Circuit Court for Talbot County
Case No. C-20-FM-22-000041

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 122

September Term, 2023

LAURA EVERNGAM-PRICE

v.

RICHARD ALLEN PRICE

Reed,
Shaw,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 13, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Laura Everngam-Price, the Appellant, and Richard Price, the Appellee, were engaged in divorce proceedings in Talbot County, Maryland. A trial was held on November 30, 2022 and December 14, 2022 in the Circuit Court for Talbot County. On December 20, 2022, the court entered a judgment of divorce between the parties. Afterwards, on January 25, 2023, the court entered a Memorandum Opinion and Judgment concerning the division of property and other relief. The court divided the marital property equally between the parties and then entered a $120,000.00 monetary award in favor of the Appellee. The Appellant filed a motion to reconsider the judgment, which the trial court denied on February 22, 2023. The Appellant then filed this timely appeal.

In bringing her appeal, Appellant presents four questions for appellate review:

I. Did the Circuit Court err as a matter of law or abuse its discretion when it entered a monetary award in favor of the Appellee in the amount of $120,000.00?
II. Did the Circuit Court abuse its discretion when it denied Appellant's claim for counsel fees?
III. Did the Circuit Court err as a matter of law when it determined the parties' Datsun vehicle was not marital property?
IV. Did the Circuit Court abuse its discretion when it permitted the Appellee's expert witness to testify and to admit his report into evidence when that report was not provided to the Appellant until the day of trial?

For the following reasons, we affirm the Circuit Court for Talbot County.

FACTUAL & PROCEDURAL BACKGROUND

The parties married in Easton Maryland on June 12, 1993. The parties had two children during the marriage who both have reached the age of majority. When the parties first married, the Appellee worked at T. Rowe Price and the Appellant worked as an ice-skating coach and took care of the home for the parties.

The Appellee began working at T. Rowe Price prior to the marriage in October 1987. T. Rowe Price gave multiple benefits to the Appellee including an employee stock purchase plan and retirement contributions to a 401(k). When the parties married the 401(k) account had approximately $19,000.00 in value and the T. Rowe Price stock the Appellee purchased was worth about $9,500.00.

The parties moved to Colorado in 1998 for the Appellee's work. The Appellee then lost his job at T. Rowe Price in 2001, and the parties moved back to Maryland the following year. After losing his job at T. Rowe Price, the Appellee placed his T. Rowe Price stock into a joint Ameritrade Account with the Appellant. The parties purchased a home in Easton, Maryland in 2002. The parties purchased Ship and Print Place in Easton, where the Appellee worked as the manager and the Appellant kept the business records and finances. The Appellant began serving on the Talbot County Council in 2010 but continued to work in the parties' business.

On March 26, 2021, the parties stopped living together. Since that time the parties have not resided in the same home and have not tried to reconcile. On May 12, 2021, the parties entered into a separation and partial property settlement agreement. The parties sold their home, their business, and some of the T. Rowe Price stock, and equally divided the proceeds of those sales.

Before trial, the parties filed a joint statement concerning marital and non-marital property. There were a few items that the parties disagreed on how to classify. The Appellant argued that the Appellee's entire 401(k) account, valued at $893,608, was marital property. The Appellee argued that 77.68% of the account was marital property and

22.32% was non-marital property. Similarly, for the Ameritrade account containing the T. Rowe Price stock, the Appellant argued that all 3,000 shares, valued at the time at $321,630, was marital, while the Appellee initially argued 46.8% of the stocks were marital and 53.2% of the stocks were non-marital property. The parties also disputed the classification of the 1972 Datsun, but agreed on the valuation of $10,000.

The case proceeded to a trial before the Honorable Thomas G. Ross of the Circuit Court for Talbot County. The trial was held over two days on November 30, 2022 and December 14, 2022. At trial, both parties testified to their marital history and finances, as discussed above. Daniel O'Connell, a CPA with PKS and Company, P.A., testified as an expert on financial matters regarding the Appellant's 401(k) account and stock plans. He testified that the 401(k) account was worth $19,161.00 at the time of the parties' marriage and now was worth $893,608.00. Mr. O'Connell testified that $206,818.00 was traceable to the accounts value at the time of the marriage. This was based on a method of using percentages to trace what amounts would be attributable to pre-marital assets.

For the T. Rowe Price stocks, Mr. O'Connell testified that he took the number of shares at the start of the marriage and traced them through dividends and stock splits. When the parties married, Mr. O'Connell said there were 201 shares in the account. The shares held a value of $9,515.21 at the time. He testified that there were the 3000 shares in the account valued at $120.50 per share, making the total account worth $361,500. Mr. O'Connell testified that 64.3% of the total assets, worth $232,357, were traced to the shares owned prior to the marriage. After the parties' marriage, there were three sales of stock in 1999, 2002, and 2020. Mr. O'Connell said that for the 1999 sale, the sale was based on

shares acquired in 1997 and 1998, so they were all marital. This conclusion was not in Mr. O'Connell's initial reports but came from his analysis of an income tax return that he performed after being deposed. For the other two sales, Mr. O'Connell could not be sure as to which shares were sold, so he prorated both sales. The Appellant objected to the admission of Mr. O'Connell's reports based on changes that he made to them between his deposition and trial, which were overruled. Those reports and changes are discussed in more detail in the fourth issue of this opinion. At the conclusion of trial, the court entered a judgment of absolute divorce. The parties then filed written closing arguments addressing the division of marital property.

The court filed its Memorandum Opinion and Judgment Regarding Marital Property and Other Relief on January 25, 2023. Regarding the attorney's fees requested by both parties, the court concluded that each party had the financial resources to contribute to the other's attorney's fees, but found there was no justification to do so. The court determined that both parties were essentially justified in bringing and maintaining the action.[1]

Turning to the T. Rowe Price stock plan, the trial court found no basis for the apportionment calculated by the Appellee's expert witness. As a result, the court awarded each party half of the stock, which was 1500 shares. Regarding the 401(k) account, the court found the evidence of tracing was lacking, so the account was entirely marital

[1] The court also references issues with discovery on both sides, describing that the "discovery required in this case likely exceeded what was necessary, and supplementation of it, on both sides, was untimely." The court noted that it had excluded an expert from the Appellant because of the delay in discovery and that the Appellee's expert changed his valuation and method with limited or no notice to the Appellant, referring to Mr. O'Connell and the reports discussed in the fourth issue.

property. The court said half of the account should be transferred to the Appellant. Lastly, the court found that the Datsun car was the non-marital property of the Appellee, and he could do with it what he wished.

The court then turned to the factors outlined in § 8-205 of the Family Law statute. The court analyzed all eleven factors. The court found that the parties contributed equally to the well-being of the family, where the Appellant provided more non-monetary support, and the Appellee contributed more financially. The court calculated that the total marital assets were $2,685,903.72, so each party's share was $1,342,951.86. With that award, the court determined that the parties "do have significant assets and accounts upon which to live at least modestly." Regarding when marital property was acquired, the court noted that "[t]he parties contributed equally to the acquisition of their marital property." The court recognized that the Appellee "brought the stock plan and 401(k) into the marriage, totaling approximately $9,500 and $19,000.00, which significantly increased over the years."

After analyzing the statutory factors, the court concluded that "[a] monetary award of $120,000 is appropriate as an adjustment of the parties' equities in marital property, particularly the 401(k). [Appellee] contributed just under $30,000.00 of non-marital funds into the stock plan and 401(k) prior to the parties' marriage in June, 1993." While not marital property, the court found that the 401(k) has considerable funds in it and funds were not removed during marriage or commingled into a joint account like the stock plan.

The Appellant then filed a motion to reconsider the judgment, which the trial court denied on February 22, 2023. The Appellant then filed this timely appeal.

STANDARD OF REVIEW

Maryland Rule 8-131(c) governs our standard of review in cases decided without a jury:

> When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

DISCUSSION

Monetary Award of $120,000.00

A. Parties' Contentions

The Appellant argues the trial court erred as a matter of law or abused its discretion when it awarded $120,000.00 to the Appellee after evenly dividing the marital property. The Appellant argues that a monetary award in a divorce action is meant to counterbalance unfairness in the distribution of property and there was no unfairness to counterbalance in this case. The Appellant contends that the trial court failed to explain why the equal distribution of assets was not equitable and that the award itself created an inequity that this court should consider clear error.

The Appellee argues there was no error in this case and the trial court properly followed the statutory criteria. The Appellee disputes the case law cited by the Appellant and argues the final disparity in the award is not so sizeable as to create an error. The Appellee argues that the trial court properly exercised its discretion in ordering an award to reflect that the Appellee brought premarital assets into the marriage.

B. Standard of Review

In a divorce case, the trial court's determination of whether an asset is marital or non-marital property is a question of fact, which we review under the clearly erroneous standard. *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (quoting *Collins v. Collins*, 144 Md. App. 395, 408–09 (2002)). We review the trial court's ultimate decision to grant a monetary award and the amount of the award under the abuse of discretion standard. *Id.* (citing *Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019). Under the abuse of discretion standard, "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result . . . ." *Flanagan v. Flanagan*, 181 Md. App. 492, 521–22 (2008) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230, *cert. denied*, 361 Md. 232 (2000)). However, even under that deferential standard, "a trial court must exercise its discretion in accordance with correct legal standards." *Id.* (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)).

C. Analysis

"When the division of marital property by title is inequitable, the chancellor may adjust the equities by granting a monetary award." *Flanagan*, 181 Md. App. at 519 (citing *Long v. Long*, 129 Md. App. 554, 579 (2000)). The purpose of the monetary award is "to compensate a spouse who holds title to less than an equitable portion of" the marital property. *Id.* (quoting *Ward v. Ward*, 52 Md. App. 336, 339–40 (1982)) (internal quotations omitted).

There is a three-step process to determine whether to grant a monetary award. *Abdullahi*, 241 Md. App. at 405. The first step is for the judge to determine whether each

item of disputed property is marital or non-marital property. *Id.* (citing *Flanagan*, 181 Md. App. at 519); *see also* Md. Code, Fam. Law § 8-203(a) ("In a proceeding for . . . an absolute divorce, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital property."). Marital property is defined as "the property, however titled, acquired by 1 or both parties during the marriage." Md. Code, Fam. Law § 8-201(e)(1). Marital property does not include property: "(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources." *Id.* at § 8-201(e)(3).

The second step is for the judge to determine the value of the marital property. *Abdullahi*, 241 Md. App. at 405 (citing *Flanagan*, 181 Md. App. at 519); *see also* Md. Code, Fam. Law § 8-204 (stating with exceptions that "the court shall determine the value of all marital property").

Lastly, the court "may transfer ownership of an interest in property . . . grant a monetary award, or both, as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded." Md. Code, Fam. Law § 8-205(a)(1). The court's role is to "'decide if the division of marital property according to title would be unfair,' and if so, it 'may make a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled.'" *Abdullahi*, 241 Md. App. at 405–06 (citing *Flanagan*, 181 Md. App. at 519–20) (internal quotation and citation omitted). The court must consider a list of statutory factors before making that determination:

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

Md. Code, Fam. Law § 8-205(b). "While a trial court is vested with broad discretion in deciding whether to grant a monetary award, . . . the exercise of that discretion should be informed and based upon reason." *Murray v. Murray*, 190 Md. App. 553, 572 (2010) (quoting *Freese v. Freese*, 89 Md. App. 144, 153 (1991)) (internal quotations omitted).

Turning to this case, the court followed this process before making its award. The parties did not dispute that a majority of the property was marital property. The Appellee requested that the court find that 64.3% of the 3,000 shares in the T. Rowe Price Employee Stock plan was non-marital, which would equate to 1,928.27 shares, which the Appellee valued at $238.083.50. The Appellee also contended that $220,000.00 in the 401(k) account was non-marital. The Appellant argued both were entirely marital property.

The court analyzed the disputed marital property in its ruling. For the T. Rowe Price stock plan, the court stated that there were three separate stock sales since the marriage in 1999, 2002 and 2020. The court found that the Appellee did not prove whether the sales involved marital or non-marital shares. As a result, the court said the stock plan was so commingled that the account and any stock within it were marital and awarded each party one-half of the stock in the account. For the 401(k) account, the court determined that the expert was unable to trace the initial non-marital funds and what they would be worth today. The court then found that the 401(k) account was 100% marital and should be split evenly between the parties. The trial court properly determined whether the property was marital or non-marital and assigned its value.

After determining what property was marital, the court turned to the § 8-205(b) statutory factors. The court analyzed each factor. For the economic circumstances of the parties, the court determined that the parties "do have significant assets and accounts upon which to live at least modestly." Regarding when marital property was acquired, the court noted that "[t]he parties contributed equally to the acquisition of their marital property." The court recognized that the Appellee "brought the stock plan and 401(k) into the marriage, totaling approximately $9,500 and $19,000.00, which significantly increased over the years." The trial court properly considered the statutory factors before moving to the final step of granting the monetary award.

The court then concluded that a monetary award of $120,000.00 was appropriate "as an adjustment of the parties' equities in marital property, particularly the 401(k)." This was because prior to the marriage the Appellee contributed "just under $30,000.00 of non-

marital funds into the stock plan and 401(k) prior to the parties' marriage." The court said that the 401(k) had considerable value, funds had not been removed from the account, and funds were not commingled like the stock plan funds. The court went on to explain that "[i]t would be unfair, unjust and inequitable not to grant a monetary award to husband given his non-marital contributions to the marriage and its overall marital property." The decision to award the Appellant $120,000.00 was an appropriate action under the statutory procedure recognizing the factor of when marital property was acquired. The court properly followed the three-step process to grant its monetary award.

While following the statutory process, the Appellant argues that the trial court still abused its discretion in granting an award because there was no inequity to correct. The Appellant argued that since the Appellee failed to trace any pre-marital investments, it was improper for the trial court to support its reasoning with the Appellee's "non-marital contributions to the marriage." We disagree with this argument as it collapses the statutory three-steps. When performing the first step of determining which property is marital, the trial court recognized the Appellee's arguments that he brought pre-marital assets into the marriage. However, under the analysis of that step, those assets could not be distributed as non-marital assets because of the lack of tracing, since the T. Rowe Price stock was commingled with marital stock in a joint account and the expert failed to calculate the current value of the pre-marital interest in the 401(k) account. Both accounts were entirely marital property under the marital property definition because the Appellee failed to show that any amount of money or stocks in the current accounts were "directly traceable" to property "acquired before the marriage." Md. Code, Fam. Law § 8-201(e)(3).

The court then turned to the statutory factors under FL § 8-105(b). One of those factors asks the court to look at "how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both[.]" Md. Code, Fam. Law § 8-205(b)(8). This statutory factor allows the court to recognize that one party brought specific marital property into the marriage, which the court did here. The balancing of equities the court performs in determining the amount of a monetary award does not have the same burden of proof for tracing as the marital property determination. The trial court here altered the award from a 50/50 split in order to account for the pre-marital assets that Appellee brought into the marriage, which was a proper fact for the court to consider.

The Appellant also contends that the Court erred by not explaining the particular amount of the award. In *Wasyluszko v. Wasyluszko*, 250 Md. App. 263 (2021), the court said that the trial court did not create a sizeable disparity after granting an award that meant one party held 54% of the property and the other had 46% of the property. *Id.* at 282. We said that the award in that case did "not create such a lopsided result that a specific explanation of the court's calculation is needed beyond consideration of the FL § 8-205(b) factors." *Id.* at 282. We reiterated the statement that the court "is not required to articulate every step in [its] thought processes" because mere silence will not rebut the presumption that a judge "know[s] the law and [how] to properly apply it." *Id.* at 282–83 (quoting *Imagnu v. Wodajo*, 85 Md. App. 208, 221 (1990)).

Here, the final split of the assets means that the Appellee will have 57% of the

marital assets and the Appellant will have 43%. This case has a similar final split to *Wasyluszko,* and the award does "not create such a lopsided result" that the court needed to explain its specific calculation. *Id.* at 282. The court considered all of the statutory factors before giving its award. While it did not explain how it arrived at the specific value of $120,000.00, the court explained that the award was meant to compensate for the Appellant's pre-marital contributions to the stock plan and 401(k) and was less than the $220,000.00 that the Appellant argued was non-marital in the 401(k). Additionally, the award here is a far cry from prior cases where an unexplained disparity compels the court to vacate the award. *See Flanagan v. Flanagan*, 181 Md. App. 492, 526–27 (2000) (vacating a "sizeable, unexplained disparity" where the appellee retained 86.7% of the marital property); *Long v. Long*, 129 Md. App. 554, 575, 578 (2000) (remanding an award that "titl[ed] lopsidedly in favor of Husband" who was awarded 80.2% of the marital assets because the chancellor failed "to give adequate force to his own findings"). Here, the court used its discretion to provide a monetary award and provided reasoning as to why the award was being granted and acted within its discretion.

We hold that the trial court did not abuse its discretion in awarding the Appellee $120,000.00.

Denial of Appellant's Claim for Attorney's Fees

A. Parties' Contentions

The Appellant argues the trial court abused its discretion by denying her claim for attorney's fees. The Appellant claims that she was justified in defending the case and prevailed on the issue of whether the money in the accounts was marital property. The

Appellant argues that the Appellee's "attempt to exclude property as marital was not based upon any credible evidence and was in bad faith" and therefore the trial court should have awarded her attorney's fees.

The Appellee contends that the trial court did not err in denying the Appellant's request for attorney's fees. The Appellee argues that the trial court properly reviewed the necessary factors to decide whether or not to grant an award and properly ruled that an award of fees was not necessary.

B. Standard of Review

An award of attorney's fees is subject to the trial court's discretion. *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019) (citing *Petrini v. Petrini*, 336 Md. 453, 468 (1994)). We should not reverse the trial court's decision on this matter "unless the ruling was arbitrary or clearly incorrect or both." *Abdullah*, 241 Md. App. at 425. (quoting *Huntley v. Huntley*, 229 Md. App. 484, 497 (2016)).

C. Analysis

A trial court is permitted to order one party to pay the other party's attorney's fees in a matter concerning property disposition in divorce. Md. Code, Fam. Law § 8-214(b). Before the court orders the payment, the court must consider "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding." *Id.* at § 8-214(c); *see also Collins v. Collins*, 144 Md. App. 395, 447 (2002) (referring to Family Law § 12-103(b), describing how the court "does not have to recite any 'magical' words so long as its opinion, however phrased, does that which the statute requires").

Here, the trial court's opinion devoted a section to attorney's fees. The trial court concluded that "each party has the financial wherewithal to contribute to the other's attorney's fees, but there is no justification for doing so in this case. Both parties were essentially justified in bringing and maintaining this court action." The court noted there were discovery issues on both sides and issues with experts and recognized that the Appellant "was the one most interested in seeking a prompt resolution of this matter without significant litigation expense." The trial court's opinion showed that the court considered the parties' financial needs and whether they had a substantial justification for prosecuting or defending the proceeding, determining that they did. *See Flanagan v. Flanagan*, 181 Md. App. 492, 546 (2008) (vacating and remanding decision where trial court failed to make express findings about whether parties had the ability to pay or if the actions were substantially justified). As a result, the court properly determined it could not award attorney's fees to either party.

The Appellant argues that she "should not be penalized by justifiably defending what was rightfully determined to be 100% marital property." A denial of an award of attorney's fees is not a "penalty" in our legal system. The general principle, or "American rule," is that "each party to a case is responsible for the fees of its own attorneys, regardless of the outcome." *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 456 (2008). Family Law § 8-214 is a statutory exception to that rule, but that does not mean a party is *entitled* to the trial court imposing the payment of the fees under the statute. The decision is left to the trial court to award or deny fees, and here the trial court properly exercised its discretion to make each party pay its own fees. The Appellant argues that she was diligent in trying

to resolve the case, and the trial court recognized her desire for a "prompt resolution," but that still does not require the court to award attorney's fees.[2]

Further, this argument does not properly apply the standard for substantial justification. The Appellee's claims that portions of his employee stock plan and 401(k) account were non-marital were not baseless and the trial court found he had substantial justification in bringing those claims. "A party lacks substantial justification to maintain or defend a proceeding when it has no 'reasonable basis for believing that the claims would generate an issue of fact for the fact finder.'" *State v. Braverman*, 228 Md. App. 239, 262 (2016) (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)). That was not the case here, as the Appellee brought an expert to court to make an argument supported by evidence that he could trace his pre-marital assets. While the argument was ultimately unsuccessful, that does not mean the party was not justified in making the argument and, as the trial court concluded, the Appellant's arguments that portions of the 401(k) plan and stock portfolio were non-marital had substantial justification.

The trial court did not abuse its discretion when it denied the Appellant's claim for attorney's fees.

Determination of 1972 Datsun Vehicle as Marital Property

A. Parties' Contentions

The Appellant argues that the trial court erred as a matter of law when it determined

[2] The statute does require awarding attorney's fees when the court finds there was an absence of substantial justification and no finding of good cause to the contrary, but that finding was not made here, so the decision remained within the trial court's discretion. Md. Code, Fam. Law § 8-214(d).

that the Datsun vehicle was not marital property. The Appellant argues that the vehicle was acquired from the Appellee's brother and marital funds were used to improve the vehicle. The Appellant argues the vehicle was acquired during the marriage and therefore should be marital property as a matter of law.

The Appellee argues that the title of the car created a rebuttable presumption of ownership for the Appellant. The Appellee argues that the Appellant's claims about the purchase of the Datsun are not in the trial court record so the trial court's determination that the Datsun was not marital property was not in error.

B. Standard of Review

As discussed above, in a divorce case the trial court's determination of whether an asset is marital or non-marital property is a question of fact. *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (quoting *Collins v. Collins*, 144 Md. App. 395, 408–09 (2002)). We review factual findings under the clearly erroneous standard. *Id.* (citing Rule 8-131(c)). "When the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous." *Innerbichler*, 132 Md. App. at 230.

C. Analysis

The property at issue was a 1972 Datsun car valued by the parties at $10,000. The Appellee testified, "We have a Datsun that is in my name, that my son drove as a high school student, I am keeping it for him. I would like to transfer that into his name." The Appellant agreed the parties' son drove the car, but said it did not belong to him. She said that her son drove it for two years in high school and the parties' other son drove it a little

in high school. In its ruling, the trial court found that the Datsun car was non-marital property.

"Our case law is clear that the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property." *Murray v. Murray*, 190 Md. App. 553, 570 (2010) (citing *Pickett v. Haislip*, 73 Md. App. 89, 97 (1987), *cert. denied*, 311 Md. 719 (1998)); *see also Malin v. Mininberg*, 153 Md. App. 358, 428 (2003) ("The party who claims a marital interest in property has the burden of proof as to that claim."). Here, the Appellant asserted that the vehicle was marital property and therefore held the burden of proof on that fact.

The Appellant argues before this court that "[t]he uncontroverted testimony of the parties was that they purchased the Datsun vehicle in question from [Appellee's] brother and thereafter contributed substantial marital funds into fixing the vehicle up for use by their son." However, that information does not appear in the transcript or arguments before the trial court. The Appellant's citation to the record here does not direct this Court to that information. Whether or not that testimony is true, the trial court was not given the opportunity to consider that fact about the vehicle's purchase and the Appellant failed to meet their burden of proof on the Datsun's property status.

There was sufficient evidence presented to the trial court that the car was non-marital property. The court heard that the car was titled in the Appellee's name, and the parties agreed to that fact in their joint statement concerning marital property. Title registration raises a rebuttable presumption of ownership. *Johnson v. Dortch*, 27 Md. App.

605, 617 (1975) (citing *Liberty Mutual Insurance Co. v. American Automobile Insurance Co.*, 220 Md. 497, 500 (1959)). "[W]hether the presumption of [a vehicle's] ownership has been rebutted is 'clearly a question for the trier of the facts to decide,' and its decision will not be disturbed on appeal unless it is clearly erroneous." *One Ford Motor Vehicle VIN No. 1FACP4lA8LFZ17570 v. State*, 104 Md. App. 744, 751 (1995) (quoting *Liberty Mutual Insurance Co.*, 220 Md. at 500) (citation omitted). There was no evidence presented that rebutted the vehicle's ownership as belonging to anyone but the title-holder, the Appellee, who let his son use it while in high school.

Given that there was no testimony regarding when the car was acquired,[3] and the Appellant failed to meet her burden of proof to show that the car was marital property, the trial court was permitted to rely on the evidence about the car's title and determine that the Datsun was non-marital property belonging to the Appellee. We do not hold that the trial court determining that the Datsun was non-marital property was clearly erroneous.

Admission of Appellee's Expert's Report

A. Parties' Contentions

For this final issue, the Appellant argues that the trial court abused its discretion when it permitted the Appellee's expert witness to testify about a report that was not

[3] Had the car been acquired during the marriage, as the Appellant argued, then under the definition of marital property, the car would be marital property even if titled in the Appellee's name alone. Md. Code, Fam. Law § 8-201(e)(1). However, since the car is a 1972 Datsun, it is presumably possible that the car was purchased by the Appellee between 1972 and 1993 when the parties married, which would make the car non-marital property. The age of the car allowed for the rebuttable presumption that would not have been present for an item that was necessarily purchased during the years the parties were married.

provided to the Appellant until the day of trial. During the testimony of Daniel O'Connell, the Appellant objected to Mr. O'Connell's testimony and reports varying from his previously provided reports. The Appellant says that the admission of this report was unfairly prejudicial due to the Appellant's inability to properly review the changes.

The Appellee disputes that there were any prejudicial changes in the exhibits since the percentages of marital versus non-marital values in each account did not change. The changes to the documents were, according to the Appellee, changes to update the values based on market conditions which were more precise. Additionally, the Appellee argues any errors were harmless since the court ultimately ruled that the non-marital contributions to the accounts could not be properly traced.

B. Standard of Review

"The admissibility of evidence ordinarily is left to the sound discretion of the trial court." *Colkley v. State*, 251 Md. App. 243, 263 (2021) (quoting *Moreland v. State*, 207 Md. App. 563, 568 (2012)).

C. Analysis

This issue concerns two reports entered at trial during the testimony of the Appellee's expert Daniel O'Connell on November 30, 2022. The first was an updated report on the 401(k) account that was prepared on November 28, 2022, entered into evidence as Plaintiff's Exhibit 2. The prior report, entered as Plaintiff's Exhibit 1, was prepared on November 9, 2022. The initial report concluded that the 401(k) account was worth $893,608.00, with a marital value of $686,790.00 and a non-marital value of $206,818.00. Mr. O'Connell testified that this established a ratio of 77% marital property

to 23% non-marital property. Exhibit 2 concluded that the 401(k) account was now worth a total of $941,383.00, with a marital value increased to $722,969.00 and the non-marital value increased to $218,414.00. The percentages of each type of property remained unchanged, the whole account just increased in value. There were no differences in the methodology used in the updated report.

The Appellant entered into evidence a prior draft report updated to September 9, 2022, that was used in settlement discussions. In that report, the percentage of non-marital and marital property was the same as in the final report. However, the methodology changed, as initially Mr. O'Connell looked at the portfolio as a whole, but the updated reports looked at the individual funds. He testified that both methods are appropriate but that the updated report "is more detailed and precise."

The second report was an updated report on the T. Rowe Price stock prepared on November 29, 2022, entered into evidence as Plaintiff's Exhibit 4. The prior report, entered as Plaintiff's Exhibit 3, was also prepared on November 29, 2022. The initial report concluded that the 3,000 shares were worth $321,360.00. It allocated 64.3% of the shares as non-marital, or 1,928.27 shares, and 35.7% as marital, or 1071.73 shares. The updated report, Exhibit 4, had the same percentages of shares allocated as marital versus non-marital, but with an updated share price that changed the total value of the 3,000 shares to $361,500.00.

Both reports were updated versions of the report Mr. O'Connell used at his deposition, which was prepared on June 1, 2022, and entered as Plaintiff's Exhibit 5. The difference between the deposition report and the two updated reports was that Mr.

O'Connell was able to use an income tax return to determine that the 1999 stock sale involved only marital shares being sold. The deposition report prorated the 1999 sale like it had for the 2002 and 2020 sales, but the updated reports assigned all 500 sold shares to the marital share category. This meant that there was a change in the percentage allocation, as the deposition report had 53.2% of the shares as non-marital and 46.8% of the shares as marital.

The Appellant deferred on objections to the exhibits until after cross-examination. During cross-examination, the Appellant was able to challenge the methodology used in the 401(k) reports. The Appellant objected to the reports because the most recent reports were not shown to the Appellant before trial. The trial court ruled that it was unsure how the documents were prejudicial to the Appellant and the Appellant had the opportunity to cross-examine Mr. O'Connell, so the documents were admitted.

As discussed in more detail above, in its ruling the trial court did not find Mr. O'Connell presented sufficient evidence to trace non-marital property, and awarded each party half of the shares from the stock plan and half of the 401(k) account values.

We disagree with the Appellant that the updated reports made Mr. O'Connell's testimony "tantamount to a new expert that had not previously been identified." Mr. O'Connell testified to what changes were made in the reports between his deposition and the trial. The Appellant compares the Appellee's actions to the plaintiff's actions in *Asmussen v. CSX Transportation, Inc.*, 247 Md. App. 529 (2020). In that case, the plaintiff served an expert witness designation for four different witnesses. *Id.* at 536–37. The plaintiff then withdrew one of the witnesses and later tried to add the expert again after the

discovery period ended. *Id.* at 539. The circuit court said there was not sufficient cause to allow the expert to be added when the plaintiff made a "tactical choice" to choose one expert over another, only to find the chosen expert was ineffective. *Id.* at 542. This court agreed with the lower court that it was proper to strike the additional expert. *Id.* at 556.

This case differs greatly from *Asmussen*. Here, Mr. O'Connell was the Appellee's designated expert on the parties' finances from the start of the case, designated specifically to analyze the T. Rowe Price stock and the 401(k) retirement plan. The Appellant was able to depose Mr. O'Connell. The identity of the expert did not change, and the Appellee did not choose a new expert because he found Mr. O'Connell's opinion to be insufficient. Mr. O'Connell reached his conclusions in the area the Appellee said he was retained to analyze. *Asmussen* is not controlling in this case.

Experts, within reason, may clarify or provide more support to their expert opinions. *See Katz, Abosch, Windesheim, Gershman & Freedman, P.A. v. Parkway Neuroscience & Spine Inst., LLC*, 485 Md. 335 (2023). In *Katz*, the Supreme Court of Maryland, analyzed the opinion of a CPA who changed her calculations leading up to a *Daubert-Rochkind* hearing. *Id.* at 347. The expert re-examined the available data and updated her calculations. *Id.* at 352–53. The Court said that these adjustments "did not implicate the reliability of her methodology." *Id.* at 382. Instead, the adjustments went to the care of her conclusion, which could be explored on cross-examination. *Id.* at 382.

Regarding the stock analysis, the same happened here, as Mr. O'Connell's method did not change, but rather he received new information in the form of the income tax return and updated his results accordingly. This change did not implicate the reliability of Mr.

O'Connell's methodology. Further, the Appellant did not ask for a hearing to challenge the reliability to any of Mr. O'Connell's changes to his methodology, or a postponement to analyze the reports further. The Appellant's issue was limited to the surprise from the document. Regarding the change to the analysis of the 401(k) reports, the Appellant was able to cross-examine Mr. O'Connell on the changes to his methodology and attack the method's reliability.

The Appellant would have wanted the reports excluded from evidence, but the "[e]xclusion of evidence for a discovery violation is not a favored sanction and is one of the most drastic measures that can be imposed." *Morton v. State*, 200 Md. App. 529, 543 (2011) (quoting *Thomas v. State*, 397 Md. 557, 572 (2007)). The court recognized in its ruling that this was a discovery issue, stating that Mr. O'Connell "effectively changed his valuation and/or method of valuing those interests with limited or any notice to [Appellant]." While the court did not exclude the evidence, it also found that the Appellee could not properly trace the pre-marital 401(k) assets or T. Rowe Price stock. The trial court was permitted to admit the evidence and subsequently conclude that the evidence did not meet the Appellee's burden of proof for non-marital property. Any prejudicial effect is lessened because the trial judge disagreed with Mr. O'Connell's conclusions.

The Appellant argues that even though the trial court did not adopt Mr. O'Connell's conclusions, there was still prejudice because the monetary award was based upon Mr. O'Connell's conclusions and had the reports been excluded then those amounts would not have been considered. As we discussed above, there was no abuse of discretion in granting the monetary award and the trial judge had sufficient evidence to reach his conclusion. We

will again affirm that decision here. The trial court did not abuse its discretion in admitting Mr. O'Connell's updated reports.

CONCLUSION

Accordingly, we affirm the judgment of the Circuit Court for Talbot County.

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