Circuit Court for Charles County
Case No. 08-C-17-000446

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0005

September Term, 2019

ROY LEE TATUM

V.

CYNTHIA TATUM

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: March 13, 2020

The Appellant, Roy Lee Tatum ("Roy Lee") and the Appellee, Cynthia Tatum ("Cynthia") were married in January of 1986 in North Carolina. For the next 18 years, while Roy Lee served on active duty in the military, Cynthia lived with Roy Lee while he was stationed at different locations throughout the world, except for a year in which he was stationed in Korea. During her time as a military spouse, Cynthia worked in various locales as a dental assistant and a nursing assistant, earning salaries ranging between $8.00 and $14.00 per hour. The couple permanently settled in Maryland in 1992, living together at their jointly owned marital home in Charles County. Roy Lee retired from the military on November 24, 2004.

Cynthia continued to work as a dental assistant and/or a nursing assistant earning between $10.00 and $17.00 per hour. In 2007, Cynthia earned an Associate's Degree and a Nursing certification. After his military retirement, Roy Lee obtained employment at Northrop Grumman, and earned approximately $117,407.00 per year in addition to his military pension; he also has a Northrop Grumman savings plan and pension. Cynthia worked as a home health aide earning $12.00 per hour. Throughout the marriage, Roy Lee was the primary breadwinner.

Beginning in 2009, Roy Lee obtained a separate apartment where he resided the majority of the time. Between 2009 and 2016, despite maintaining separate residences, the couple regularly traveled together, spent holidays together with family, filed taxes together and shared living expenses. They socialized together and frequently spent nights together. Throughout all of that time, Roy Lee paid the mortgages on the Tatums' well-appointed

marital home and was able to come and go freely to the home. In October of 2016, however, after a contentious incident between the two, Cynthia obtained a protective order against Roy Lee. Cynthia filed a Complaint for Limited Divorce, or in the Alternative, Absolute Divorce in February of 2017.

While the divorce proceedings were pending, in September of 2017, Cynthia sought and obtained a *pendente lite* order requiring Roy Lee to continue paying the two mortgages on the marital home and to pay Cynthia's *pendente lite* attorney's fees of $6000.00. Cynthia claimed that the order was sought out of a reasonable concern that Roy Lee would cease contributing to the expenses of maintaining the home, because he had already stopped paying certain house-related expenses that he had previously paid during the marriage.

The Tatums' divorce hearing was held over the course of several days, on January 31, February 22, March 2, and March 26 of 2018. Both parties testified about their respective incomes and financial contributions to the relationship, their standards of living during the marriage, the on-and-off nature of the Tatums' marital relationship throughout the 32 years at issue, Roy Lee's alleged infidelity, the parties' ages (Cynthia: 57, Roy Lee: 55) and health, and the current financial needs and expenses of each party. Ultimately, Judge Bragunier issued a Final Order of Absolute Divorce on February 1, 2019.

In her order, the trial judge observed, first and foremost, that the Tatums' marriage should be appreciated as a marriage that had lasted 32 years, and that the amount of indefinite alimony and division of marital property would be ordered based on that duration of the marriage. Judge Bragunier ordered: 1) the sale of the marital home with an equal

division of the sale proceeds between the parties; 2) indefinite modifiable alimony from Roy Lee to Cynthia in the amount of $2200.00 per month beginning as of April 1, 2018, with any outstanding arrearage to be deducted from Roy Lee's proceeds of the marital home sale; 3) Cynthia to receive 50% of Roy Lee's military retirement accrued between January 15, 1986 and December 4, 2018; 4) Cynthia to receive 50% of the Northrop Grumman pension accrued during the marriage until September 30, 2016 and 50% of the Northrop Grumman savings plan valued as of September 30, 2016; 5) each party will keep his/her respective vehicle; and 6) Roy Lee will keep various items of agreed-upon marital property.

On February 11, 2019, Roy Lee filed a Motion to Alter or Amend objecting to the order to make alimony payments retroactive to April 1, 2018 and objecting to the requirement that he should continue making mortgage payments on the marital home while also making alimony payments. No hearing was held on Roy Lee's motion, and no ruling on said motion was issued by the trial court. Roy Lee filed an appeal of the Judgement of Divorce on March 1, 2019. On March 6, 2020, however, the Motion to Alter or Amend was formally withdrawn and the judgment of divorce and alimony under our review became a final judgment for appeal purposes.

A Single Contention

Although the Appellant has raised a total of five ostensible contentions[1], a close look at those contentions reveals that they can readily be condensed into a single contention, that we rephrase as:

Judge Bragunier erroneously granted the ex-wife an award of indefinite alimony.

---

[1] The five specific contentions advanced by the appellant were:

I. "Did the Court abuse its discretion when it granted Appellee alimony retroactive to April 1, 2018 while the Appellant was paying the two mortgages on the former marital home (Appellee's residence) pursuant to the Court's *pendente lite* Order? Likewise, it is an abuse of discretion to order Appellant to pay alimony when he is still obligated to pay the monthly mortgage?"

II. "Did the Court abuse its discretion when it ordered that any alimony arrears as of the date of sale of the marital home be deducted from the Appellant's share of the net proceeds?"

III. "Did the Court abuse its discretion when it granted Appellee indefinite alimony?
   a. When the Court failed to value all marital property of the parties and failed to state what monetary awards were granted to Appellee before making an award of alimony?
   b. When the Court failed to do any analysis as required by Md. Code Ann., Fam. Law Sec. 11-106(b)(11)(i-iv)?"

IV. "Did the Court err and abuse its discretion in awarding Appellee indefinite alimony when it found that Appellee could not make any progress toward becoming self-supporting due to age and health issues not supported by the record?"

V. "Did the Court err and abuse its discretion in awarding Appellee indefinite alimony when it found that 'even after Appellee may have made such progress that the respective standards of living would be unconscionably disparate'?"

At the most fundamental level, the Appellant is aggrieved at every dollar he must pay to his ex-wife. Some of those payments of dollars emanate from aspects of the indefinite alimony award itself. Several of the payments that aggrieve the Appellant, on the other hand, are not technically aspects of the indefinite alimony but nonetheless cause the Appellant to be chagrined that he must pay indefinite alimony in addition to these other payments that are, at most, only loosely-related to the indefinite alimony. We will look at each of the Appellant's ostensible contentions as aspects of his larger complaint, to wit, as sub-contentions. Our standard of review throughout will be the abuse of discretion.

As noted by both parties, the appropriate standard of review of a trial court's award of alimony is whether the trial court abused its discretion. Karmand v. Karmand, 145 Md.App. 317, 802 A.2d 1106 (2002). "This standard implies that appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." Tracey v. Tracey, 328 Md. 380, 385, 614 A.2d 590 (1992). "[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. North v. North, 102 Md.App. 1, 14, 648 A.2d 1025 (1994).

Age, Illness, Infirmity, Or Disability

In allowing for indefinite alimony, Maryland Code, Family Law Article, Sect. 11-106(c) provides:

> (c) Award for indefinite period. -- The court may award alimony for an indefinite period, if the court finds that:

> (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; **OR**
>
> (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

(Emphasis supplied.)

Sect. 11-106(c) sets out two alternative sets of qualifying circumstances, separated by the disjunctive "or", either of which could qualify a spouse for indefinite alimony. These two sub-provisions are alternate ways of qualifying. In focusing on Sect. 11-106(c) in two of his sub-contentions, however, the Appellant treats them as two sets of circumstances, either of which, if not satisfied, could disqualify one from receiving indefinite alimony. In Gallagher v. Gallagher, 118 Md.App. 567, 584, 703 A.2d 850 (1997), Judge Cathell was emphatic with respect to the disjunctive rather than the conjunctive relationship between the two sub-provisions:

> It is clear the court made both of the findings contained in Section 11-106(c), even though only one such finding is required in order to grant indefinite alimony.

(Emphasis supplied.)

With respect to the first of these sets of qualifying circumstances, the Appellant argues:

> In this case, Appellee testified to the contrary. Appellee testified that one week on her current job, she worked 110 hours and earned $1,326.26 for one week. Appellee further testified that she was expecting a raise if she continued to work at MCI Home Healthcare. Appellee also testified that she could make a better salary and earn a higher income as a dental assistant due

> to her credentials and that she has been looking for dental assistant jobs and that she has more interviews lined up. Appellee also testified that the state of her physical and mental health is excellent.
>
> The court found that "Appellee appears to be physically fine, and has testified to such." The court then contradicts its own finding and states in its ruling that "due to the Appellee's age and what could be some other health issues, that she cannot reasonably be expected to make substantial progress toward becoming fully self-supporting." The court had no basis for finding that "due to Appellee's age and what could be some other health issues, that she cannot reasonably be expected to make substantial progress toward becoming self-supporting." Appellee failed to meet her burden of proof as to the existence of the prerequisites to entitlement to an award of indefinite alimony.

(Emphasis supplied.)

We accord great deference to the factual findings of trial courts as they have the unique benefit of assessing witness testimony firsthand, and having the better opportunity to judge the credibility of said witnesses. Md. Rule 8-131. In this case, after assessing testimony and documentary evidence by the parties and various witnesses, including instances of conflicting testimony, Judge Bragunier made specific factual findings, including findings about the duration of the marriage, the earning potentials of each party, and the standards of living of the parties. And so, while the parties may not be in agreement as to certain facts and details in the case, we readily defer to Judge Bragunier's findings as the record does not reflect clear error in her interpretations of the facts surrounding the parties' marriage and financial situations.

Judge Bragunier found as follows:

> I will touch on some of the factors, but I will go through specifically, the ability of the plaintiff to be wholly or partly self-supporting.

> I find that she can be partly self-supporting, as she has worked hard over the years, although she is unable to make much more than $15.00 per hour, plus overtime.
>
> I believe the ship has sailed on her being able to gain sufficient education and training to find additional suitable employment. She is fifty-seven, fifty-eight years old. Realistically, she cannot be expected to do better than she has been doing. This has been a constant of what she has been doing.

In her ruling, Judge Bragunier specifically found that Cynthia's age at the time of divorce (57) made it unlikely that she would be able to acquire sufficient additional education and training to advance her income beyond the fairly consistent amount that it had been during their 32 years of marriage. The trial judge also specifically pointed to the testimony by both Roy Lee himself and another witness that Cynthia suffered from unaddressed mental health issues that contributed to the likelihood that she cannot reasonably be expected to become entirely self-supporting. These factual findings based on the evidence adduced satisfied this factor.

We hold that Sect. 11-106(c)(1)'s conditions for an award of indefinite alimony were fully satisfied.

Unconscionably Disparate Standards of Living

Notwithstanding Gallagher v. Gallagher's clear advisement, 118 Md.App. at 584, that only one of Sect. 11-106(c)'s two preconditions for the granting of indefinite alimony need be satisfied, Judge Bragunier clearly found that both had been satisfied in this case. In a nutshell, Cynthia is, in effect, limited to employment paying her an income of no more than or little more than $15.00 per hour. Roy Lee earns a salary of approximately $117,000 per year. Based on all of the evidence, Judge Bragunier had no difficulty in finding:

> [E]ven after, as she may have made such progress, that the respective standards of living would be unconscionably disparate without some award of alimony.

(Emphasis supplied.)

Judge Bragunier described the current incomes of each party, the comfortable standard of living of the parties while together, the comparison of education levels and training of the parties, and emphasized the fact that Cynthia's income had remained fairly stagnant throughout the 32 years of marriage (and would likely remain stagnant) as compared to Roy Lee's income, which had increased steadily over the years.

The difference in income has been held by our Court of Appeals to be an important factor in assessing the existence of an unconscionable disparity. In Boemio v. Boemio, 414 Md. at 144, 994 A.2d 911 (2010), the Court points to a long line of Maryland cases that found unconscionable disparity based on the relative percentage the dependent spouse's income was of the other spouse's income. In this case, the Appellant had an annual income, between his salary and his pension, of more than four times that of the Appellee.

That finding was not clearly erroneous and that ruling did not constitute an abuse of discretion. Sect. 11-106(c)'s two-part disjunctive requirement was, therefore, doubly satisfied. Either satisfaction would suffice.

Mortgage Payments and Alimony

Another of Roy Lee's sub-contentions loosely embraces two related complaints. In her oral ruling from the bench on December 4, 2018, Judge Bragunier had ordered Roy Lee to pay indefinite alimony in the amount of $2,200 per month, beginning as of April 1,

2018. At one point, Roy Lee's argument seems to be that the backdating of the alimony to April 1, 2018 was an abuse of discretion for the reason that Roy Lee was making the mortgage payments over the eight-month course of the backdated period. As he framed the issue, Judge Bragunier abused her discretion when she "granted Appellee alimony retroactive to April 1, 2018, while the Appellant was paying the two mortgages on the former marital home… pursuant to the court's pendente lite Order."

Without any distinction in his arguments being articulated, Roy Lee intersperses with this specific complaint about the overlapping of the mortgage payments and the backdating of the alimony award, a more general complaint about the overlapping of mortgage payments and the award of alimony at any time, quite aside from any backdating. Roy Lee's argument is that, "It is an abuse of discretion for the court to order the Appellant to pay alimony when he is still obligated to pay the two monthly mortgages on the marital home."

Before giving our formal legal response to this ambiguous complaint (or complaints), we take note of several pertinent facts. With respect to the backdating of alimony payments generally, Maryland Code, Family Law Article, Sect. 11-106(a)(2) provides:

> (2) The Court may award alimony for a period beginning from the filing of the pleading that requests alimony.

(Emphasis supplied.)

That original pleading had been filed by Cynthia on February 25, 2017, a full 13 months before the April 1, 2018 date to which the award was actually backdated in this

case. There was nothing illegal about the backdating. The April 1, 2018 date made logical sense, moreover, because it was at about that time that Roy Lee stopped paying a wide variety of expenses for Cynthia, quite aside from the mortgage payments. The backdating of the alimony was appropriate compensation to her to make up for that loss of voluntary payments of general expenditures.

One other general observation is worthy of note. At the earlier pendente lite hearing in this case, Cynthia was denied alimony pendente lite but Roy Lee was ordered to continue making the mortgage payments. Roy Lee somehow conjured up the misbegotten notion that the pendente lite hearing had made a choice between alimony and mortgage payments, one or the other but not both. He magnifies a scrap of loose and casual conversation into a binding legal mandate. His entire argument of the sub-contention is pervaded with this misperceived assumption, the idea that alimony and mortgage payments are forbidden at the same time and that the "punitive" combining of the two is ipso facto an abuse of discretion.

Our quick answer to the entire sub-contention, however, is that it is not properly before us. In his brief, Roy Lee's entire argument on the sub-contention runs for two pages. Aside from a passing reference to Roginsky v. Blake-Roginsky, 129 Md.App. 146, 740 A.2d 125 (1999), for the uncontroversial assertion that the abuse-of-discretion standard applies to appellate review of a trial judge's decision about alimony, Roy Lee's entire argument cites not a single appellate opinion nor any other academic authority. He simply

recites Judge Bragunier's decisions and then makes the bald assertion that these decisions constituted abuses of discretion.

In Anderson v. Litzenberg, 115 Md.App. 549, 578, 694 A.2d 150 (1997), Judge Harrell wrote for this Court that a contention argued without the support of any legal authority will be treated as a contention that has been waived.

> Cramaro's briefing of this contention is completely devoid of legal authority. In *Oroian v. Allstate Ins. Co.*, 62 Md.App. 654, 490 A.2d 1321 (1985), appellants contested the admissibility of a computer printout, which was unsigned, unverified, and unauthenticated. We held that because appellants, in their brief, cited no authority for their position, their contention was deemed waived. *Id.* at 658, 490 A.2d 1321. It is not our function to seek out the law in support of a party's appellate contentions. *See von Lusch v. State*, 31 Md.App. 271, 282, 356 A.2d 277 (1976), *rev'd on other grounds*, 279 Md. 255, 368 A.2d 468 (1977). Accordingly, we shall not address the potential merits of Cramaro's appellate contention.

(Emphasis supplied.)

The Court of Appeals has over the years consistently hewed to the same line. State Roads Commission v. Halle, 228 Md. 24, 31, 178 A.2d 319 (1962) was emphatic.

> [N]either under this heading nor the heading 'Argument' in its brief does it present any argument in support of its contention on this point, nor do the appellees deal specifically with the question. Under these circumstances, we conclude the point has been waived.

(Emphasis supplied.)

In Larmore v. Larmore, 241 Md. 586, 589, 217 A.2d 338 (1966), Judge Marbury wrote for the Court of Appeals:

> Contrary to the provisions of Maryland Rule 831(c)(4) the appellant's brief contains no argument in regard to these last two questions. Under the circumstances we conclude that the points suggested in these questions have been waived and do not require answers.

(Emphasis supplied.)

In von Lusch v. State, 31 Md.App. 271, 282, 356 A.2d 277 (1976), this Court made it clear that a litigant does not make a valid appellate argument simply by alluding to an alleged error and then depending on the Court to flesh that error out for him.

> Surely it is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested… We cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position.

(Emphasis supplied.)

In Oroian v. Allstate Ins. Co., 62 Md.App. 654, 658, 490 A.2d 1321 (1985), Judge William Adkins (later on the Court of Appeals) spoke for the Court:

> We need not decide these contentions. Appellants, in their brief, have cited no authority for their position. We deem it waived.

(Emphasis supplied.)

So much for the relationship between mortgage payments and alimony awards.

Quick and Efficient Payment of Arrearages

As she wrapped up her oral rulings from the bench on December 4, 2018, Judge Bragunier concluded:

> JUDGE BRAGUNIER: Also, the Court is going to order modifiable, indefinite alimony in the amount of $2,200.00 per month, commencing April 1st of 2018.
>
> APPELLANT'S COUNSEL: I'm sorry, Your Honor, I—

> JUDGE BRAGUNIER: $2,200.00 per month, commencing April 1st, 2018. Any arrears will just be paid from the defendant's share of the proceeds of the [sale of the] home.

(Emphasis supplied.)

Roy Lee now raises the following sub-contention:

> The trial court abused its discretion when it ordered that any alimony arrears owed to the Appellee as of the date of sale of the marital home "shall be deducted from Appellant's share of the net proceeds."

(Emphasis supplied.)

Although Judge Bragunier's solution to the possible arrearage problem seems sensible enough, it is not necessary to push our analysis that far. This sub-contention suffers the same fatal deficiency as did the immediately preceding sub-contention. Roy Lee's argument on the sub-contention is exactly one page in length. There is not a suggestion of any legal authority, by way of caselaw or other academic authority. As our response to the sub-contention, we will simply adopt our response to the immediately preceding sub-contention. We will however, repeat Judge Harrell's admonition from Anderson v. Litzenberg, 115 Md.App. at 578:

> It is not our function to seek out the law in support of a party's appellate contentions.

Roy Lee boldly and baldly asserts that in ruling as she did, Judge Bragunier abused her discretion. It is not enough for Roy Lee to assert that. It is Roy Lee's burden to persuade us that that is so. The presumption is that Judge Bragunier did not abuse her discretion. In the appeals process generally, it is not the obligation of the appellate court to confirm the presumption. It is the obligation of the appellant, if he can, to rebut the presumption. Failing

that, the status quo remains undisturbed. The rulings of Judge Bragunier, as they now stand, are, of course, the status quo.

A Non-Existent Monetary Award; An Alimony Checklist "Never The Twain Shall Meet"

Roy Lee's final sub-contention is really two sub-contentions. He frames it in the following terms:

> Did the Court abuse its discretion when it granted Appellee indefinite alimony?
>
> a. When the Court failed to value all marital property of the parties and failed to state what monetary awards were granted to Appellee before making an award of alimony?
>
> b. When the Court failed to do any analysis as required by Md. Code Ann., Fam. Law Sec. 11-106(b)(11)(i-iv)?

A. Monetary Awards: A Non-Issue

Of the two-page combined argument, one full page concerns monetary awards. Roy Lee sets out the three-step process that "may culminate in a monetary award" and then charges Judge Bragunier with having failed to go through these three steps.

> The Court did not go through any of these steps in its ruling. The Court is required to value all of the marital property, such as the home, and the bank accounts, the 401K pension accounts, and to state what if any monetary award is being granted to a party, and to make this determination prior to making an award of alimony as these amounts and awards are to be considered by the court when making any award of alimony.

(Emphasis supplied.)

Our only response is that none of that has anything to do with the case before us. Cynthia never requested a monetary award. Judge Bragunier never made a monetary award. The propriety of the grant of indefinite alimony has nothing to do with monetary awards.

As in virtually every divorce dispute, some property is marital and some is not. By amicable agreement, Roy Lee and Cynthia resolved essentially all of such issues on their own, and there was no need for a monetary award to compensate for any imbalance or inequity. In the case before us, many items of the parties' marital property had already been cooperatively divided. The parties agreed that each party should retain ownership of his or her own vehicle. The parties agreed that Roy Lee would retain ownership of various pieces of furniture, electronics, a pool table, and tools. Each party agreed they would keep any other property and several bank accounts already in his or her possession or name. Each party agreed that the marital home would be sold with each party receiving half of any sale proceeds. Ultimately, the only remaining assets that needed to be characterized as either marital or non-marital were Appellant's Northrop Grumman savings account, Appellant's Northrop Grumman pension plan, and Appellant's military pension. Those determinations were made. They were not monetary awards.

Although no issue with respect to monetary awards is before us, we cannot help but take note of Roy Lee's inappropriate presentation of this issue. There was no dispute in this case about which property was marital or which was not. The parties filed a Joint Property Statement. In assessing the financial needs and resources of the parties, Judge

Bragunier relied on the financial statements which were, without objection, received in evidence. Roy Lee is now objecting to, on appeal, evidence that was not objected to at trial and was, indeed, not even in controversy at trial. He presents an inaccurate picture.

B. Section 11-106(b)(11)

The more viable half of this bifurcated sub-contention concerns Maryland Code, Family Law Article, Sect. 11-106(b). That sub-provision directs a trial judge, when determining the amount and/or the period of an award of alimony, to consider 12 factors. Roy Lee is presumably content with the court's consideration of 11 of those 12 factors but does take umbrage with respect to sub-factor 11, which dictates attention to:

> (11) the financial needs and financial resources of each party, including:
>
> (i) all income and assets, including property that does not produce income;
>
> (ii) any award made under Sect. 8-205 and 8-208 of this article;
>
> (iii) the nature and amount of the financial obligations of each party; and
>
> (iv) the right of each party to receive retirement benefits.

Roy Lee is aggrieved in four specific regards. He charges the trial court with having failed to consider 1) the sale of the marital home with one-half of the proceeds going to Cynthia; 2) the award to Cynthia of one-half of the marital portion of Roy Lee's military retirement; 3) the award to Cynthia of 50% of the value of Roy Lee's Northrop Grumman

savings plan; and 4) the award to Cynthia of 50% of the marital share of the Northrop Grumman pension plan.

Thus broken down, this sub-contention is an absurdity. Of course, Judge Bragunier **considered** those four awards. It was Judge Bragunier, after all, who had actually made those awards, and she did not make them subconsciously. Nor did she forget them 30 minutes after having made them. What Roy Lee is actually saying is that, in describing the awards, Judge Bragunier failed to state expressly the probable dollar value of each award. Roy Lee's thesis would continue that, by failing to express the likely dollar value of each award, Judge Bragunier may have been oblivious of such value when ultimately considering the issue of Cynthia's eligibility for indefinite alimony.

A. Sale Of The Marital Residence

Let us take the sale of the marital home as an example. In her order of December 4, 2018, Judge Bragunier directed:

> I am going to order that the marital home be sold and the proceeds divided equally.

(Emphasis supplied.)

Notwithstanding that clear directive, Roy Lee, in his brief, argues that Judge Bragunier failed to **consider** that order when she awarded indefinite alimony.

> [T]he Circuit Court in this case failed to consider the fact that it awarded Appellee more than 50%[2] of the proceeds from the sale of the marital home. The record reflects that the marital home has a value of $349,000.00 and the

[2] Apparently, Roy Lee bases this "more than 50%" calculation on the fact that alimony arrearages were to be deducted from Roy Lee's share of the sale proceeds.

> mortgage balance is $213,000.00, yielding Appellee a profit of at least $57,500.00 upon sale of the marital home.

(Emphasis supplied.)

Within the preceding hour of Judge Bragunier's making of the award, of course, counsel for Roy Lee had very vigorously argued before her.

> So, I have done the math, and the house is worth approximately $349,000.00. The mortgage balance is approximately $213,000.00. Even deducting for a six percent sales cost, which would be real estate commission, Mrs. Tatum is going to get approximately $57,500.00 from that.

(Emphasis supplied.) Is Roy Lee telling us that Judge Bragunier failed to **consider** his lawyer's argument? Must the mental phenomenon of **considering** be vocalized? The sale of the marital home, moreover, was still a future event. The sale price, therefore, was necessarily still a matter of speculation.

B. Roy Lee's Military Retirement

The scenario repeats itself precisely with respect to the award to Cynthia of one-half of the marital portion of Roy Lee's military retirement. In her order of December 4, 2018, Judge Bragunier directed:

> The Court is going to order that she receive one half of the marital portion of the defendant's military pension. And he will begin paying that to her December 1st.

(Emphasis supplied.)

Notwithstanding the clarity of that order, Roy Lee, in his brief, again charges that Judge Bragunier failed to consider it.

> The Circuit Court failed to consider that it awarded Appellee one half (50%) of the marital share of Appellant's military retirement based on the formula set forth in *Bangs v. Bangs*, prior to making an award of indefinite alimony.

(Emphasis supplied.)

Once again, we point out that within the preceding hour of Judge Bragunier's making of that award, Roy Lee's counsel had reminded Judge Bragunier of the precise dollar-value of such an award. Judge Bragunier, moreover, had specifically noted the amount of Roy Lee's annual military pension payment as $25,548.00.

> [W]e already discussed that she would get a portion of the military retirement at forty-four, which is $877.00 a month. I'm leaving off the cents because I don't really think those matter.

(Emphasis supplied).

C. The Northrop Grumman Savings Plan

With regard to the Northrop Grumman savings account, the trial court found that the amount accrued through the end of September 2016[3] (the date of separation) was marital property and should be divided equally between the parties. Judge Bragunier pointed to the financial statements which showed the current balance in the Northrop Grumman savings account ($235,744.00). In her order of December 4, 2018, Judge Bragunier directed:

> I'm also going [to] order that she receive one half of the marital portion of the Northrop Grumman savings plan, up until September 30, 2016. And the Court will sign an order to transfer that into a separate account for her. That should be a non-taxable event.

[3] It appears this date was selected as the end date because Cynthia filed a restraining order against Roy Lee in October 2016, effectively ending their cooperative relationship.

(Emphasis supplied.)

Roy Lee, in his brief, argues that Judge Bragunier failed to consider that award when within minutes (two and one-half pages later in in the transcript of the proceedings of December 4, 2018) she awarded to Cynthia indefinite alimony.

> The circuit court also failed to consider that it awarded Appellee fifty percent (50%) of the value of Appellant's Northrop Grumman savings plan valued as of September 30, 2016. The value of the Northrop Grumman saving account as of July 15, 2017 was $204,000.00. As such, Appellee will receive a lump sum transfer of approximately One Hundred Thousand Dollars ($100,000.00) Said lump sum transfer will also be tax free.

(Emphasis supplied.)

In his immediately preceding argument, Roy Lee's counsel had argued with respect to the Northrop Grumman savings plan:

> In addition, our argument with respect to the distribution of Mr. Tatum's pension and retirement benefits that he has from Northrop Grumman is that the period where they were separated from 2009 to the present should be excluded. But there is a portion that would not be excluded when the parties were married.
>
> Mr. Tatum started working for Northrop Grumman in 2005, and the parties separated in 2009. Based on that formula, Mrs. Tatum would receive approximately $40,000.00 from Mr. Tatum's 401K plan.

(Emphasis supplied.)

D. Northrop Grumman Pension Plan

Because of the speculative and variable nature of the Northrop Grumman pension plan, Judge Bragunier could not specify the numerical value of that piece of marital property, but the Court specified the time period during which the marital portion accrued. As to the Northrop Grumman pension plan, the trial court found that Appellee's marital

portion should also be half of what accrued through the end of September 2016. In her order of December 4, 2018, Judge Bragunier directed:

> Also that she receives one half of the [marital] portion of the Northrop Grumman pension plan. And that if she chooses to have the survivor benefit, she can pay for it and the parties will cooperate with allowing her to do so.

(Emphasis supplied.)

Roy Lee, in his brief, once again complains that, minutes later, Judge Bragunier failed to consider that award she had made a few paragraphs earlier.

> The Circuit Court failed to consider that it awarded Appellee one half (50%) of the marital share of the Defendant's Northrop Grumman pension plan.

(Emphasis supplied.)

E. What Does This Sub-Contention Really Contend?

Roy Lee's underlying grievance is the award to his ex-wife of indefinite alimony. The thrust of this sub-contention is that the aggregate of the awards Judge Bragunier made to Cynthia should have persuaded Judge Bragunier that Cynthia would have enough money so that her post-divorce style of life could not be considered unconscionably disparate from that of Roy Lee.

To persuade Judge Bragunier of how many dollars Cynthia now enjoyed, contends Roy Lee, required the help of Judge Bragunier herself. If in making the various awards, Judge Bragunier had explicitly used more dollar-oriented language, that might have helped to persuade Judge Bragunier of Cynthia's disqualifying affluence more effectively than did the use of more abstract and non-monetary language. It might have kept the question of dollars uppermost in her mind. In her choice of rhetorical technique, Judge Bragunier was

not as effective in persuading herself as she might otherwise have been if she had used more dollar-oriented language. In effect, Roy Lee contends that Judge Bragunier committed reversible error for failing to persuade Judge Bragunier not to award indefinite alimony. On this issue, however, it is we who are not persuaded.

F. A Skewed Measuring Of Respective Assets

In examining disparity generally or unconscionable disparity particularly, we essentially compare the dollar value of one spouse's assets and potential earnings with the dollar value of the other spouse's assets and potential earnings. Roy Lee, however, has a hopelessly skewed view of how to make such an examination.

Throughout this sub-contention, Roy Lee is obsessed with the instances in which Cynthia has been ostensibly enriched and Roy Lee has been concomitantly impoverished by the various divisions of assets ordered by the court. Property division by property division, Roy Lee misperceives each as an enhancement of Cynthia's assets and a concomitant diminution of his own, a series of payments from him to her to his detriment and to her benefit. He looks upon an award to Cynthia of one-half of the marital portion of Roy Lee's military pension, for example, somehow as a payment from him to her. It was, of course, no such thing. It was hers to begin with. It did not belong to him. It had been accrued by and belonged to both of them. Roy Lee stubbornly refuses, however, to appreciate or to understand the very concept of marital property.

If Cynthia is awarded one-half of the proceeds from the sale of the marital home, that share, moreover, is not necessarily a gain. It has to be offset, of course, by the loss of

one-half of the value of a comparable house. If in any of the 50-50 division of a marital asset, Cynthia had been ostensibly enriched by a dollar value, then Roy Lee has been comparably enriched by precisely the same dollar value. The disparity differential has not budged one way or the other. When all the 50-50 divisions are done, value has not gone up or down. It has simply taken a more liquid form. In a 50-50 division of a marital asset, the parties both go up together or they come down together or they hold their own together. In any event, disparity is not seriously affected.

JUDGEMENT OF THE CIRCUIT COURT AFFIRMED. COSTS TO BE PAID BY APPELLANT.