Circuit Court for Anne Arundel County
Case No. C-02-FM-15-004500

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 835

September Term, 2021

STEVEN MARTINEZ

v.

ISABEL GALVEZ LOPEZ

Reed,
Zic,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 7, 2023

*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.

This case, before us for the second time, concerns the calculation of a former spouse's share of a United States military pension. On November 22, 2016, the Circuit Court for Anne Arundel County granted the parties—Steven Martinez, appellee and cross appellant, and Isabel Galvez Lopez, appellant and cross appellee—an absolute divorce. Among other rulings, the court awarded Lopez a marital share of Martinez's military pension. Years of litigation followed, but it is not necessary to provide that history here because the pertinent facts and procedural background were set forth in detail in our prior unreported opinion, *Lopez v. Martinez*, No. 760, Sept. Term 2019 (filed June 18, 2020), 2020 WL 3318309, *cert. denied*, 471 Md. 122 (2020) (hereafter referred to as "*Lopez*").[1] After considering that appeal, we remanded the case to the circuit court for further proceedings relative to the computation of the amount of retirement benefit Martinez is required to pay to Lopez.

On remand, after soliciting further briefing from the parties and conducting a hearing, the circuit court issued an amended order in which it ordered Martinez to pay Lopez a portion of his retirement benefits at the rate of $222.85 per month.

Both parties filed motions to alter or amend the court's ruling. After both motions were denied, Lopez filed a notice of appeal, and thereafter, Martinez also filed a notice of appeal. *See* Maryland Rule 8-202(e) ("If one party files a timely notice of appeal, any other

[1] *Lopez* was filed before the November 8, 2022 general election at which the name of this Court was changed from the Court of Special Appeals to the Appellate Court of Maryland. For clarity, we will refer to this Court with the name it had at that time, i.e., the Court of Special Appeals.

party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.").

ISSUES PRESENTED

In this appeal, both parties are proceeding in proper person, and each filed an informal brief pursuant to Maryland Rule 8-502(a)(9).

In Lopez's informal brief, she presents the following eight issues:

> I. Whether the circuit court erred in making a NDAA 2017 retired pay award calculation;
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> II. Whether the circuit court erred or abused its discretion on establishing an effective date of divorce of November 22, 2016 and a High 36 as of November 16, 2016 to effectuate an accurate NDAA 2017 calculation;
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> III. Whether the circuit court erred on establishing that the retired pay base is $1,382.29 and erred on using a reduced retired pay multiplier;
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> IV. Whether the circuit court erred or abused its discretion on not adding properly the COLAs (Cost of Living Adjustments) Lopez is entitled to by federal law;
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> V. Whether the circuit court erred or abused its discretion by acting with favoritism and preference towards Martinez by establishing unreasonable conditions and putting untenable financial burden on Lopez in order to start receiving her pension share payments;
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> VI. Whether the circuit court erred and/or abused its discretion by ordering again Lopez bear the sole cost and expense of preparation of a Qualified pension order;
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> VII. Whether the circuit court erred or abused its discretion by avoiding to state with clarity and specification the proper wording required to make the military pension order, qualified; and,
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> VIII. Whether the circuit court and the Court of Special Appeals erred and/or abused its discretion by considering the SBP (Survivor's Benefit Plan) award can just be excluded, going contrary to the law of the In Banc review opinion, blatantly ignoring an order of a superior hierarchy.

In Martinez's informal brief, he presents the following three issues:

> I. Whether the circuit court erred by not using its discretion pursuant to the Court of Special Appeals' unreported opinion on remand to make necessary findings, clarify any discrepancies for the record, reconsideration of award, and revision as may be necessary;
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> II. Whether the circuit court erred in issuing an unenforceable order and in denying Martinez's motion to alter or amend;
>
> III. Whether the circuit court erred in determining entitlement and calculations when granting military pension division payments.

For the reasons set forth herein, after correcting the amount of Lopez's monthly share in Martinez's military pension benefit to $211.09, we shall affirm the judgment of the circuit court.

BACKGROUND

A. Previous appeal

In our previous consideration of this case, we noted that several of the issues (that include some that the parties again contest in this appeal) had been resolved by rulings as to which no timely appeal had been taken. The parties were married on February 9, 2011, and a judgment of absolute divorce was entered by the Circuit Court for Anne Arundel County on November 22, 2016. For the entire five years and nine months they were married, Martinez served in the Navy on active duty. The trial judge found that Martinez elected to receive a career status bonus under 37 U.S.C. § 354, that he had received a bonus of $30,000, and that the net amount received "was spent for reasonable living and marital expenses during the course of the marriage." *Lopez*, at 26 n.3. Although the date of the

divorce was November 22, 2016, and, even though a change in the law that resulted from the enactment of the National Defense Authorization Act for Fiscal Year 2017 ("NDAA 2017") on December 23, 2016 was arguably inapplicable, Lopez did not file a timely appeal when the circuit court ordered that the NDAA 2017 was controlling; consequently, we held that that ruling is not subject to further relitigating. *Lopez*, at 23-24. The circuit court rejected Martinez's argument that the court should award Lopez less than 50% of the marital portion of his retirement benefit. And the circuit court also rejected Lopez's argument that Martinez should be compelled to elect "former spouse coverage" for her under the Survivor Benefit Plan. Both parties conceded that, if NDAA 2017 applied, the method for calculating Lopez's share of Martinez's pension was the career status bonus/reduction ("CSB/Redux") formula set forth in 10 U.S.C. § 1409(a) and (b).[2]

[2] The CSB/Redux formula is set forth in 10 U.S.C. § 1409(a) and (b), which provide:

> **(a) Retired pay multiplier for regular-service non-disability retirement.** – In computing –
>
> **(1)** the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than –
>
> **(A)** chapter 61 of this title (relating to retirement or separation for physical disability); or
>
> **(B)** chapter 1223 of this title (relating to retirement for non-regular service); or
>
> **(2)** the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title, the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).
>
> **(b) Percentage**. –
>
> **(1) General rule**. – Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of –
>
> **(A)** 2 ½, and

(continued…)

Pursuant to the analysis set forth in *Fulgium v. Fulgium*, 240 Md. App. 269 (2019), we remanded the case for the circuit court to apply the formulas mandated by the NDAA 2017, and we pointed to certain variables the court would need to clarify in the course of applying the formulas. *Lopez,* at 24-30.

In addition, we commented on Lopez's contention that the circuit court should have accounted for annual cost of living adjustments ("COLAs"). As guidance to the circuit court, we examined a Department of Defense Financial Management Regulation that suggested that COLA adjustments would be determined by the Department of Defense without regard to whether a court issued a retired pay award as a fixed dollar amount or as a percentage of disposable retired pay. *Id.* at 30. Relying on a statement in the regulation that provided, "[i]n an NDAA applicable case, COLAs will be added to the disposable income calculation on all awards regardless of what the court order states," we concluded

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> **(B)** the member's years of creditable service (as defined in subsection (c)).
>
> **(2) Reduction applicable to certain new-retirement members with less than 30 years of service.** – In the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by –
>
> **(A)** 1 percentage point for each full year that the member's years of creditable service are less than 30; and
>
> **(B)** 1/12 of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

10 U.S.C § 1409 (eff. Jan. 31, 2018-Jan. 31, 2019).

that the circuit court "need not expressly address COLAs in an NDAA applicable case[,]" and that the circuit court did not err in declining "to provide for COLAs in its order" awarding Lopez's share of Martinez's retired pay award. *Id.* at 31-32.[3]

Finally, we recognized that there was information in the record to suggest that Martinez had transferred to the Fleet Reserve effective December 29, 2018, after the date of the divorce, and that he had begun receiving retired pay in the amount of $1,954.00/month in January 2019. *Id.* at 32. The circuit court, however, had not made any findings "about the date of Martinez's transfer to the Fleet Reserve and his receipt of retirement pay[.]" *Id.* Nevertheless, the circuit court ordered that Lopez's award would begin when Martinez retired from the Reserves and was receiving his full military retired pay. *Id*. We stated that "[a]s far as we can see, the applicable regulations do not distinguish between 'full military pay' and partial retirement payments." *Id.* We noted that Department of Defense regulations appeared to permit a retiree's former spouse to apply for payments any time after the court has issued a court order enforceable under the Uniformed Services Former Spouses' Protection Act ("USFSPA"). *Id.* We also noted that, according to the Department of Defense regulations we cited, a former spouse may submit an application to the Defense Finance Accounting Service ("DFAS") for former spouse payments from retired pay even before the service member begins to receive his or her retired pay. For those reasons, we concluded that the circuit court should not have included language in its

[3] As we will explain in this opinion, our conclusion that, under the quoted regulation, the Department of Defense would add COLAs "regardless of what the court order states" overlooked other language in that same regulation that states "[i]f the retired pay award is a fixed amount, COLAs cannot be added . . . ." *Lopez*, at 31.

order delaying Lopez's award until Martinez retired from the Reserves and was receiving his full military retired pay. *Id.* at 32-33.[4]

We also noted that certain variables needed to calculate Lopez's award were "not expressly addressed by the court" including the duration of the parties' marriage, the percentage of Martinez's pay that was awarded to Lopez, Martinez's years of creditable service, his retired base pay amount, and his retirement date. *Id.* at 25. We suggested that on remand the court may find it appropriate to use the CSB/Redux formula set forth in 10 U.S.C. § 1409(a) and (b), and we provided an example of how the formula might be used, "subject to modification corresponding to the circuit court's findings with respect to the variables" we had mentioned. *Id.* at 27. We remanded the case because we were unable to discern from the record the calculations used by the circuit court to arrive at the award it had made. *Id.* at 25-26. We stated: "Because we are unable to discern from the record the calculations utilized by the circuit court to arrive at the number in its order of April 12, 2019, we shall remand this case for reconsideration of that award, and revision as may be necessary." *Id*. at 29-30.

[4] As we will discuss more fully herein, our opinion in *Lopez* did not take into account the applicability of the "10/10 rule," which forecloses direct payments to the former spouse in the case of a retiree who, like Martinez, had not been married to the former spouse for at least ten years. The "10/10 rule" requires that, for a division of disposable retired pay as a marital property award to be eligible for direct payment from DFAS under USFSPA, the former spouse must have been married to the service member for a period of ten years or more during which the service member performed at least ten years of service creditable toward retirement eligibility. 10 U.S.C. § 1408(d)(2). There is nothing in the statute that divests the state court of its authority to divide disposable retired pay, but only the ability of the former spouse to receive direct payments from a retired pay center such as DFAS.

We also addressed Lopez's claim that she was entitled to an award under the military's Survivor Benefit Plan. We acknowledged that Lopez had requested that benefit in the circuit court, but, after the court failed to grant her request, she failed to challenge that decision in a timely manner. We held that:

> Lopez's requests for participation in the Survivor Benefit Plan had been denied by being excluded from every revised judgment of divorce entered by the circuit court after the remand from the in banc panel. Lopez cannot now challenge the court's February 12, 2019 ruling and pursue the relief she seeks with respect to survivor benefits in this appeal.

Id. at 22.

B. On Remand

On remand, the circuit court ordered each party to file a memorandum "detailing which method of calculation/formula should be used in calculating [Lopez's] monthly amount of pension benefits and the basis for the selected method." In his memorandum, Martinez, who was proceeding in proper person, stated that he believed that the CSB/Redux formula should be used. Without citing any authority, Martinez argued that, because the amount previously ordered by the court was "a fixed amount based on NDAA 2017 and is not a percentage or hypothetical amount[,]" "no adjustments should be made that result in an increase of future benefits." Martinez further argued that the court should consider awarding Lopez "a lesser amount based on date of separation or as deemed appropriate" because, he asserted, Lopez did not make monetary contributions to the marriage, the marriage was short, the parties were separated for long periods of time "for legitimate reasons," Lopez's non-monetary contributions were rather minimal or nominal, and there was documentation of physical abuse.

Martinez asserted in his memorandum that his High-3 was $4,242.30.[5] But, in support of that assertion, Martinez attached an exhibit that he claimed set forth his retired base pay and other supporting information needed to determine his High-3. That exhibit indicated in two locations that Martinez's High-3 was "$4,265.17." (This was the figure that was later adopted by the circuit court.) Martinez also included in his memorandum his proposed calculation under the CSB/Redux formula, and he argued that Lopez should be awarded $152.24 per month as her share of his pension benefits.

In Lopez's memorandum, she argued that an evidentiary hearing was required to establish certain variables necessary to calculate her portion of Martinez's retired pay, including Martinez's current retirement status, his retired pay, his High-3 based on the actual date of divorce, and when the pension payments were to begin so as to determine arrearages owed to her. She asserted that there was insufficient evidence, including insufficient pay statements from Martinez, to support a calculation of Martinez's High-3. Lopez also argued that, because we focused in our unreported opinion on the circuit court's amended order filed August 30, 2018, *that* date should be deemed to be the date of the

[5] To compute a service member's retirement benefit, the service member's history of compensation is reviewed to determine the "High-3." We explained in *Fulgium*, 240 Md. App. at 290:

> Section 1407 of the USFSPA . . . provides that a member's retired pay base "is the person's high-three average," which is "the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by . . . 36." § 1407(c)(1)(A)-(B).

(Footnote omitted.)

judgment of divorce and should be utilized in the formulas to increase the length of the marriage and correspondingly increase her share of Martinez's retirement benefit.

Lopez asserted that the court should make a hypothetical retired pay award to be calculated pursuant to Department of Defense Financial Management Regulations 7000.14-R ("DoD Regs") ¶ 290213 and DoD Regs ¶ 290608(C). She contended that both formula and hypothetical retired pay awards are considered a type of percentage award and will "automatically include a proportionate share of a member's COLAs" if the order is "submitted to DFAS for direct payment[.]" She conceded, however, that the 10/10 rule disqualified the parties in this case from direct payment from DFAS, but she argued that the court should nevertheless add the COLAs once the hypothetical award was reduced to a fixed amount.

C. June 28, 2021 Hearing

At a hearing held on June 28, 2021, before the judge who had entered the orders we had reviewed in *Lopez* relative to the retirement benefit, the court and parties discussed the issues to be resolved on remand. The judge stated that he had read the parties' memoranda and the prior unreported opinion from this Court (i.e., *Lopez*), and then commented:

> The only thing for me to do today is to implement the recommendations that the Court of Special Appeals has made.

When counsel for Lopez was asked if he agreed, he responded: "Mostly[.]" He acknowledged that the Court of Special Appeals applied the formula "mostly correctly[,]" but noted that this Court had questions about certain variables such as the date of divorce. The trial judge rejected Lopez's argument that there was any ambiguity about the date of

divorce, and asserted that November 22, 2016, was the correct date. Counsel then reviewed the CSB/Redux formula discussed in the appellate opinion.

In response, Martinez, representing himself, stated that he objected to some of the calculations that appear in the opinion in *Lopez*, and he requested an opportunity to place his arguments on the record. Martinez challenged the statement in our unreported opinion that, as far as we could see, Lopez could apply for her share of Martinez's retirement pay any time after the trial court issued an order enforceable under USFSPA. Martinez argued that this Court failed to consider the fact that the "10/10 rule" does not permit direct payment in the parties' case.[6]

[6] Martinez is correct that this Court did not address the "10/10 rule" in *Lopez*. As this Court explained in *Fulgium*, Lopez and Martinez are not eligible for direct payment because their marriage was for fewer than ten years. We stated in *Fulgium:*

> The USFSPA provides that, under certain circumstances, the nonmilitary spouse may obtain his or her share of disposable retired pay directly from the federal government, i.e., the Defense Finance and Accounting Service ("DFAS"). 10 U.S.C. § 1408(d)(1). To be eligible for direct payment, there must be a court order, incident to a final decree of divorce or legal separation, providing for the payment of an amount of the disposable retired pay. § 1408(a)(2) & (d)(1); *accord* CRS Report, 2. After service on the Secretary of such an order, "the Secretary shall make payments (subject to the limitations of [§ 1408]) from the disposable retired pay ... to the spouse or former spouse." *Id*.
>
> **One of the limitations on direct payment is that it is available only when the service member performed ten or more years of creditable military service while married to his or her spouse.** 10 U.S.C. § 1408(d)(2). *See Mansell* [*v. Mansell*, 490 U.S. 581, 585 (1989)]. *Accord Dziamko* [*v. Chuhaj*, 193 Md. App. 98, 119 (2010)] (direct payment of military pension not possible where parties married only seven years).

Fulgium, 240 Md. App. at 282-83 (emphasis added).

Martinez also complained that Lopez had not paid the sum of money that the court had ordered her to pay to him, that he would be required to pay Lopez directly, that the marriage had been of short duration, that Lopez made "little to no contribution during the marriage," and that she had been "heavily compensated already during the time of separation." Martinez stated that he had "always maintained that [her share of his retirement benefit] should be a less amount or no amount at all." He asked the court to consider that Lopez would be "receiving a lifetime benefit" that was "unprecedented," and that she was "completely disqualified from" receiving under USFSPA.

As noted above, however, in Martinez's written submission on remand, he asserted that his High-3 was $4,242.30 (though his supporting exhibit said his High-3 was $4,265.17), and he included in his memorandum his proposed calculation under the CSB/Redux formula, which led him to argue that Lopez's share of his retirement benefit should be no more than $152.24 per month.

On July 2, 2021, the court docketed an order amending the provisions of its Orders that had been docketed on April 12, 2019 and May 28, 2019, relevant to the parties' respective payment obligations, and stating in pertinent part:

> Pursuant to an Order of the Court of Special Appeals remanding the above-captioned matter to the trial Court to make necessary findings and clarify any discrepancies regarding the method of calculation of the Defendant's (former spouse's) retired pay award and after a hearing, the Orders docketed on April 12, 2019 and May 28, 2019 are hereby modified as follows:
>
> ORDERED, that the following facts appear from the record as delineated by the Court of Special Appeals:
>
> 1. The date of divorce is November 22, 2016;
> 2. The parties were married for 69 months;

3. The plaintiff (husband) has 214 months of creditable service (17 years; 10 months);

4. The plaintiff (husband) high 3 years of salary is: $4,265.17;

5. The plaintiff (husband) retired base pay is: $1,382.29;

6. The Court is not required to make a Cost-of-Living Adjustment as the Court of Special Appeals points out that ". . . a former spouse will automatically receive a proportionate share of the member's COLAs on all NDAA applicable cases . . ."

7. Survivor Benefits. The Defendant (wife) is not entitled to participation in the Survivor Benefit plan as the Court of Special Appeals Points out " . . . as Lopez's requests for participation in the Survivor Benefit Plan had been denied by being excluded from every revised judgement [sic] of divorce entered by the circuit court after remand from the in banc panel"; and it is further,

ORDERED, that the Court finds that the proper method of calculating the Defendant's retired pay award is the CSB/REDUX method set forth in 10 U.S.C. § 1409; and it is further,

ORDERED, that the Defendant's retired monthly pay award is hereby $222.85 in accordance with the formulas set forth in 10 U.S.C. § 1409 (See Court of Special Appeal's calculation on page 28 and 29) and as follows:

a. Retired Pay Award = (([Months of parties' marriage]/[Plaintiff's total months of creditable service at the time of the parties' divorce]) x (retired pay base)) x [percentage of Defendant's share]

b. ((69/214) x $1382.29) x 50% = $222.85; and it is further,

ORDERED, the defendant's (wife) award will not begin until she satisfies the $1,565.83 judgement [sic] against the defendant in favor of the plaintiff and it is further,

ORDERED, that the Defendant (wife) shall bear the sole cost and expense of preparation of the Qualified Domestic Relations Order (QDRO) and be responsible for submitting it to this Court[.]

Both parties filed, in proper person, motions to alter or amend the judgment. The court denied both motions to alter or amend. This appeal and cross appeal followed.

STANDARD OF REVIEW

When we review rulings made by a circuit court sitting without a jury, we "review the case on both the law and the evidence." Md. Rule 8-131(c). But we "will not set aside the judgment of the trial court on the evidence unless clearly erroneous," and we "will give

due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* "A trial court's findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings[.]'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (alteration in original) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). '"When a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court."' *Id*. at 569 (quoting *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 475 (2019)).

DISCUSSION

A. LOPEZ'S ARGUMENTS ON APPEAL

I.

As we ruled in our prior opinion in *Lopez*, Lopez's claim that the circuit court erred in utilizing NDAA 2017 because the date of divorce preceded its effective date was not timely raised by noting an appeal after the circuit court first ruled, on August 30, 2018, that NDAA 2017 would apply instead of the *Bangs* formula. *See Bangs v. Bangs*, 59 Md. App. 350, 356 (1984). Consequently, the applicability of NDAA 2017 is no longer open to question on appeal. *See also Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (2002) ("Once an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings.").

II.

Lopez next contends that the circuit court erred in using November 22, 2016, as the date of the parties' divorce. As we stated in our prior unreported opinion, the parties were granted an absolute divorce via an order entered on November 22, 2016. *Lopez*, at 1. That

date was never challenged in any of the appeals that followed (prior to this one), and is not a matter open to further litigation. Although amendments were subsequently made with respect to other issues, including the division of marital property, the date of the judgment of absolute divorce was never changed. We will not change it at this point.

III.

Lopez challenges the circuit court's determination that Martinez's retired base pay is $1,382.29. She maintains that the High-3, which the court found to be $4,265.17, and the retired base pay should be the same amount. She further argues that the High-3 cannot be calculated as of November 22, 2016, because that date preceded the effective date of NDAA 2017. For the reasons already stated, it was determined in the circuit court's judgment entered August 30, 2018—as to which no appeal was taken, *see Lopez*, at 8-11—that, for the purpose of dividing the military pension in this case, NDAA 2017 applies and, therefore, the High-3 may be calculated using the divorce date of November 22, 2016, for the purpose of calculating Martinez's hypothetical frozen benefit as of that date. And it appears to us that the court appropriately utilized the High-3 figure of $4,265.17 in the calculation of the share awarded to Lopez.

Lopez also contends that the court should have utilized a "hypothetical pay award" formula to calculate her share of Martinez's military pension. As we noted in our prior unreported opinion, however, in her initial brief in that earlier appeal, Lopez agreed that if NDAA 2017 applied in this case then the CSB/Redux method set forth in 10 U.S.C. § 1409 should apply. *Lopez*, at 26. The rationale for utilizing the CSB/Redux formula is that Martinez already received a $30,000 career status bonus pursuant to 37 U.S.C. § 354, and

the trial judge expressly found that this money was received *during* the parties' marriage *and* "it was spent for reasonable living and marital expenses during the course of the marriage." *Id.* at 26 n.3.

Martinez also agreed in the earlier appeal that the CSB/Redux formula should be applied. Accordingly, the parties acquiesced in the use of the CSB/Redux method, and at this point, its application is no longer open to question. *In re Nicole B.*, 410 Md. 33, 64 (2009) ("[A] party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order."). *See also Franzen v. Dubinok*, 290 Md. 65, 69 (1981) ("[A] voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.").

IV.

Lopez argues that the circuit court erred in failing to award her a proportionate share of Martinez's COLAs. She argues that, because the 10/10 rule prevents her from receiving her share of Martinez's retirement pay directly from DFAS, she will not automatically receive a proportionate share of Martinez's COLAs as we incorrectly suggested in our prior opinion (and as the circuit court alluded to in its order on remand).

As to the 10/10 rule precluding direct payment, Lopez is correct. In our prior opinion, we addressed the award of COLAs under NDAA 2017 without consideration of the impact of the 10/10 rule. Nevertheless, on remand, Lopez apprised the circuit court that the 10/10 rule precluded her from applying for direct payment, and she asked the court to add COLAs to the amount it awarded her. As the party asking the court to award her a

future increase in the award of Martinez's retirement benefit, Lopez bore the burden of persuading the court to fashion a cost of living adjustment that would apply in future years. *See Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993) ("The party who asserts a marital property interest bears the burden of producing evidence of the identity and value of the property.").

On remand, both parties apprised the circuit court that the 10/10 rule precluded Lopez from receiving direct payment from DFAS of any share of Martinez's retirement benefit. We agree that the fact that the parties' marriage endured for less than ten years means that the 10/10 rule is applicable. As a consequence, the court cannot order DFAS to pay any portion of Martinez's retirement benefit to Lopez.

Further, as Martinez pointed out on remand, other language in the regulations regarding COLAs, quoted by this Court in *Lopez*, at 30, appears to preclude the addition of COLAs even if the 10/10 rule does not preclude direct payments from DFAS.

The regulation we quoted in *Lopez* states, in pertinent part:

> A retired pay award expressed as a percentage will automatically receive a proportionate share of the member's cost-of-living adjustments (COLA), while one expressed as a fixed amount will not. **There is no authority for a retired pay award to state a fixed dollar amount and also order COLAs.** Retired pay awards phrased in that manner will be construed as a fixed dollar amount.

Id. at 30 (emphasis added) (quoting Department of Defense Financial Management Regulations 7000.14-R ("DoD Regs") ¶ 290601).

The circuit court awarded Lopez a fixed dollar amount of Martinez's pension in this case, both in the order of April 22, 2019 (*see id.* at 12) and again in its order on remand.

Accordingly, we conclude the court did not err in failing to order that the fixed dollar amount of Martinez's pension benefit would be increased by COLAs.

V.

Lopez asserts that the circuit court could have avoided application of the 10/10 rule by "simply calling" the retired pay award alimony. We disagree. In the November 22, 2016 judgment of absolute divorce, the circuit court specifically denied Lopez's requests for rehabilitative and indefinite alimony, and the only issue relative to the parties' divorce that remained to be resolved upon remand is the division of Martinez's military retirement benefits.

Lopez also argues that she was not permitted to virtually attend the June 28, 2021 hearing via Zoom, and she asserts that she was left "waiting confused[.]" This issue is not preserved because the record reveals that Lopez was represented by counsel who appeared in person at the June 28 hearing, and at the start of the hearing, her counsel specifically indicated to the court that he could communicate with Lopez.

Lopez contends that the circuit court acted "with favoritism and preference" toward Martinez, established "unreasonable conditions[,]" and placed an "untenable financial burden" on her. None of these issues are properly before us because Lopez did not raise them in the circuit court. Md. Rule 8-131(a).

VI. & VII.

In its July 2, 2021 amended order, the circuit court ordered that Lopez would bear the cost and expense of preparing a Qualified Domestic Relations Order ("QDRO") and be responsible for submitting it to the court. Lopez argues that the court erred or abused its

discretion in assigning to her the full cost and expense of preparing the QDRO. In light of Lopez's recognition that the 10/10 rule precludes a state court from directing a federal agency to make a direct payment to her of a portion of Martinez's retirement benefits, this issue is moot.

VIII.

Finally, Lopez contends that the issue of survivor benefits "still remains as a pending matter to be resolved." We disagree. This issue was addressed in our unreported opinion in *Lopez*, where we pointed out that, although the circuit court had at one point included language relative to an award of survivor benefits, two orders entered after remand from the in banc appeal omitted any reference to survivor benefits. (This Court observed in *Potts v. Potts*, 142 Md. App. 448, 462 (2002): "The decision to award survivor benefits is within the sound discretion of the trial court.") Lopez filed a motion to revise the court's August 30, 2018 order, asking, among other things, that the court add language that would require Martinez to elect "former spouse coverage" under the Survivor Benefit Plan. That request was denied, and, as we noted in our unreported opinion, Lopez did not appeal that ruling within 30 days. As a result, "Lopez's requests for participation in the Survivor Benefit Plan had been denied by being excluded from every revised judgment of divorce entered by the circuit court after the remand from the in banc panel." *Lopez*, at 22. As we have explained with respect to other issues addressed in *Lopez*, that ruling is now the law of the case and not subject to further consideration.

B. MARTINEZ'S ARGUMENTS ON APPEAL

Martinez raises three "issues" in his "informal brief." 1) He contends the circuit court did not exercise any discretion with respect to the calculation of the amount of retirement benefit to be paid to Lopez and simply adopted the illustrative example set forth in *Lopez* without considering any of the variables mentioned in our opinion. 2) He asserts that, because of the 10/10 rule—that was not addressed in this Court's previous opinion—the order entered by the circuit court is not enforceable through DFAS. 3) He asserts that the court should have granted *no* portion of his retirement benefit to Lopez (either because she had committed a disqualifying act of physical abuse against Martinez, or because she simply does not deserve any portion due to her lack of contributions to their short marriage), or in the alternative, the amount should be a lesser amount because the court used an incorrect multiplier and did not make clear that COLAs would not apply. In his request for relief, he asks that we either order that Lopez is denied any share of his military retired pay, or, in the alternative, remand the case to the circuit court for it to once again calculate the award, or, as a second alternative, set the amount of "monthly pension benefit award" at $164, with no COLAs, with payments to begin once Martinez is receiving his full retired pay at age 62.

Considering the third issue first: for the same reasons that we have declined to reconsider some of the issues raised by Lopez—namely, that the issues have already been conclusively decided in the prior litigation and appeal—we will not consider Martinez's arguments as to why Lopez should receive no portion of his retired pay.

But, with respect to the second issue, we agree—as do the parties at this point—that the 10/10 rule precludes enforcement of any award through DFAS. We reject, however, Martinez's assertion that the 10/10 rule supports his argument that no award is permitted. As the Court stated in *Fulgium*, 240 Md. App. at 283, the 10/10 rule in 10 U.S.C. § 1408(d)(2) is a limitation upon eligibility for direct payment from DFAS. It is not a limitation that prohibits any order to share a retirement benefit that is a marital asset.

With respect to Martinez's first issue and his contention that the court failed to exercise any discretion on remand, it is true that, during a hearing to consider the parties' respective arguments after remand, the court indicated, incorrectly, that our unreported opinion in *Lopez* left nothing for the court to adjudicate. The court also told the parties: "I don't have any discretion to rule on this matter, as if it were first coming before me. That had already been done by judges in the past, and including myself, all of which was before the Court of Special Appeals."

But, despite telling the parties orally that the court had no discretion, when the court issued its written order—which is the judgment we are reviewing on appeal—it prefaced the ruling with a clear acknowledgement that it understood the task before it, stating:

> Pursuant to an Order of the Court of Special Appeals remanding the above-captioned matter to the trial Court to make necessary findings and clarify any discrepancies regarding the method of calculation of the Defendant's (former spouse's) retired pay award[,] and after a hearing, the Orders docketed on April 12, 2019 and May 28, 2019 are hereby modified as follows . . . .

Notwithstanding the court's oral description of its task, this written description reflects that the purpose of the remand was for the circuit court "to make necessary findings

and clarify any discrepancies regarding the method of calculation of the Defendant's (former spouse's) retired pay award[.]" We accept the court's written statement as recognition of the scope of its charge on remand.

When we review each of the statements set forth in the court's written order, we are satisfied that, after modification as set forth in this opinion, the court's judgment is supported by the record. As noted above, the court's written order entered July 2, 2021, said in pertinent part:

> ORDERED, that the following facts appear from the record as delineated by the Court of Special Appeals:
>
> 1. The date of divorce is November 22, 2016;
> 2. The parties were married for 69 months;
> 3. The plaintiff (husband) has 214 months of creditable service (17 years; 10 months);
> 4. The plaintiff (husband) high 3 years of salary is: $4,265.17;
> 5. The plaintiff (husband) retired base pay is: $1,382.29;
> 6. The Court is not required to make a Cost-of-Living Adjustment as the Court of Special Appeals points out that ". . . a former spouse will automatically receive a proportionate share of the member's COLAs on all NDAA applicable cases . . ."
> 7. Survivor Benefits. The Defendant (wife) is not entitled to participation in the Survivor Benefit plan as the Court of Special Appeals Points out " . . . as Lopez's requests for participation in the Survivor Benefit Plan had been denied by being excluded from every revised judgement [sic] of divorce entered by the circuit court after remand from the in banc panel"; and it is further,
>
> ORDERED, that the Court finds that the proper method of calculating the Defendant's retired pay award is the CSB/REDUX method set forth in 10 U.S.C. § 1409; and it is further,
>
> ORDERED, that the Defendant's retired monthly pay award is hereby $222.85 in accordance with the formulas set forth in 10 U.S.C. § 1409 (See Court of Special Appeal's calculation on page 28 and 29) and as follows:
>
> a. Retired Pay Award = (([Months of parties' marriage]/[Plaintiff's total months of creditable service at the time of the parties' divorce]) x (retired pay base)) x [percentage of Defendant's share]
>
> b. ((69/214) x $1382.29) x 50% = $222.85; and it is further,

> ORDERED, the defendant's (wife) award will not begin until she satisfies the $1,565.83 judgement [sic] against the defendant in favor of the plaintiff and it is further,
>
> ORDERED, that the Defendant (wife) shall bear the sole cost and expense of preparation of the Qualified Domestic Relations Order (QDRO) and be responsible for submitting it to this Court[.]

Martinez asserts that the court's valuation of the marital portion of his military pension was not correct.

As noted by Linda J. Ravdin in a MICPEL treatise on Maryland family law:

> Retirement benefits will be hybrid property when acquired partly before marriage and partly during marriage, or when a spouse is still working at the time of divorce and will continue to accrue benefits in a pension that the spouse will receive in the future. The portion of a pension or other retirement benefit that an employee acquired prior to the marriage is nonmarital property. The portion acquired from date of marriage to date of divorce is marital property.
>
> The two most common types of retirement benefits are defined benefit plans, such as a federal government or military pension, and defined contribution plans, such as a 401(k) or the federal government Thrift Savings Plan.

Linda J. Ravdin, *Maryland Divorce and Separation Law*, Ch. 4, § II.F.3. (MICPEL 11th ed. 2023) (footnotes omitted) (hereafter referred to as "Maryland Divorce Law").

Although Maryland courts generally allocate the marital and non-marital portions of defined benefit plans by utilizing the "*Bangs* formula," *id*. § II.F.3.b., because of NDAA 2017, military pensions must be allocated pursuant to federal law. *Fulgium*, 240 Md. App. at 288 ("The formula set forth in the USFSPA, to the extent it is inconsistent with the *Bangs* formula, preempts state law."). Under NDAA 2017, if the service member has not retired on or before the date of the divorce, the valuation of the member's military pension "'is limited to that which the member would have been entitled using the member's retired pay

base and years of service on the date of the final decree of divorce, dissolution, annulment, or legal separation.' Department of Defense Financial Management Regulations 7000.14-R ('DoD Regs') ¶ 290802." *Id*.[7]

Our review shows that the circuit court correctly endeavored to apply the CSB/Redux formula because Martinez had taken advantage of receiving a career status bonus during the parties' marriage. Both parties had argued that the CSB/Redux formula was the correct formula to use in this case. For example, in Martinez's memorandum filed with the circuit court on July 24, 2020, he "agreed with the Court of Special Appeals that the 'career status bonus/reduction' ('CSB/Redux') formula, as set forth in 10 U.S.C. § 1409(a)-(b), be applied on remand to the trial court." He also noted that Lopez had conceded this was the correct formula to use if NDAA 2017 applied.

[7] *See also* Maryland Divorce Law § IV.G.6.a., stating:

> Federal law, specifically, the Uniformed Services Former Spouses' Protection Act (USFSPA), governs the mechanics of division of a military pension and creates limits on what a court can do. These limits include the definition of disposable retired pay that is subject to division—the Frozen Benefit Rule, effective in 2016—and the cap of 50% on the amount of disposable retired pay that can be awarded to the spouse. In addition, USFSPA, as interpreted by the Supreme Court, does not permit a trial judge to award any part of disability pay to a spouse. Thus, the servicemember who is eligible may elect to receive disability pay in lieu of retired pay, reducing the benefit available to the spouse. The combination of the frozen benefit rule and the prohibition on an award of disability pay means that, for a spouse of a servicemember, the right to a meaningful share of military retired pay may be illusory.

(Footnote omitted.)

We note that it was Lopez's burden to establish the value of the marital interest in Martinez's pension benefits. "The party who seeks a marital property interest in an asset owned by the other party has the burden of proof as to classification of the asset and its value." Maryland Divorce Law § III.D.2. (citing *Blake v. Blake*, 81 Md. App. 712, 720 (1990), and other cases). "When one party produces evidence of value and the other does not, the trial court may accept the evidence presented to it; it is not an abuse of discretion for the trial judge to accept the only evidence before it as to the value of property." *Id.* Although both of the parties offered arguments regarding the value of Martinez's retirement benefit as of the date of the divorce, neither party offered expert testimony even though that could have been helpful in this case. *Cf. id.* § III.E.9 (To establish the present value of a pension, "a party may need to present the testimony of an expert witness.").

Martinez told the circuit court in his post-remand memorandum that the "CSB/Redux calculation begins with the determination of [Martinez's] 'high-3 amount.'" And, he asserted that his "High-3 amount is $4,242.30" as shown on an attached exhibit to the memorandum. But the number shown on that exhibit as Martinez's High-3 was $4,265.17, and that was the "High-3" number adopted by the circuit court. That was not clear error for the court to do so.

In Martinez's memorandum, he asserted that the parties were married a total of 69 months, and "[t]here are 214 months of creditable service as of the date of the parties' divorce." In calculating the share of Martinez's retirement benefits that would go to Lopez, the circuit court on remand ruled that "[t]he parties were married for 69 months" and that Martinez "ha[d] 214 months of creditable service[.]" Again, we perceive no clear error.

With respect to the calculations up to this point, the circuit court largely adopted the figures urged by Martinez. The application of the reduction required for the CSB/Redux calculation is less straightforward. In Martinez's memorandum on remand, he urged the circuit court to make the following computation:

> 10. The Retired pay award is calculated by dividing 69 [the months of parties' marriage] by 214 [Martinez's total months of creditable service at the time of the parties' divorce] then multiplying that number by the sum of $4,242.30 [Martinez's retired pay base] multiplied by 50% [the percentage of Lopez's share], which equals 16.12% of $4,242.30.

(Bracketed language in original.) The marital fraction that he utilizes [69 divided by 214 = 32.24%] is consistent with the court's calculations.

And 16.12% of $4,265.17 (the High-3 number used by the circuit court) is $687.54. That amount is very close to the figure computed by the circuit court. The circuit court found that Martinez's "retired base pay is: $1,382.29[,]" and 1/2 of $1,382.29 is $691.14. It appears to us that the correct application of the arithmetic would have produced a determination that Martinez's retired base pay is $1,375.09—i.e., 32.24% of $4,265.17—of which Lopez's 50% share (before applying CSB/Redux reduction) would be $687.54.

So, had Martinez ended his military service simultaneously with the date of divorce, his retirement benefit attributable to the period of the marriage could have been $1,375 (rounded). But, because of the career status bonus reduction impact, the retirement percentage multiplier is reduced by 1 percent for each full year of creditable service less than 30 [30 – 17 full years = 13] and further reduced by 1/12th of 1 percent for each full month in the partial year of service [10/12ths], in this case, a reduction of 13.8% [based upon 30 years minus 17 full years and minus 10/12 of the partial year].

As both parties agreed, the CSB/Redux formula was applicable, and the circuit court indicated that it was applying the CSB/Redux formula. But we are unable to recreate the court's calculation. In the figures set forth in the amended order, the court appeared to reduce the calculated "retired pay award" by the numerator of the marital fraction of Martinez's total creditable service as of the date of divorce. We cannot intuit how that would account for the reduction required by the CSB/Redux formula which is applicable without regard to the member's marital status; the member's benefit is reduced because of the member's receipt of the career service bonus.

Nor are we able to understand how Martinez's proposed computation comports with the CSB/Redux formula. (As we noted earlier, expert testimony on this point might have been helpful, but we recognize that the economics of this case may not have justified the expense of paying an expert.) In Martinez's post-remand memorandum, he urged the circuit court to begin by calculating the normal marital portion of his retired pay award, which, according to Martinez, would have been 69/214ths of $4,242.30, which computes to $1,364.62, of which Lopez's 50% share would have been $683.85. As set forth above, we basically agree with this calculation up to that point except that it appears to us that the circuit court reasonably used a High-3 number of $4,265.17 based upon the exhibit Martinez submitted.

But Martinez contends that application of the CSB/Redux formula would reduce that amount as follows. He states in his memorandum:

> 11. Further, the CSB/Redux is 1.5% for every year of Plaintiff's 17 years of military service, equaling 25.5%.

> 12. Accordingly, 25.5% of the retired pay award, $4,242.30, equals $1,081.79; then 16% of $1,081.79 is $173.08.
> 13. The trial court adjusted the above amount for taxes by reducing the monthly amount by the federal tax rate of 12%, *e.g.*, 12% of $173.00 is $20.76; $173.00 – $20.76 = $152.24.
> 14. As such, the monthly payment amount should be $152.24 awarded to Defendant Lopez.

This is substantially the same argument Martinez made in this Court in *Lopez*. But, in that case, Lopez replied that Martinez's proposed application of the CSB reduction was not in accordance with the language of 10 U.S.C. § 1409(b)(2) because Martinez simply reduces the annual multiplier from 2.5% per year of service to 1.5% per year of service, rather than reducing the previously applied "normal" retirement multiplier of 44.5% [based upon 2.5% per year times 17.8 years of creditable service] by 1% per each year of service less than 30. If there had been no reduction required by § 1409(b)(2), Martinez would have been entitled to a multiplier of 2.5% for each of 17.8 years of his service, i.e., 44.5%.

Lopez argued that 10 U.S.C. § 1409(b)(2) provides the correct procedure to be followed for the CSB/Redux formula as follows: instead of being entitled to a retirement multiplier of 44.5% (as the multiplier to be applied against his High-3), *that* multiplier must be reduced by 1% for each full year of service "less than 30" and further reduced by 10/12ths of a percent for the additional 10 months of service. We note that § 1409(b)(2) states that, if the service member "has elected to receive a [career status] bonus" as Martinez had, then "*the percentage determined under paragraph (1) [of § 1409(b)] shall be reduced by*" 1 percentage point per year by which the member's years of creditable service are less than 30. (Emphasis added.) The percentage "determined under paragraph (1)" was *the product* of 2.5% times the member's years of creditable service. Consequently,

we conclude that the interpretation proposed by Lopez, and apparently utilized by the circuit court, is the more appropriate interpretation of the CSB reduction required by § 1409(b).

Accordingly, we agree with Lopez that the CSB reduction reduces the previously applied retirement multiplier of 44.5% by 13.8% to 30.7%. Using that retirement multiplier and a High-3 of $4,265.17 produces a frozen benefit computation of $1,309.41, of which 69/214ths—$422.19—was marital property, such that 50% of that pension benefit is $211.09. Pursuant to Rule 8-604(a)(4), we shall order that the monthly payment amount be modified to match our calculated number of $211.09 per month.

Although Martinez also urged the circuit court to make a further adjustment for taxes, the court did not do so, and stated in the order that "any other relief requested by the parties is DENIED[.]" It was within the court's discretion to do so, and we shall not disturb the circuit court's ruling in that regard.

We therefore order, pursuant to Rule 8-604(a)(4), that the language in the circuit court's order of July 2, 2021, that currently reads:

> The Court is not required to make a Cost-of-Living Adjustment as the Court of Special Appeals points out that ". . . a former spouse will automatically receive a proportionate share of the member's COLAs on all NDAA applicable cases . . ."
> 7.

be and the same is hereby DELETED; and we further order that the paragraph in the circuit court's order of July 2, 2021, that currently reads:

> ORDERED, that the Defendant's retired monthly pay award is hereby $222.85 in accordance with the formulas set forth in 10 U.S.C. § 1409 (See Court of Special Appeal's calculation on page 28 and 29) and as follows:

a. Retired Pay Award = (([Months of parties' marriage] / [Plaintiff's total months of creditable service at the time of the parties' divorce]) x (retired pay base)) x [percentage of Defendant's share]

b. ((69/214) x $1382.59) x 50% = $222.85; and it is further,

is, pursuant to the mandate of this opinion, modified to read:

ORDERED, that the Defendant's share of Plaintiff's military pension monthly benefit is determined to be $211.09 per month, without cost of living adjustments; and it is further,

As modified, the judgment of the circuit court is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS MODIFIED IN PART AS SET FORTH IN THE FINAL PARAGRAPH OF THIS COURT'S OPINION, AND IS OTHERWISE AFFIRMED.
COSTS TO BE EVENLY DIVIDED BETWEEN APPELLANT AND APPELLEE.