

Circuit Court for Montgomery County  
Case No.: C-15-FM-22-000070

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 0201

September Term, 2023

---

Francisco Diaz

v.

Eugenia Diaz

---

Leahy,  
Beachley,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned,)

JJ.

---

Opinion by Wilner, J.

---

Filed: January 12, 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).

This appeal is from a judgment of divorce entered by the Circuit Court for Montgomery County. After 15 years of what appeared to be a stable marriage, the parties separated in May of 2017 and, to their credit, eventually settled all but one of the issues that often arise following a separation. Although the appellee (the wife) has three adult children from a prior marriage, the parties have no children together. The only lingering issue arises from the trial court's award of \$400 per month of indefinite alimony to appellee, which appellant (husband) contends is unsupported by relevant evidence and constitutes an abuse of discretion.

#### **Relevant Underlying Facts**

The parties were married in March of 2002 and, as noted, separated in May of 2017. They have lived separate and apart since then. Appellee lives in Beltsville in a property that is jointly owned by the parties and was valued at \$540,600, subject to a mortgage in the amount of \$348,430, thus leaving an equity value of \$192,000. Appellant lives in Silver Spring, in the home they had lived in together, that also is jointly owned and was valued at \$498,700 subject to a mortgage of \$315,900, with an equity value of \$183,000. Both of those properties were acquired during the marriage. Each would keep their respective homes, the net values of which were largely equivalent.

Appellee also owned a plot of land in Nicaragua with a value of \$5,500. Appellant agreed that appellee could keep that property, which was titled in her name. They also owned three vehicles – a 2010 Toyota valued at \$6,000, a 2014 Acura valued at \$13,000 and a truck that appellant purchased long after the separation that he valued at \$74,000, subject to a loan of \$73,000. The parties agreed that appellee could keep the two cars and that appellant could keep the truck. At the time of the court hearing, the appellee was 54 years old and appellant was 51.

Appellee was gainfully employed cleaning homes, earning \$17 an hour. In a critical finding, the court concluded that, given her age (54), a sixth-grade education, being a non-English speaker, and suffering from “a number of health issues,” she was not likely to enhance her employment opportunities. Her three children lived with her and helped to support her with rental payments totaling \$1,300 a month. The court discounted those contributions, however, noting that those children were adults with families of their own and would soon be moving out. The court determined her income, for purposes of considering an alimony award, to be the \$17 per hour she earned, amounting to an annual income of \$34,000.

The problem for the court was in determining appellant’s income. Appellant produced evidence regarding that, most of which the court found not to be credible. Appellant said that he had operated a home improvement business in the form of a Subchapter S corporation that he opened in 2009 but that he was in the process of closing

it down. In 2019, the company had generated revenue of \$568,176 but a profit of only \$36,063. He claimed that the business lost \$118,687 in 2020, notwithstanding that it started the year with \$61,130 in the bank and ended it with over \$88,164 in its accounts.

He was unable to explain how he was able to make bank deposits during 2020 of over \$77,000 yet declare income of only \$8,433 on his 2020 tax return.

### **The Court's Ultimate Conclusion**

The court's ultimate conclusion was that:

“considering those incomes with relative equal expenses, except for [appellant's] large car note, I will find indefinite alimony because I find three times his salary is unconscionably disparate, and I also find that due to [appellee's] age, depression and disability, either one of those factors is enough, but there's just no chance of her, in this Court's eyes, to make any great improvement as to income. . .

So, again, both sides are hurting for income. It's unfortunate. I'm sure that wasn't the easiest when they were together because it's an expensive area to live and living apart can have all that much more challenges with two mortgages and two everything else. But it's not fair for one side to be able to live so much higher than the other. . .

But based upon those incomes that I see and the expenses that I don't want to have to spend more time, but I am happy to if the parties want going over their incomes, neither one which adds up to make them both under water, I will grant [appellee] \$400 of alimony a month. . .

I do find that [appellant] is involuntarily impoverished, so I don't credit his numbers, his financial statements or his testimony. I think he clearly could earn \$100,000 doing home improvements. He's healthy. He's strong. He's got that experience. He's got connections by now. There's a great demand for it.”

### **Appellant's Complaint**

Appellant complains about the court’s discounting the rental payments appellee received from her children as based on “sparse and meaningless findings,” and of ignoring the “parties’ respective net worth following property distribution” and declaring, in the absence of evidence, that appellant lived in a “phenomenal” area to engage in the home improvement business, from which he could earn \$100,000 a year. The evidence, he contends, showed that appellee was self-sufficient based on her income, that she was leaving the marriage with a net worth of \$200,000, and that the award of \$400 alimony was “arbitrary, capricious, unfair, inequitable, and unsupported and patently contradicted by the evidence.”

### **Appellee’s Response**

Appellee notes that none of appellant’s exhibits were included in the Record Extract and that he ignores the court’s specific findings regarding appellee’s age and health issues that were relevant to the court’s conclusion that appellee was not entirely self-supporting or able to become so and that, given appellant’s opportunities to substantially increase his income, there was an unconscionable disparity between them.

### **Procedural Deficiencies**

With good reason, appellee complains that, although appellant presented 12 exhibits that were admitted by the court and appellee presented 10 exhibits that were admitted, none of them were included in appellant’s Record Extract, and we are not required or inclined to go hunting for them. With an exception not relevant here, Rule 8-501 requires an

appellant to prepare and file a Record Extract in every civil case that “shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal.” The exhibits excluded from the Record Extract dealt in large measure with appellant’s income and assets and his company’s income and assets. That unexcused violation of Rule 8-501 is enough to warrant dismissing the appeal, but we elect to resolve the appeal on a more substantive basis.

The only issues left for the Circuit Court to decide in this case were whether to award alimony to appellee and, if so, how much and whether it should be indefinite. The court did summarize the evidence it believed most relevant and related it to the factors set forth in Md. Code, Family Law Article, § 11-106, which sets forth the standards with respect to both of those issues. The crux of its decision both to award alimony and how much was based, at least in part, on its rejection of appellant’s “evidence” and argument.

Although appellant is correct that a court may not award indefinite alimony based solely on the parties’ income differential, appellant ignores that the court implicitly found that the parties’ standard of living would be unconscionably disparate when it concluded that “it’s not fair for one side to be able to live so much higher than the other.”

The Circuit Court, based on the evidence before it, concluded that appellant had voluntarily impoverished himself – that he had the ability to earn a great deal more money than he was reporting. He had been able to conduct a profitable home improvement business and could do so again. Most of the “wealth” that appellee ended up with was in

the value of her home, in which she had considerable equity but also a significant mortgage and no place else to live. We find no error of law or abuse of discretion in the court's findings and judgment.

**JUDGMENT AFFIRMED; COSTS  
TO BE PAID BY APPELLANT.**