings regarding both parties' property interests.
- **The economic circumstances of each party at the time the award is to be made**. "[Mr. Howard] receives NFL disability income…$5,360 a month." "There's no real dispute but that [Mr. Howard] earns about $13,141.95 a month on his investments, which is $157,703.00 per year. He gets health insurance for free." "Right now, neither one is working. They can devote themselves almost exclusively if they want to the children…And thanks to [Mr. Howard] they have a financial wellbeing. That's obvious." "I've taken into consideration [Mr. Howard's] non-marital assets that he's going to continue to have at his disposal."

- **The circumstances that contributed to the estrangement of the parties**. "I do think that something that did contribute rather significantly to the dissolution of the marriage was this – I don't know what to call it really -- a tendency to solicit solacious photographs from different women, including [], I think was her name, the eighteen-year-old babysitter or she was at least eighteen at the time she was sending you the pictures. And I find that you did try to pull the same thing with your former college roommate's wife, sending the money in advance and then following up with the request. It certainly didn't help the marriage." "So, I do believe that it's true that part of the demise of the marriage was a function of… you used the word bullying and that's, you know, it's probably the correct term."
- **The duration of the marriage**. "And there's no dispute that the parties have been married for about seven years, nine months. That they separated in June of 2020."
- **The age of each party.** "Austin Howard is thirty-four." Ms. Howard testified that she was thirty-four.
- **The physical and mental condition of each party.** "[Mr. Howard] has had his hip replaced after an injury in 2018 and had surgery in January of 2021." "There's been testimony that the parties are capable. They both have college degrees and are obviously intelligent people[.]"
- **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.** "Almost all of the assets that the parties have, of course, has been a function of the income generated by [Mr. Howard]."
- **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.** "Almost all of the assets that the parties have, of course, has been a function of the income generated by [Mr. Howard]."
- **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 I'm not going to order additional attorney's fees." "So, I will not award alimony." "The parties have agreed that the personal property in their various storage units and in the marital home will be divided by the parties in terms of what's in the house after the use and possession order is over." "[T]he parties have agreed to [Ms. Howard's] use and possession [of the marital home] for three years from the entry of the date of judgment of absolute divorce, splitting the proceeds, net proceeds, fifty/fifty."

Judge McCrone, then, explained the terms of the marital award. With respect to the $3,270,006 monetary award, the judge announced that "after thirty days, [he] would reduce [the monetary award] to a judgment if it's not paid." With respect to Mr. Howard's retirement accounts, Judge McCrone noted:

> So, I have the NFL 401K, which is $431,083.00, which I'm going to have divided fifty/fifty. So, fifty percent of that value would be conveyed to [Ms. Howard]. With respect to the NFL Capital Accumulation of $311,173.00, I'm going to order that that be divided fifty/fifty between the parties. So, fifty percent of that transferred to [Ms. Howard]. And what I would like to see done if possible is if those are retirement assets, if they can be transferred in a way that it would transfer to a retirement asset for [Ms. Howard] and would not create a taxable event.
>
> * * *
>
> And there is an NFL pension that I'm going to be expecting a QDRO, if, as and when. And I will say fifty/fifty if, as and when.

Mr. Howard asserts that Judge McCrone abused his discretion by granting Ms. Howard a monetary award of $3,270,006, because the judge should have considered that Mr. Howard had $2,600,000 in his investment accounts at the time of the marriage. By so arguing, Mr. Howard seeks to abrogate his recognition in the Joint 9-207 that the $2,600,000 became marital property after the marriage because of transactions in the accounts during the marriage and his stipulation that only $105,695.83, rather than $2,600,000, in the accounts could be traced back to non-marital shares.

Rule 9-207 provides that when a monetary award is requested, the parties shall file a joint statement listing all property owned by one or more of them as marital or non-marital or without agreement, and the asserted value of such property. Facts presented in the Joint 9-207 are "stipulations of fact by the parties through their counsel." *Brown v.*

Brown, 195 Md. App. 72, 104, 107 n.18 (2010) (citing *Beck v. Beck*, 112 Md. App. 197, 208 (1996), *cert. denied*, 344 Md. 717, *and* 345 Md. 456 (1997) (discussing "joint S74 Statements," predecessor to those envisioned in Rule 9-207)). Stipulations, whether made in the Joint 9-207 or in open court, are binding upon the parties. *Salisbury Beauty Schools v. State Bd. of Cosmetologists*, 268 Md. 32, 45-46 (1973) ("The actions of an attorney within the scope of his employment are binding upon his client under the ordinary principles of agency. This is particularly true concerning the stipulation of counsel in open court.").

In attempting to do an "end run" around his various stipulations, Mr. Howard asserts that he was "compelled to stipulate," because he was unable to satisfy the "source of funds" theory with respect to his Fidelity investment accounts that had recently been discussed by our Court in *Wasyluszko v. Wasyluszko*, 250 Md. App. 263 (2021).

In *Wasyluszko*, the "source of funds" theory was applied to investment accounts to determine whether any portion of Husband's accounts retained a non-marital character or whether commingling of the shares rendered the accounts marital. *Id.* Our Supreme Court earlier had adopted the "source of funds" theory in *Harper v. Harper*, 294 Md. 54, 80 (1982), by which, "a party seeking to demonstrate the non-marital nature of a particular property must 'trace the property to a non-marital source.'" *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003) (quoting *Noffsinger v. Noffsinger*, 95 Md. App. 265, 282, *cert. denied*, 331 Md. 197 (1993)). "[An] inability to trace property acquired during the marriage *directly* to a non-marital source simply means that all property so acquired was marital property." *Melrod v. Melrod*, 83 Md. App. 180, 187 (1990) (emphasis in original).

Before us and in trial, counsel for Mr. Howard acknowledged that he was unable to directly trace the $2,600,000 originally in his Fidelity accounts, because several stocks he had in 2014 no longer existed in 2022 and he had purchased and sold shares of stock during the course of the marriage:

> [Mr. Howard's Counsel]: So, what the Court of Special Appeals did in *Wasyluszko* is it looked at assets, asset by asset, stock by stock. And so, when we did that, a couple things were evident. First of all, the stocks that Mr. Howard had in 2014, a lot of them do not exist in 2022. And so, we weren't able to directly trace some of the stocks from 2014 to today because they don't exist. In addition, Mr. Howard purchased shares during the marriage and sold shares. Well, as *Wasyluszko* recognized, the minute you purchase additional shares and then sell shares, you can't tell if you're selling a marital stock or non-marital stock. So, what it does, it has the effect of making all of the – all of the stocks or most of the stocks marital property. And because you can't use the source of funds, if we did a source of funds, the value is 2.6 million at the time of marriage and it's 6 million now. It's something like forty percent. But the source of funds theory doesn't work. And so, for step one of the analysis, you know, the fact that these accounts he had in—the stocks he had in 2014 don't exist, it's just frustrating because you see this value of 2.6 shrink down to I think we stipulated maybe it's $100,000.

Clearly, there was no basis to declare the $2,600,000 originally in the investment accounts as non-marital because commingling during the marriage rendered tracing pursuant to the "source of funds" theory impossible.

Mr. Howard, however, asserts that *Alston v. Alston*, 331 Md. 496 (1993) permits an "end run" around the "source of funds" theory by reliance on factor eight of Section 8-205(b)(8) of the Family Law Article, "when and how marital property was acquired," which was relied upon in that case. In the case, Mr. Alston had purchased a winning lottery ticket, after he and his wife had separated, that was valued at over $1,000,000. *Id.* at 501. In calculating the monetary award, the trial court had divided all of the marital property

equally, including the lottery winnings. *Id.* at 503. On review, our Supreme Court held that the trial court had correctly characterized the lottery winnings as marital property, but "erred in awarding half of the lotto annuity to Mrs. Alston." *Id.* at 505, 509. Based upon the "peculiar circumstances of th[e] case," the *Alston* Court focused upon the eighth factor of Section 8-205 of the Family Law Article to render an equitable result. *Id.* at 509.

Alston, though, is inapplicable because of its unique facts that triggered the reliance on the eighth factor. In the present case, the "source of funds" theory, dictated in a long line of cases, was applicable but unavailing for Mr. Howard to separate property in his investment accounts as non-marital, and a post-hoc reference to factor eight cannot cure the comingling conundrum. Judge McCrone did not err.

Additionally, Mr. Howard points to the factors in Section 8-205(b) of the Family Law Article to argue that Judge McCrone erred by granting Ms. Howard 55% of Mr. Howard's non-retirement assets, given that the marriage was brief and that Mr. Howard was the sole monetary contributor. Judge McCrone, however, did consider both "the duration of the marriage" and "the contributions, monetary and nonmonetary, of each party to the well-being of the family," and he did not err.

Judge McCrone explicitly recognized the length of the marriage: "And there's no dispute that the parties have been married for about seven years, nine months. That they separated in June of 2020." The durational aspect is not dispositive of the amount of a marital award, but rather weighed in its equation. *See Alston*, 331 Md. at 507 ("The application and weighing of the [Section 8-205] factors is left to the discretion of the trial court."). Importantly, Judge McCrone recognized that, during the marriage, "[Ms. Howard]

did everything for – virtually everything for the kids when [Mr. Howard] was away, and he was away a lot during the football season or pre-season or even during the off-season when he was at workout facilities[.]"

Judge McCrone also recognized the monetary and nonmonetary contributions of both parties. As in many "traditional" marriages, one party earned the crux of the financial support, while the other spouse maintained the home and cared for the children. As was recognized in *Alston*, "[t]he history of the [Marital Property Act] indicates that the General Assembly was primarily concerned with achieving equity by reflecting non-monetary contributions to the acquisition of marital assets, and this principle should be a major consideration in a trial judge's analysis." 331 Md. at 506-07. *See also* Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-18 (7th ed. 2021) ("The thrust of the Marital Property Act is that [monetary contributions] are no more important in the overall picture than nonmonetary contributions."). The judge acknowledged that Mr. Howard "disproportionately contributed financially," but also commented that Ms. Howard "disproportionately" contributed "in terms of the children."

Mr. Howard then claims that Judge McCrone's "focus on the breakdown of the marriage" was the "precipitating factor" in the judge's decision to grant a monetary award to Ms. Howard and "had the effect of punishing" Mr. Howard for his role in the dissolution of the marriage. In support of his claim, Mr. Howard points to what Judge McCrone said in his oral ruling on the last day of trial:

> [Mr. Howard] does have a way of frightening people, which I'm not saying – you know, some of that is that he's a six foot seven and three hundred and

> forty-five pounds and I can't imagine it might be a little frightening to look up from the floor…
>
> I do think that something that did contribute rather significantly to the dissolution of the marriage was this—I don't know what to call it really – a tendency to solicit solacious photographs from different women…
>
> But you used the word bullying and that's, you know, it's probably the correct term. You know, you can only bully people so much before they have a little mental (indiscernible) for you and you can't get back to a loving relationship. But also spending $4,500.00 on the babysitter photos. I do find that the various things, you know, most of those things that were damaged in the house were a function of him punching and/or –and what is that for? What do you do that for? You do it because while you don't have to hurt somebody, you can still scare them into submission.
>
> And then you and your father came back up and the door was thrown open and you both start yelling at [Ms. Howard]. I find that may be a little bit revealing as to why you do the things you do if this is what your father does to your wife in his house. You know, that's outrageous that you would have him yelling at your wife in his house. I don't know where he gets off doing that.

Judge McCrone clearly was adhering to the statute relative to making findings about "the circumstances that contributed to the estrangement of the parties," pursuant to Section 8-205(b)(4) of the Family Law Article. His findings were supported by evidence in the record. He did not err.

Child Custody

The central consideration in every child custody case is the best interest of the child. *Ross v. Hoffman*, 280 Md. 172, 174-75 (1977). In determining the best interest of the child, we evaluate the factors laid out in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986), which include:

(1) Fitness of the parents;
(2) Character and reputation of the parties;

(3) Desire of the natural parents and agreements between the parties;
(4) Potentially maintaining natural family relations;
(5) Material opportunities affecting the future life of the child;
(6) Age, health, and sex of the child;
(7) Residences of parents and opportunities for visitation;
(8) Length of separation from the natural parents;
(9) Prior voluntary abandonment or surrender;
(10) Capacity of the parents to communicate and reach shared decisions affecting the child's welfare;
(11) Willingness of parents to share custody;
(12) Relationship established between the child and each parent;
(13) Preference of the child;
(14) Potential disruption of child's social and school life;
(15) Geographic proximity of parental homes;
(16) Demands of parental employment;
(17) Age and number of children;
(18) Sincerity of parents' request;
(19) Financial status of the parents;
(20) Impact on state and federal assistance; and
(21) Benefit to parents.

Sanders, 38 Md. App. at 420; *Taylor*, 306 Md. 304-11.

"[A]n appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007) (citing *Boswell v. Boswell*, 352 Md. 204, 224 (1998)). A trial court's findings are "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 627-28 (1996). An abuse of discretion occurs where "'no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

Judge McCrone made the following findings relative to custody and visitation:

- **The fitness of the parents.** “In terms of physical custody, parental fitness—I find that they’re both good parents, generally speaking. Not perfect.” “I think they’re both fit to share joint custody.”
- **The character and reputation of the parties.** “Character and reputation of the parties. You know, I’m hopeful that [Mr. Howard’s] going to take some steps to get himself squared away in terms of his temper. And [Ms. Howard’s] not to be bantering around accusations of criminal conduct until she’s absolutely certain she’s correct. But both parties generally enjoy, I think, positive reputations and good character.”
- **The requests of each parent and the sincerity of the requests.** “They are both sincere in their interest in having -- sharing -- well, they might want sole custody but they both want to be as involved as possible with their children.”
- **Willingness of the parents to share custody.** “I think they’re both fit to share joint custody. They both have strong relationships with the children.” “They are both sincere in their interest in having -- sharing -- well, they might want sole custody but they both want to be as involved as possible with their children.”
- **Each parent's ability to maintain the child's relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interest.** “I do think you both, when you are calm, that you support one another’s relationships with the children.” “Potentiality of maintaining natural family relations. It’s apparent to me that [Ms. Howard], in particular, wants to ensure that the kids remain very much involved with dad. I don’t know that I’d ever want to speak to [Mr. Howard’s] father again if I was [Ms. Howard] if he’s yelling at her there in Colorado. That’s kind of over the top and it begins to approach unforgiveable.”
- **The preference of the child, when the child is of sufficient age and capacity to form a rational judgment.** “In terms of preferences of the child, I don’t have any expressed preferences of the child, but it is clear that they may be appreciably more attached to [Ms. Howard] and maybe find shelter in [Ms. Howard’s] shadow.”
- **The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare.** “I do think it’s a case where I’ve seen that the parties can communicate very well at times and put their difference aside to provide the children with a happy occasion.” “In terms of the *Taylor v. Taylor*,[10] again, the parents, I think, will be able to communicate better than they have in the past.”

[10] *Taylor v. Taylor*, 306 Md. 290 (1986).

- **The geographic proximity of the parents' residences and opportunities for time with each parent.** “Again, the geographic proximity is obvious.” “Residence is, again, like fifteen minutes or miles apart.”
- **Material opportunities affecting the future life of the child.** “Material opportunities. I think the father has secured that for all three of his children with his success as a football player in the national football league and all the financial reward that that creates.”
- **Financial status of the parents.** “And thanks to [Mr. Howard], they have a financial wellbeing. That’s obvious.”
- **The demands of parental employment and opportunities for time with the child**. “Right now, neither one is working. They can devote themselves almost exclusively if they want to the children.”
- **The age, health, and sex of the child.** “Three children... Six years old, four years old and three [years] old.”
- **The relationship established between the child and each parent.** “They both have strong relationships with the children. The children may have, again, they may find some solace in [Ms. Howard’s] proximity, at least to [the eldest child].”
- **The length of the separation of the parents**. “And there’s no dispute that the parties have been married for about seven years, nine months. That they separated in June of 2020.”
- **Whether there was a prior voluntary abandonment or surrender of custody of the child. “**There’s been no real separation from the natural parents. No voluntary abandonment or surrender.”
- **The potential disruption of the child's social and school life. “**I don’t think joint custody would disrupt the child’s life.”

After a review of the relevant factors, Judge McCrone granted joint legal custody, with tie-breaking authority to Ms. Howard, and primary physical custody to Ms. Howard:

> And I don’t think the other criteria applies. So, I say joint custody, with tiebreaking authority to [Ms. Howard] because I think she had demonstrated a little bit of better judgment on a couple of these important issues.

Mr. Howard’s access was also defined:

> So, in terms of the access schedule, I'm going to say—I'm going to leave the schedule as is pursuant to the *Pendente Lite* Consent Order of I believe it was December 9th of 2020. Alternating weeks [Mr. Howard] had Wednesday, Thursday, Friday or Friday, Saturday, Sunday with alternating Tuesday dinners. And the holiday and summer schedule would remain as the parties have agreed. So, I believe that would be fair to say primary physical custody is with [Ms. Howard].

After Judge McCrone determined Mr. Howard's access, Ms. Howard's counsel offered a correction regarding the *Pendente Lite* Order that had provided Mr. Howard with overnights from Friday to Monday on alternating weeks, rather than Friday to Sunday. Mr. Howard's counsel then argued for the *Pendente Lite* schedule to be followed, "I'm confused by what you said. You said you were going to follow the PL Order as far as the schedule goes. So, the schedule is Wednesday to Friday morning and Friday to Monday morning," to which Judge McCrone responded, "well, I thought it was Friday until Sunday at 5:00pm." Judge McCrone, thereafter, clarified and announced, "I'm going Friday to Sunday at 5:00pm." When Ms. Howard asked that Mr. Howard's Tuesday dinners be eliminated, Judge McCrone asserted that "Tuesday stays."

Mr. Howard urges us to determine that Judge McCrone improperly decreased his access schedule agreed upon in the *Pendente Lite* Order, even though the court found him fit and proper. A *pendente lite* order, however, is a temporary measure that terminates once the court issues a final judgment of divorce. *Speropulos v. Speropulos*, 97 Md. App. 613, 617 (1993). A *pendente lite* order "is subject to modification during the pendency of the action, as current circumstances warrant, and it does *not* bind the court when it comes to fashioning the ultimate judgment." *Frase v. Barnhart*, 379 Md. 100, 111 (2003) (emphasis added).

Mr. Howard, nevertheless, argues that the judge found him fit and proper and did not provide any bases for the four overnight access every two weeks. The evidence adduced during trial supports Judge McCrone's access schedule, because Ms. Howard testified that the access schedule pursuant to the *Pendente Lite* Order was "not going well." She explained how Mr. Howard was not adhering to the children's sleep schedules, and that he had consistently been unable to get the children to their activities on time.

Child Support

In the Judgment of Absolute Divorce, Judge McCrone ordered Mr. Howard to pay $3,187 in monthly child support payments, which included a basic child support obligation of $1,928, as well as Mr. Howard's monthly share of the $1,092 private school tuition and $975 therapy expenses for the eldest child. Mr. Howard argues that Judge McCrone did not make any findings as to a "particular educational need" for the children to attend private school or the cost of therapy as an "extraordinary medical expense."[11]

On review, an appellate court "will not disturb the trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse or discretion." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002).

On the last day of trial, Judge McCrone adopted Ms. Howard's initial requested child support amount of $1,915 but asked that each party submit revised child support calculations to take into consideration his oral rulings. Ms. Howard submitted her

[11] Without citation to any authority, Mr. Howard urges vacating the child support award because no child support guidelines were attached to the Judgment of Absolute Divorce. Such a requirement does not exist.

proposed Judgment of Absolute Divorce which included a revised request for monthly child support payments of $3,187 by Mr. Howard, which included a basic child support obligation of $1,928, as well as a monthly contribution of $665 for private school tuition and $594 for therapy expenses by Mr. Howard, based upon the evidence adduced at trial.

Mr. Howard argues that Judge McCrone erred by including the cost of private school tuition in the child support award, because there was no evidence that the children had any "particular educational need" to continue private school education nor did the judge make such a finding.

Section 12-204(i) of the Family Law Article provides, in pertinent part:

> By agreement of the parties or by order of court, the following expenses incurred on behalf of a child may be divided between the parents in proportion to their adjusted actual incomes:
>
> (1) any expenses for attending a special or private elementary or secondary school to meet the particular educational needs of the child[.]

In *Witt v. Ristaino*, 118 Md. App. 155, 170-71 (1997), we announced a "non-exhaustive" list of factors for courts to consider when determining whether a child has a "particular educational need" to attend private school: (1) "the child's educational history," which should also contemplate "the child's need for stability and continuity during the difficult time of the parents' separation and divorce;" (2) "the child's performance while in the private school;" (3) "family history," including "whether there are other family members currently attending the school;" (4) "whether the parents had made the choice to send the child to the school prior to their divorce," explaining that "[c]onsideration…should be given to the prior decision and choice of the parents to send the children to a private

institution as the intent of the parties before the separation is instructive;" (5) "any particular factor that may exist in a specific case that might impact upon the child's best interests;" and (6) "the parents' ability to pay for the schooling." The *Witt* Court noted that the factors should be evaluated on a "case-by-case basis, taking into consideration the best interests of the child[.]" *Id*. at 169-70.

The facts of every case dictate which *Witt* factors will be dispositive. *Ruiz v. Kinoshita*, 239 Md. App. 395, 430-32 (2018). In *Ruiz*, a divorce case concerning private school for children aged 5 and 7, we held that a court may include private school tuition in the child support calculation, despite not stating the *Witt* factors explicitly, when the record revealed that the court "heard evidence and considered several relevant factors relating to the children's enrollment in private school—most notably the parents' consent agreement to continue with private school and their ability to pay." *Id.* at 431-32.

Clearly, not all of the *Witt* factors are applicable when the minor children are only 6, 4, and 3. In the present case, Mr. and Ms. Howard both testified that they had agreed to enroll their two oldest children at Mount Airy Christian Academy during the marriage prior to separation and had not reconsidered their decision. They each also testified that the eldest child, who was six at trial, had attended the private school since the Fall of 2020 and was in first grade, and that the middle child, age four at the time of trial, had just started attending the school and was in pre-kindergarten. Each parent testified that the children were doing well academically. There was no dispute as to the parties' ability to continue paying the tuition. Accordingly, there was sufficient evidence from the record to find a

"particularized educational need," under the statute and *Witt*, for the two children to continue their private school education. Judge McCrone did not err.

Mr. Howard urges that Judge McCrone erred by including the cost of therapy for the oldest child in the child support payments. He alleges that Judge McCrone failed to make any findings as to whether the therapy would qualify as an "extraordinary medical expense" under Section 12-204(h)(2) of the Family Law Article, and that the costs were speculative because they had not yet been incurred. (Appellant Br. 32).

Section 12-204(h)(2) of the Family Law Article provides for a division of "extraordinary medical expenses":

> Any extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes.

"Extraordinary medical expenses" are defined in Section 12-201(g) of the Family Law Article:

> (1) "Extraordinary medical expenses" means uninsured costs for medical treatment in excess of $250 in any calendar year.
>
> (2) "Extraordinary medical expenses" includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, vision care, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for any diagnosed mental disorders.

Clearly, "professional counseling" or play therapy are "extraordinary medical expenses." In so far as to whether the expenses had to have been incurred already, we refer to *Horsley v. Radisi*, 132 Md. App. 1 (2000). In *Horsley*, we considered "anticipated" orthodontic expenses for braces. *Id.* at 16, 30. At trial, the minor child's orthodontist

testified that she "could not predict an exact time" when the child would be ready for braces, but that it was likely to be in the next year or two, and the trial judge found that, "the anticipated orthodontic payment was not certain, but anticipated to be about $100 per month" and ordered the parties to pay the cost of the orthodontic care "if and when that becomes necessary, in proportion to their actual income." *Id.* at 13, 16-18. Because the treatment was "relatively imminent," the future uninsured orthodontic expenses were appropriate.

The same result inures on the present case. While the oldest child was not yet in therapy, the testimony adduced at trial supported the "immediate" [12] need for counseling for her and the $975 total monthly cost of therapy. Judge McCrone did not err.

Mr. Howard then contends that Judge McCrone erred by ordering Mr. Howard to pay half the $5,980 monthly mortgage of the marital home during Ms. Howard's three-year use and possession period, in addition to monthly child support.

Under Section 8-208(a) of the Family Law Article, a court may grant use and possession of the marital home to either of the parties, and under Section 8-208(c) of the Family Law Article:

> The court may order or decree that either or both of the parties pay all of any part of:
>
> (1) any mortgage payments or rent;
> (2) any indebtedness that is related to the property;

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[12] Judge McCrone's Judgement of Absolute divorce stated:

> ORDERED, that [Ms. Howard] shall be and is hereby authorized to immediately enroll [the eldest child] in therapy and/or mental health counseling after discussing the selection of a counselor with [Mr. Howard].

> (3) the cost of maintenance, insurance, assessments, and taxes; or
> (4) any similar expenses in connection with the property.

See also Knott v. Knott, 146 Md. App. 232, 250 (2002) ("[I]n addition to any order that the noncustodial parent pay direct child support payments, the trial court may order one or both parents to contribute to the mortgage on the family home, insurance, and taxes."). Thus, it was within Judge McCrone's discretion to order Mr. Howard to pay all or any part of the mortgage of the marital home during Ms. Howard's use and possession period.

CONCLUSION

In conclusion, we hold that the trial judge did not err by denying Mr. Howard's motion to take additional evidence, granting Ms. Howard a monetary award in the amount of $3,270,006, establishing the child access schedule, and ordering Mr. Howard to pay half of the $5,980 monthly mortgage on the marital home during Ms. Howard's three-year use and possession period, in addition to the $3,187 monthly child support payments, which appropriately included private school tuition and therapy expenses.

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