Circuit Court for Anne Arundel County
Case No. C-02-FM-19-003561

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 161

November Term, 2022

PAIGE BLAIR

v.

ROBERT BLAIR

Nazarian,
Tang,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: January 3, 2024

*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).

Following a trial on the merits, the Circuit Court for Anne Arundel County granted an absolute divorce to appellant Paige Blair ("Wife") and appellee Robert Blair ("Husband"). The court also granted Wife a monetary award of $100,000. On appeal, Wife challenges the court's characterization of Husband's inherited property as nonmarital and the monetary award. For the reasons below, we shall affirm the circuit court's judgment.

BACKGROUND

The parties married in the early 1990s and separated in 2017 after about 26 years of marriage. At the time of the merits hearing, Husband and Wife were 74 and 59 years old, respectively.

Riverlave and Other Properties

During the marriage, the parties acquired real property and other assets, most of which are not at issue in this appeal. In pertinent part, Husband inherited property located at 1742 Riverlave Trail ("Riverlave") and four contiguous, landlocked lots ("Unimproved Lots"). It was undisputed that there were no debts or liens encumbering Riverlave and the Unimproved Lots at the time of the inheritance. The parties agreed that the Unimproved Lots remained Husband's nonmarital property. But, as we explain later, Wife claimed that Riverlave became partly marital.

Husband used Riverlave as collateral to secure loans to acquire other properties during the marriage. They included jointly owned investment properties in Bowie that the

parties later sold, and the loans were repaid.[1] In 2005, the parties bought Blair Lane, held as tenants by the entirety, for $1.5 million.[2] To finance the purchase, the parties executed a deed of trust to secure a $1,250,000 loan using Blair Lane as collateral. Husband executed a second deed of trust to secure a $250,000 loan for the balance using Riverlave as collateral. By the next year, the parties repaid these loans with a combination of funds, some of which were marital funds from selling one of the Bowie properties.

In 2009, the parties bought a pub located at 726 Londontown Road ("Londontown"). Wife operated the pub business in her name while Husband held the real property in his.[3] They worked at the pub until it closed in 2020. Then Husband sold Londontown for $400,000 and took back a promissory note for $320,000 that became due in May 2022.

Parties' Estate Plan

In 2009, the parties met with an estate attorney to establish revocable living trusts to benefit the parties' children. The trusts were to be funded with Riverlave. To that end, the attorney prepared a deed that conveyed Riverlave to the parties as co-trustees of their separate living trusts.

[1] The parties purchased property on Norman School Road for about $250,000 and sold it for $500,000 in 2003. They also purchased property on Route 3 for $240,000 and sold it for $1,100,000 in 2005.

[2] Blair Lane had four addresses (4250, 4254, 4256, and 4258 Blair Lane) on 216 acres of land.

[3] The parties used Blair Lane as collateral to secure a loan to buy Londontown and renovate the pub.

Husband, as the grantor, signed the deed. According to Husband, he did not intend for the deed to convey Riverlave to Wife individually. Nor did he intend to have the deed recorded while he was alive, a directive that he made clear to the attorney. The attorney went on to hold the deed for many years.

In 2014, the attorney sent the parties a letter reminding them that the deed had not been recorded. He noted, "[Y]ou still hold that property individually rather than in a trust." He explained why the deed had not been recorded and asked for instructions on what to do with it. The attorney offered an option: "to do nothing and, for now, I will continue to hold the deed." According to Husband, the parties never responded to the attorney because they had agreed not to record the deed.

Divorce Proceeding

In 2019, the parties filed their complaints for absolute divorce. They asked the court to determine the marital and nonmarital character of property, the value, and a monetary award to account for an adjustment of the equities.

During the pendency of the divorce action, Wife wanted to record the deed. She obtained the deed from the estate attorney and paid the back taxes on Riverlave. According to Husband, he never authorized the attorney to release the deed to Wife. Wife understood that Husband had objected to recording the deed and acknowledged being told there would be "hell to pay" if she recorded it.[4]

[4] In December 2021, the deed was recorded in the land records, which prompted Husband to move to strike it from the land records. Wife denied recording the deed. Later,

The circuit court held a two-day merits hearing in October 2021. The court issued a 33-page opinion, followed by an order granting the divorce. In pertinent part, the court concluded that Wife failed to prove that she had gained any marital interest in Riverlave. The court found that Blair Lane and the amount due under the promissory note for the sale of Londontown were subject to equitable distribution. They were titled and valued as follows:

Marital Property Values by Title					
Property	**Titled**	**Value**	**Liens, Encumbrances, or Debts**	**Husband's Interest**	**Wife's Interest**
Promissory note from sale of Londontown	Husband	$320,000 (Due May 2022)	0	$320,000	
Blair Lane	Jointly	$1,000,000	$335,000	$332,500	$332,500
Total:				**$652,500**	**$332,500**

After assessing the statutory factors under Md. Code Ann., Family Law Article ("FL") § 8-205(b) (1984, 2019 Repl. Vol.), the court awarded Wife a monetary award of $100,000, representing an equitable division of the amount due under the promissory note for the sale of Londontown. It also ordered that Blair Lane be sold and the net proceeds evenly divided between the parties.[5]

We will provide additional facts as they relate to the discussion of specific issues.

the circuit court entered an order declaring that the recordation "shall have no force, validity or effect."

[5] At the time, Blair Lane was in foreclosure and had been sold at a tax sale.

LEGAL FRAMEWORK AND STANDARD OF REVIEW

Marital property means "property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). It "includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement." FL § 8-201(e)(2). It does not include property acquired before marriage, acquired by inheritance or gift from a third party, excluded by valid agreement, or directly traceable to any of these sources. FL § 8-201(e)(3)(i)–(iv).

In a divorce proceeding where property disposition is at issue, "the party asserting a marital property interest in specific property has the burden of producing evidence as to the identity and value of that property." *Pickett, Houlon & Berman v. Haislip*, 73 Md. App. 89, 97 (1987). "The court must then follow a three-step process when disposing of the marital property." *Id*. "First, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital property." *Id*. "Secondly, it must determine the value of such property." *Id*. at 98. "Finally, it may grant a monetary award as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded. In making such a monetary award, the court must consider [the statutory factors outlined in FL § 8-205(b)]." *Id*. (cleaned up). "Only those marital assets which have been sufficiently identified and valued can be considered in any court award." *Id*.

Whether all or a portion of an asset is marital or nonmarital property and the value of each item are questions of fact and subject to the clearly erroneous standard of review.

Collins v. Collins, 144 Md. App. 395, 408–09 (2002); *Abdullahi v. Zanini*, 241 Md. App. 372, 413 (2019). We review "the record for the presence of sufficient material evidence to support the [trial court's] findings" and "all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party[.]" *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (citation omitted). "If there is any competent evidence to support [a] factual finding[] . . . [it] cannot be held to be clearly erroneous." *Omayaka v. Omayaka*, 417 Md. 643, 652 (2011) (citation omitted). An appellate court "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." Md. Rule 8-131(c).

In contrast, we review the trial court's determinations on questions of law de novo. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). The decision about whether to grant a monetary award and the amount of such an award is subject to review for abuse of discretion. *Id*.

DISCUSSION

I.

Riverlave is Nonmarital Property

Wife contends that the circuit court erred in finding that Riverlave was nonmarital property for two main reasons. First, the deed prepared by the estate attorney conveyed to Wife an interest in Riverlave. Second, Husband's use of Riverlave as collateral to buy other

properties and the later repayment of loans with marital funds rendered it partly marital. We address each argument in turn.[6]

A.

Deed and Delivery

The circuit court found that the deed was not legally delivered to Wife as a trustee, and even if properly delivered, she would have only possessed title for the benefit of the beneficiaries. Wife argues that the court erred because the deed conveyed to her an interest in Riverlave, and the conveyance became effective when the estate attorney gave her the deed during the pendency of the divorce action.

To the extent that Wife claims the deed conveyed an interest in Riverlave to her individually, we disagree. A trust is "a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another." George T. Bogert et al., *Bogert's The Law of Trusts and Trustees* § 1, Westlaw (database updated June 2023) ("Bogert").[7] A trustee is an individual or entity that holds the trust property for the benefit of another. *Id*. "[I]t is well settled that an entity

[6] In sweeping and conclusory fashion, Wife adds in her brief that "there were improvements made to Riverlave using marital funds. Contrary to the trial judge's ruling, that alone rendered Riverlave partly marital property." Because the point is not adequately briefed, we decline to address it. *See* Md. Rule 8-504(a)(6) (a brief shall contain "[a]rgument in support of the party's position on each issue."); *Konover Prop. Tr., Inc. v. WHE Assocs.,* 142 Md. App. 476, 494 (2002) (where a party fails to cite any relevant law on an issue in her brief, we have refused to "rummage in a dark cellar for coal that isn't there[,]" or to "fashion coherent legal theories to support appellant's sweeping claims").

[7] We regard Bogert as an authoritative guide on trusts. *Grueff v. Vito*, 229 Md. App. 353, 367 n.6 (2016).

acting in its individual capacity, and the same entity acting as a trustee, 'are, in law, two entirely separate and distinct persons[.]'" *Hector v. Bank of New York Mellon*, 473 Md. 535, 553–54 (2021) (quoting *Alexander v. Rose*, 181 Md. 447, 454 (1943)); *see also* 90 C.J.S. Trusts § 2, Westlaw (database updated Aug. 2023) ("A fiduciary acting in a representative capacity is a different legal person from the same person acting in an individual capacity."). We have no difficulty concluding that the deed conveying Riverlave to Wife as a trustee did not convey the property to her as an individual.

Instead, the deed seemed to convey Riverlave to the parties as co-trustees to hold the property as joint tenants. From an estate planning perspective, there are benefits to this arrangement "because of the nature of their powers and duties and the advantages of survivorship." Bogert § 145. But the "joint tenancy of trustees is not like the ordinary joint tenancy of persons who hold property for their own benefit." *Id*. In the latter case, the owners "may partition and each may sell his interest and change the relationship into a tenancy in common." *Id.* Contrary to Wife's assertion that she would have "unbridled ownership" as a trustee, "trustees have no power to partition the trust property and sever the trust by a conveyance or other action. Their powers are confined to joining with their cotrustees in conveying the whole estate or a part of it." *Id*. (footnotes omitted).

If the settlor of a trust intends to make another person a trustee, "he must transfer to that person the property interest to be held in trust before the trust administration can begin and before the person named as trustee can be trustee." Bogert § 141 ("If A, a fee-simple owner, desires to make B trustee of the land for C, B cannot begin the trusteeship until the

fee simple is vested in her, nor can anyone else begin the performance of the trust duties without acquiring such a property interest."). "Where the settlor contemplates a transfer to a trustee by deed inter vivos but fails to deliver the deed in a technical sense—that is, fails to express a present intent that the deed have immediate operative effect—the trust does not arise." *Id*.

Whether or not the deed conveyed Riverlave to Wife individually or as a co-trustee, the deed was not legally delivered. "Delivery is the last but an indispensable step by a grantor to give validity and operative effect to a deed for conveyance of real estate. Execution and acknowledgment are equally indispensable but, without delivery, accomplish nothing." *Fike v. Harshbarger*, 20 Md. App. 661, 661–62 (1974). Delivery is consummated only when the instrument has passed from the grantor, without any right of recall, to the grantee or a third party for the grantee's use. *Gianakos v. Magiros*, 234 Md. 14, 27 (1964). "[N]o particular form of procedure is necessary to effect a delivery; it may be by words or acts, or by both combined; but in all cases the intention that it shall be a delivery must exist." *Id*. at 26 (citation omitted). "The ultimate test of a valid delivery is the grantor's relinquishment of all custody and control over the deed, which would give the grantor any power to revoke or to 'take the deed back and destroy it[.]'" *Daniels v. Daniels*, 217 Md. App. 406, 414 (2014) (citation omitted). "Whether the requirements of a valid delivery have been met depends largely on the facts of each case." *Gurley v. Gurley*, 245 Md. 393, 403 (1967) (internal quotations omitted).

Relying on *Gianakos v. Magiros*, 234 Md. 14 (1964), Wife contends that the deed was delivered because the estate attorney gave it to her during the pendency of the divorce. In *Gianakos*, the grantor gave the deed to his attorneys with instructions to have it recorded, followed by their causing it to be recorded. *Id*. at 28. It was later followed by the grantor's acknowledgment of the deed with the knowledge that it was recorded. *Id*. The Supreme Court of Maryland concluded that these facts were enough to establish delivery. *Id*.

Gianakos is distinguishable from the facts here. In this case, Husband did not instruct the estate attorney to record the deed; he instructed the attorney to hold the deed and not to deliver or record it while Husband was alive. Husband testified that when they received the letter from the attorney in 2014, the parties agreed not to record the deed. Thus, the deed remained subject to Husband's control and his right to revoke it. *See* 26A C.J.S. Deeds § 84 n.4, Westlaw (database updated Aug. 2023) ("There is no delivery when a deed is given to a third person pending further instructions from the grantor, since in such circumstances the deed remains subject to the grantor's control and the grantor can revoke or annul it at will."). That Wife obtained the deed from the attorney does not change the result. Husband testified he "absolutely" did not authorize the attorney to release the deed to Wife. And she acknowledged that Husband had objected to her recording it.

Wife points out that the attorney's letter did not mention Husband's instruction not to record the deed, suggesting that Husband's testimony should be discredited. The court, however, implicitly found Husband's testimony credible, noting that, consistent with his instruction, the deed had "remained in [the attorney's] file for over ten years without

recordation, correction, or specific instructions to record[.]" *See Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020) ("When weighing the credibility of witnesses and resolving conflicts in the evidence, 'the fact-finder has the discretion to decide which evidence to credit and which to reject.'") (citation omitted). We thus hold that the court did not err in finding that Wife did not acquire a marital interest in Riverlave because of the deed.[8]

B.

Riverlave as Collateral

Alternatively, Wife argues that Riverlave became partly marital because Husband used it as collateral to buy other properties; the parties "acquired" Riverlave when marital funds were used to repay the loans and essentially "buy back" the property.

Husband suggests that the argument is not preserved for our review because Wife did not raise it below. On the merits, Husband responds that the parties repaid the debt owed to him when he extended his separate, inherited property as credit for the loans used to buy other properties. Regardless of the source of funds used to repay the loans, the repayments did not result in acquiring any new or greater interest in Riverlave.

[8] The court also found that the deed was invalid because it "contained substantial mistakes" (*e.g.*, error in the tax identification number, unspecified property description, absence of a notarial seal, misidentification of Wife as grantor). On appeal, Wife challenges this finding. Because we conclude that the deed was not delivered, we need not address the court's alternate finding that the deed was invalid.

i.

Preservation

At the merits hearing, Wife requested, in her opening statement, an award "for the money used on Riverlave." She proffered that the evidence would show that Husband took out "mortgages on Riverlave" that were repaid with marital funds and that "a lot of marital money was put into the Riverlave property." The court questioned if Wife gained a marital interest in Riverlave, likening the use of the property to "having a credit card debt. Instead of going and getting an unsecured loan[,] they use [Riverlave] as a bank[.]" The court telegraphed its view that if Riverlave "was premarital and it was owned without a mortgage premarital, the fact that they used it to lien it to do other things doesn't give [Wife] an interest in that property."

Indeed, the evidence established that Husband inherited Riverlave free and clear as his sole and separate property, he used Riverlave as collateral to secure loans to buy other properties held in the parties' names, none of the loan proceeds were used to make improvements to Riverlave, and the debts were eventually extinguished.

During closing arguments, Husband argued that Riverlave was nonmarital property; he used it as collateral to buy other properties, and when the purchased properties were sold, "he paid the mortgage back." The court reiterated that Riverlave "basically" "became the bank."

The court concluded that using Riverlave as collateral during the marriage did not result in its acquisition under FL § 8-201(e)(1). In the opinion, it explained:

> There is no doubt that the Riverlave property was utilized as collateral to obtain mortgages to purchase various investment properties during the marriage. These mortgages were not acquisition or improvement mortgages for the Riverlave property. At the time of trial, the investment properties had been sold and the mortgages had been extinguished from the proceeds. Pursuant to [FL] § 8-201 "marital property" means the property, however titled, acquired by one or both parties during the marriage unless excluded under subsection (e)(3). Regardless of the mortgages that utilized Riverlave as collateral, they were not related to the acquisition. Riverlave was not acquired during the marriage. Therefore, [Wife] does not have a marital interest in the property.[9]

Although Wife did not clearly raise below the argument she now raises on appeal, we shall exercise our discretion under Maryland Rule 8-131(a) to consider it. The Supreme Court of Maryland, "in several cases, has distinguished between the raising of a new *issue,* which *ordinarily* is not allowed, and the raising of an additional *argument*, even by the Court, in support or opposition to an issue that *was* raised, which is allowed." *Kopp v. Schrader*, 459 Md. 494, 512 n.12 (2018); *see also Med. Waste Assocs., Inc. v. Md. Waste Coal., Inc*., 327 Md. 596, 605 (1992) (concluding that the appellate court did not abuse its discretion in addressing another possible basis of support for standing because the general issue of standing had been litigated and resolved by the trial court).

[9] Wife points out that the court and Wife's trial counsel referred to "mortgages" on Riverlave even though they "were actually deeds of trusts backed up by deed of trust notes." She distinguishes the two, explaining that two parties are involved in a mortgage (borrower and lender) whereas three parties are involved in a deed of trust (borrower, lender, and trustee). While there is a distinction, our Supreme Court has "generally treated them the same" and, in cases involving deeds of trust, the Court has "refer[red] to the instruments as mortgages[.]" *Legacy Funding LLC v. Cohn*, 396 Md. 511, 513 n.1 (2007).

Here, Wife asserted that Riverlave was marital property partly because "mortgages" were taken out and repaid using marital funds. Although Wife did not specifically argue that using separate, unencumbered property as collateral to secure loans to acquire other properties and the later repayment of the loans using marital funds resulted in "acquiring" the separate property under FL § 8-201(e)(1), we view it as another argument supporting an issue that the court had resolved. Because the parties briefed this argument, Husband is not prejudiced by our considering it.

ii.

Analysis

We begin with the definition of "acquired" under FL § 8-201(e)(1). In *Harper v. Harper*, 294 Md. 54 (1982), the Supreme Court of Maryland rejected the inception of title theory. *Id*. at 78–79. That theory provides that property is "acquired" at the inception of title, and improvements made during the marriage on that separate property remain the separate property of that spouse even if improvements were made with marital funds. *Id*. at 64–66. In rejecting that theory, the Court explained that the statute "expressly establishes that a determination of what constitutes marital property" does "not depend[] upon the legalistic concept of title." *Id*. at 78. Accordingly, "property is not necessarily 'acquired' on the date that a legal obligation to purchase is created." *Id*. at 79.

Instead, the Court adopted the source of funds theory. Under that theory,

> when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital. Thus, a spouse contributing nonmarital property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital

> and marital investment in the property. The remaining property is characterized as marital property and its value is subject to equitable distribution. Thus, the spouse who contributed nonmarital funds, and the marital unit that contributed marital funds each receive a proportionate and fair return on their investment.

Id. at 80. To apply the source of funds theory, the Court adopted an interpretation that defines "acquired" "as the on-going process of making payment for property." *Id*. "Under this definition, characterization of property as nonmarital or marital depends upon the source of each contribution as payments are made, rather than the time at which legal or equitable title to or possession of the property is obtained." *Id*.

Cases following *Harper* examined the definitional parameters of "acquired" in the context of a spouse's separate property. In *Bangs v. Bangs*, 59 Md. App. 350 (1984), we determined whether repayment of a loan used to improve separate property with marital funds resulted in acquiring that separate property. *Id*. at 360–64. There, the husband and his mother owned an unencumbered piece of property. *Id*. at 363. They borrowed money to build a second house on the property and mortgaged the property to secure the loan. *Id*. The husband and his wife then reduced the principal indebtedness on the loan with marital funds and used other marital funds to improve the property. *Id*.

The husband argued that, although the principal on the mortgage was paid with marital funds, the mortgage only served as security for payment of that indebtedness. *Id*. He maintained that the payment did not result in an acquisition of the property as contemplated by the source of funds rule, and so the nonmarital property was not converted into marital property. *Id*. We rejected the husband's contention, explaining that the "marital

funds used to pay the mortgage were part of the purchase price for the acquisition of an improvement on the property. As such, it was a marital investment in the property." *Id*.

We summarized that "under the source of funds theory, whenever property owned by one spouse is mortgaged or otherwise encumbered as security for a loan, the proceeds of which were used to acquire or improve the property, the property is not fully 'acquired' until the encumbrance thereon is satisfied." *Id.* at 364. In such a circumstance, "[i]f an encumbrance upon nonmarital property is reduced by the expenditure of marital funds, the property becomes marital property to the extent of that marital contribution." *Id*. "Similarly, when improvements, such as a marital residence or additions thereto, are made with marital funds upon that property, those improvements become marital property." *Id*.

In *Gravenstine v. Gravenstine*, 58 Md. App. 158 (1984), we determined whether payment of taxes on separate property using marital funds resulted in the acquisition of the property under the statute. *Id*. at 172. There, the husband had purchased, before marriage, an unimproved lot titled in his name. *Id*. at 171. During the marriage, the parties paid property taxes with joint funds. *Id*. Citing to *Harper*, we reiterated that "acquired" means "the on-going process of making payment for property." *Id*. (quoting *Harper*, 294 Md. at 80). We held "under the facts of this case that the payment of taxes is not a part of the on-going process of paying for property fully purchased prior to the marriage." *Id*. Property tax payment does not involve the acquisition of land because a tax is the "charge on the *owner* of a property by reason of his ownership alone without regard to any use that might be made of it." *Id*. at 171–72.

The parties did not cite, and we could not find, any Maryland case law directly addressing the question of whether the use of a spouse's separate, unencumbered property as collateral to secure loans to acquire other property during the marriage and the later repayment of the loans with marital funds, results in the acquisition of the separate property under the statute. While our courts have not addressed the question, courts in other jurisdictions have concluded that the nonmarital character of the separate property does not change.

In *Layman v. Layman*, 62 Va. App. 134 (2013), the husband had acquired real estate from his parents, who owned it as tenants in common. *Id*. at 135. When the husband's father died, the father's one-half interest in the real estate passed to the husband under his will (inherited property). *Id*. at 135–36. During the marriage, the husband bought the remaining one-half interest from his mother (purchased property). *Id*. at 136. Later, the husband and wife executed five deeds of trusts secured by the inherited and purchased portions of the real estate. *Id*. The loan proceeds were used for marital purposes and were later repaid with marital funds. *Id*. at 136–37. The trial court held that the inherited property transmuted to marital property when the parties used the inherited and purchased portions to secure loans later repaid with marital funds. *Id*. at 137.

The Virginia Court of Appeals disagreed.[10] It held that "using separate property to secure a loan which is used for marital purposes and is subsequently repaid in full using

[10] On appeal, the husband assigned as error the trial court's classifying as marital the purchased portion of the real estate, but the court did not consider the issue because it

marital funds does not transmute the pledged property into marital property." *Id*. at 140. The court explained that the husband did not gain equity in his inherited property when the five loans were fully discharged using marital funds. *Id*. at 139. Instead, the discharge generated marital equity in other marital properties that the parties acquired using the loan proceeds. *Id*. Therefore, the court concluded that the inherited property did not transmute into marital property. *Id*. at 140.

In *In re Marriage of Corak*, 412 P.3d 642 (Colo. App. 2014), the Colorado Court of Appeals held that using the husband's separate real estate as collateral for a line of credit did not turn it into marital property. *Id*. at 646. The husband owned property that the parties agreed was his separate property. *Id*. at 644. The couple bought a piece of property together during the marriage. *Id.* The husband pledged his separate property as collateral for a home equity line of credit for the down payment on the purchased property and the funds to remodel it. *Id*. The appellate court noted that the money obtained from the line of credit was a marital asset, and the obligation created by the line of credit was a marital debt. *Id*. at 645. But using the separate property as collateral did not turn all or part of it into marital property. *Id*. at 645 (citing *Layman*, 62 Va. App. at 140).

Courts in other jurisdictions have reached a similar conclusion. *See*, *e.g.*, *Higgins v. Higgins*, 226 So.3d 901, 907 (Fla. Dist. Ct. App. 2017) (wife's separate property did not become marital property because it was used as security for line of credit repaid with

was not adequately briefed. *Layman*, 62 Va. App. at 135, n.1. Thus, the only property that was the subject of the appeal was the classification of the husband's separate inherited property. *Id*. at 135.

marital funds); *Bullock v. Bullock*, 218 So.3d 265, 271 (Miss. Ct. App. 2017) (parties' use of wife's nonmarital property as collateral for a loan to buy a marital home did not convert the nonmarital property into marital property); *Giannuzzi v. Kearney*, 74 N.Y.S.3d 123, 126 (N.Y. App. Div. 2018) (pledge of wife's inherited stock as collateral for a loan used to acquire several parcels of property did not transmute all or any portion of the stock).

We are persuaded by the reasoning in *Layman* and similar decisions by courts in other jurisdictions. Here, Husband used Riverlave, his separate, inherited property, as collateral to acquire other properties during the marriage. The loan proceeds were not used to acquire Riverlave or improve it. Assuming that marital funds were used to repay the loans, the repayment was not part of an on-going process of making payment for Riverlave; Husband had acquired the property free and clear at the time of inheritance. Instead, the repayment of the loans with marital funds would have resulted in the acquisition of the other properties. *See Layman*, 62 Va. App. at 139. Based on this record, we conclude that using Riverlave as collateral to secure loans to acquire other properties and the later repayment of the loans with marital funds did not result in the acquisition of Riverlave under FL § 8-201(e)(1).

Wife contends that with a deed of trust, the title to Riverlave as the collateral was conveyed to a trustee and then reconveyed to Husband when the loans were repaid.[11] On

[11] A deed of trust "is a conveyance made to a person other than the creditor, conditioned to be void if the debt be paid at a certain time, but if not paid that the grantee may sell the land and apply the proceeds to the extinguishment of the debt, paying over the surplus to the grantor. It is in legal effect a mortgage with a power of sale[.]" *Wellington*

this premise, she theorizes that repayment of the loans was essentially a "buyback" of Riverlave that resulted in its acquisition under the statute.[12] This argument does not persuade us.

In *Pope v. Pope*, 322 Md. 277 (1991), the Supreme Court of Maryland rejected a similar argument in determining whether property was marital based on an acquisition as a gift from a third party. *Id*. at 283. In *Pope*, the father made a gift of his home to his two sons, Robert and Tommy. *Id*. at 279–80. The home was appraised at $32,000. *Id*. at 280. Robert and his wife, Debra, wanted to live in the home, while Tommy wanted his share of the home in cash. *Id*. at 279–80. To bring about that outcome, the father's attorney "arranged with a bank for a loan to Robert and [Debra] in the amount of $16,000 to be secured by a mortgage on the home. The attorney prepared a deed conveying the home from the father to Robert and Debra as tenants by the entireties, and a mortgage from them to the bank in the amount of $16,000." *Id*. at 280. That amount was turned over to Tommy, satisfying his interest in the home. *Id*.

Co., Inc. Profit Sharing Plan v. Shakiba, 180 Md. App. 576, 593 (2008). "Both instruments convey a defeasible title only[.]" *Id*. at 594.

[12] Wife cites *Leadroot v. Leadroot*, 147 Md. App. 672 (2002), as an example of how "buying back" property converts nonmarital to marital property. The facts and issues in *Leadroot* are significantly different from those in the case at bar. That case dealt with a post-divorce dispute over the husband's pension and whether the circuit court lacked jurisdiction to revise the qualified domestic relations order, years after it had been entered, to account for the husband's post-divorce "buyback" (repurchase) of four years of government service that he had previously cashed out during the marriage. *Id*. at 675. The case does not advance Wife's argument, nor does it stand for the proposition claimed.

When the couple divorced, Robert claimed that half of the home's value constituted nonmarital property. *Id*. at 280–81. The circuit court said the bank, through the attorney, "made a shortcut here . . . rather than the deed ever going to [Robert] and his brother, it was directly from [the] father to [Robert] and his wife." *Id*. at 283. It reasoned that Debra "really became a half owner of [Robert's] property right at that time." *Id*. Therefore, the court concluded that the home was marital property. *Id*.

The Supreme Court disagreed. It reiterated that "a determination of what constitutes marital property for the purpose of granting a monetary award is not dependent upon the legalistic concept of title." *Id*. at 282. "The only evidence, other than the titling, tending to show that Debra was entitled to a half-interest in the home was her flat assertion that she and Robert 'purchased' the home from the father." *Id*. at 283. She suggested that the "shortcut" in the conveyancing translated into a "sale" by the father and a "purchase" by Robert and her of the father's entire interest. *Id*. "Then, she avers, the father made a gift to Tommy of the $16,000 she and Robert paid the father for the home." *Id.* The Court did not find Debra's theory persuasive, and it concluded that the amount representative of Robert's contribution of $16,000 was not marital property because it was acquired by Robert by a gift from a third party under FL § 8-201. *Id*. at 283–84.

Here, Wife likewise bases her "buyback" argument on the legalistic concept of title—that the security instrument conveyed Riverlave to the trustee and back to Husband upon repayment of the loans. As *Harper* and its progeny cases have established, characterizing property as nonmarital or marital does not depend on the time at which legal

or equitable title to or possession of the property is obtained. *Harper*, 294 Md. at 80. For the reasons stated, the circuit court did not err in finding that Riverlave was not acquired during the marriage, nor did it err in concluding that Wife had no marital interest in the property.

II.

Monetary Award

Wife argues that the circuit court erred in granting her a monetary award of $100,000, explaining that the amount failed to equalize the marital property. She claims the court made erroneous findings or ignored uncontroverted evidence in its analyses of the factors under FL § 8-205(b).[13] She limits her argument to the court's analyses of three factors: the value of the property interests of each party, the economic circumstances of each party, and the parties' health. She also contends that the court did not weigh and consider the statutory factors when making the award. We address each point in turn.

[13] FL 8-205(b) provides that the court shall consider each of the following factors in determining the amount of a monetary award: (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family; (2) the value of all property interests of each party; (3) the economic circumstances of each party at the time the award is to be made; (4) the circumstances that contributed to the estrangement of the parties; (5) the duration of the marriage; (6) the age of each party; (7) the physical and mental condition of each party; (8) how and when specific marital property or interest in property was acquired; (9) the contribution by either party of property 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.

A.

Value of the Parties' Property Interests

In its opinion, the circuit court noted that the value of the Husband's nonmarital, Unimproved Lots was unknown. Wife contends that the court's finding that the lots had no value was erroneous because even landlocked property has some value. To the extent that the court implicitly found that the lots had no value, we cannot say the finding was clearly erroneous. The Rule 9-207 statement admitted as a joint exhibit indicated that Wife's assertion of the lots' value was "unknown," and Wife presented no evidence about their value. *See Abdullahi*, 241 Md. App. at 412 ("A party seeking a monetary award has the burden of establishing the value of the marital property and the value of nonmarital property."); *Blake v. Blake*, 81 Md. App. 712, 720 (1990) (finding no error where wife claimed, for the first time on appeal, that improvements to property cost $50,000 when no credible evidence of costs was established at trial).

B.

Economic Circumstances of the Parties

As for the economic circumstances of the parties, the court found that:

> Neither party has significant savings. At the time of trial, neither party was working. [Husband] has been unemployed since leaving the Pub in 2019. [He] is currently receiving $1,561.32 per month Social Security Retirement and approximately $400 a month in rental income from the Blair Lane property. [Wife] had not been formally employed since May 2020. [Wife] testified that she earned inconsistent and minimal income since closing the Pub but had not attempted to obtain full-time employment. [She] may have future opportunity to contribute to retirement savings while [Husband] will not. Neither party is paying rent or a mortgage associated with the properties

> where they reside. Neither party submitted financial statements during the trial, nor did they provide significant testimony about their living expenses. It is clear that neither party is in a positive financial position. This litigation, along with the foreclosure, the tax sale, and other court proceedings, leaves both parties in a deficit.
>
> Prior to December 2019, [Wife] paid the utilities and household expenses for both Riverlave and 4254 Blair Lane. There was no testimony or evidence regarding the parties' cost of living outside of traditional living expenses (food, clothing, etc.).

Wife contends that the court "essentially made no factual finding." She suggests that because the parties did not submit financial statements or testify about their living expenses, the "remainder of [the court's] findings in this respect were simply speculation." Wife does not identify which findings were problematic or explain why the record did not support those findings. *See* Md. Rule 8-504(a)(6). Based on our review of the record, we conclude that the court made express findings about the parties' economic circumstances that were supported by the evidence presented.

C.

Physical Condition of the Parties

As for the parties' health, the circuit court found that:

> Both parties are of generally good health. [Husband] testified that he has poor eyesight, which prevents him from returning to his role as a designer. [Wife] testified that she has [chronic obstructive pulmonary disease ("COPD")]. Neither party provided any further testimony regarding their physical or mental health, and no issues of concern were present during the trial.

Wife contends that the court dismissed her COPD as unimportant. The record, however, does not support Wife's assertion. While Wife testified that she has COPD, she

did not offer any evidence of the nature, extent, or severity of her condition. Nor did she explain how her condition impaired her day-to-day functioning. Other testimony established that Wife did not have knee problems or trouble traversing steps. We discern no clear error in the court's finding that Wife was generally in good health. *See Schade v. Md. State Bd. of Elections,* 401 Md. 1, 33 (2007) ("If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.").

D.

Weighing the Factors

After considering all the factors, the circuit court awarded Wife $100,000, representing an equitable distribution of the anticipated repayment on the note for the sale of Londontown. It explained that "[i]n determining whether a marital award is appropriate, the [c]ourt has considered all the factors outlined in § 8-205(b)." It stated that:

> After a review of the above factors in conjunction with the financial obligations which the parties will have, [t]he [c]ourt finds that Wife shall be entitled to a marital award of One Hundred Thousand Dollars representing an equitable division of the promissory note which will be paid upon [Husband]'s receipt of the promissory note payment. As the [c]ourt has ordered the Blair Lane properties to be sold and the proceeds divided equally after certain initial payments and reimbursements, this sum represents a fair and equitable award.

Wife contends that the court did not consider and weigh the statutory factors. "Without any meaningful explanation, the $100,000 monetary award came far short of equalizing even the sparse marital property the court found." Wife does not expound on

the argument nor explain why the award fell short or how the court abused its discretion in making its award. *See* Md. Rule 8-504(a)(6).

In assessing the statutory factors, the trial court need not articulate every step in its thought process. *Bangs*, 59 Md. App. at 370. It is enough that the trial judge states on the record that she considered the required factors in making her decision. *Randolph v. Randolph*, 67 Md. App. 577, 585 (1986). Here, the court assessed the statutory factors, spanning five pages of the 33-page opinion. The opinion demonstrates that the court considered the statutory factors.

As for weight, our Supreme Court made clear that "[t]he statutory factors listed in § 8-205(b) are not prioritized in any way, nor has the General Assembly mandated any particular weighing or balancing of the factors. The application and weighing of the factors [are] left to the discretion of the trial court." *Alston v. Alston*, 331 Md. 496, 507 (1993).

Here, the court found, among other things, that Husband had contributed significant nonmarital funds to maintain the pub business and acquire Blair Lane. Using Riverlave as collateral allowed the parties to buy other properties that earned rental income. Although the $100,000 award does not represent an equal division of the $320,000 of the anticipated repayment on the promissory note, it represents an equitable division based on the court's assessment of the statutory factors. *See Randolph*, 67 Md. App. at 588 ("The statute is designed to achieve *equity* between the parties; it does not require an *equal* division of marital property.") (emphasis added). The court did not abuse its discretion in granting Wife an award of $100,000.

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