

Circuit Court for Baltimore County
Case No. 03-C-18-001435

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0207

September Term, 2021

TREVOR MICHAEL DENTZ

v.

SUMITHRA RAGHU DENTZ

Friedman,
Wells,
Eyler, James R.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Wells, J.
Dissenting Opinion by Friedman, J.

Filed: December 1, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On remand from this Court, the Circuit Court for Baltimore County found that Trevor Dentz (“Husband”) dissipated over \$100,000 in marital assets and awarded Sumithra Raghu Dentz (“Wife”) half of the dissipated funds. Once again on appeal to this Court, Husband presents one issue: “In light of the majority opinion of the [C]ourt of [S]pecial [A]ppeals, did the trial court err in concluding that Husband dissipated \$100,753.38 by paying his attorney’s fees?” For the following reasons, we reverse and remand.

FACTUAL BACKGROUND¹

Husband and Wife divorced in 2018. At the absolute divorce hearing, the parties were unable to fully agree on a Rule 9-207 Joint Statement Concerning Marital and Non-Marital Property. The primary disagreement concerned Wife’s allegation that Husband dissipated \$100,753.38 from a marital bank account. Husband defended the claim of dissipation by arguing that the money was withdrawn from the account to reimburse his mother who had paid Husband’s attorney’s fees.²

Wife met her burden by introducing three bank statements into evidence on which the trial court relied to find dissipation. The burden then shifted to Husband to show that the money transferred out of the brokerage accounts – admittedly marital assets – were used for a proper purpose. Husband introduced into evidence invoices from his attorneys

¹ A complete recitation of the facts can be found in our January 2021 opinion. *Dentz v. Dentz*, No. 57, 2021 WL 22103, at *1–2 (Md. Ct. Spec. App. Jan. 4, 2021). We will only recap the facts that are relevant for the purposes of this appeal.

² The evidence showed that Husband first transferred money from the marital bank account into an account in his name before ostensibly repaying his mother.

detailing the fees they charged him. Husband testified that he made the two transfers from the marital bank account to reimburse his mother for attorney’s fees.

The trial court was not persuaded. As part of the Judgment of Absolute Divorce in February 2020, the trial court found that Husband had dissipated the funds and awarded Wife half the dissipated amount. On appeal, Husband argued that the trial court erred by finding that he had dissipated the assets because the payment of reasonable attorney’s fees does not constitute dissipation.

In a 2-1 opinion, we held that the trial court erred in finding dissipation and directed the trial court to reconsider that finding. In the opinion, we stated that a direct tracing of funds is not required to defend against a claim of dissipation. *Dentz*, 2021 WL 22103, at *6. “When one spouse has proven an obligation to pay reasonable legal fees, he may transfer marital funds to pay them—free of a dissipation claim.” *Id.* Moreover, we reasoned:

If a spouse’s parents have paid the fees, the transfer of marital funds is still legitimate without also proving reimbursement to those parents. A spouse’s arrangement—or lack thereof—with his or her parents regarding reimbursement for such fees, should not dictate otherwise . . . If the invoice from the attorneys in this case was a legitimate representation of the amount charged, and the charge was reasonable, we see no reason why Husband’s transfer from his Ameritrade account would “frustrate an equitable distribution of partnership assets.

Id. at *6–7 (internal citations omitted). We reversed as we were unsure whether the trial court considered our holding in *Allison v. Allison*, 160 Md. App. 331 (2004), where we held that when “a spouse uses marital property to pay his or her own reasonable attorney’s fees, such expenditures do not constitute dissipation of marital assets.” *Id.* at 339–40. As

a result, we asked the trial court to reconsider the dissipation award “consistent with this opinion.”

On remand, the trial court again found that Husband dissipated the funds, and again awarded Wife half of the dissipated amount. In finding dissipation once more, the trial court stated that it simply did not find Husband’s testimony—that he used the money for attorney’s fees—to be credible. Husband subsequently appealed to this court.

ARGUMENT

THE TRIAL COURT’S DISBELIEF OF HUSBAND’S TESTIMONY, WITHOUT ADEQUATE EXPLANATION, IS INSUFFICIENT FOR A FINDING OF DISSIPATION

A. Parties’ Contentions

Husband first notes that in this Court’s previous decision in this case, on remand we directed the trial court to “provide a legitimate basis for its rejection of Husband’s testimony.” Husband argues that despite our direction, the trial court again found dissipation merely because it did not find Husband’s testimony credible, thus abusing its discretion by doing “exactly what the majority in the Court of Special Appeals said it could not do.” Husband points out that in our previous opinion in this case, we stated that “a spouse’s testimony as to the use of marital funds, without more, is sufficient for the trial court to accept in defense against dissipation claims.” Husband also notes that although we stated that Husband was not required to produce documentation to corroborate his testimony, he did so anyway in the fee exhibit.

Wife argues instead that the trial court did not err and acted well within its discretion by disbelieving Husband’s testimony. Wife distinguishes this case from *Allison*, arguing

that “in the Allison case it was uncontroverted that the alleged dissipated funds were spent on attorney’s fees.” The trial court in *Allison* was not tasked with determining whether the funds were used for attorney’s fees. Conversely, here, Wife contends, it is controverted whether Husband actually used the withdrawn funds for attorney’s fees. Wife instead directs our attention to *Omayaka v. Omayaka*, 417 Md. 643 (2011), where the Court of Appeals deferred to the trial court’s discretion in assessing the witness’s credibility. *Id.* at 659. Thus, we must similarly defer to the trial court’s discretion here and affirm the dissipation award.

B. Analysis

Dissipation occurs when one party “spen[ds] or otherwise deplete[s] marital funds or property with the principal purpose of reducing the amount of funds that would be available for equitable distribution at the time of the divorce.” *Id.* at 653 (quoting *Welsh v. Welsh*, 135 Md. App. 29, 51 (2000)). When dissipation of marital assets is found, it constitutes “no more than a fraud on marital rights” and the dissipated assets should be considered “extant marital property . . . to be valued with the other existing marital property.” *Sharp v. Sharp*, 58 Md. App. 386, 399 (1984). A trial court’s finding of dissipation is a factual one, which we review under a clearly erroneous standard. *Id.* at 652. “If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Omayaka*, 417 Md. App. at 652–53 (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)). Further, Md. Rule 8-131(c) states that when an action is tried without a jury, the appellate court reviews the case based on the law and the evidence and will “give due regard to the opportunity of the trial court to judge the

credibility of the witnesses.” As such, a trial court is granted significant deference and is entitled to “accept—or reject—all, part, or none of the testimony of any witness.” *Omayaka*, 417 Md. at 659.

It is undisputed that the payment of reasonable attorney’s fees does not constitute dissipation. *See Allison*, 160 Md. App. at 339–40. The only issue before the trial court concerning dissipation was whether Husband did in fact use the money for attorney’s fees. In the Judgment of Absolute Divorce, the trial court found dissipation because Husband “failed to produce evidence sufficient to show that the transfers of funds were appropriate.” The trial court found dissipation even though Husband introduced invoices from his attorneys that corroborated the amount of money withdrawn from the marital bank account. In its decision, the trial court did not explain why the evidence was insufficient.

In our previous opinion, we noted that even though the trial court has discretion to disbelieve Husband, critically, it was “not clear . . . what testimony regarding material facts the court rejected.” *Dentz*, 2021 WL 22103, at *6. We offered two theories which could have served as the basis for the trial court’s ruling. The first theory—that the trial court “might have rejected as false that [Husband] was billed for legal fees in the amount shown on the invoices”—we rejected because that required us to assume that Husband’s attorneys introduced into evidence false invoices, a step we were unwilling to take. *Id.* The second theory was that the trial court accepted the attorneys’ invoice but found it “insufficient to defend against dissipation because he produced no evidence that any of the fees were paid.” *Id.* We also rejected that theory, reasoning that it was not persuasive that “the burden of production imposed on the alleged dissipating spouse is quite so strict.” *Id.* We added:

“We are unwilling to hold that a good defense against a dissipation claim—showing direct withdrawal of marital funds—requires a direct tracing of the marital funds to payment of the legitimate expenditure: in this case, legal fees.” *Id.* at *7. We reversed and remanded and directed the trial court to reconsider the dissipation award “consistent with this opinion.” *Id.*

On remand, the trial court again found dissipation, and, again, based its finding solely on Husband’s lack of credibility. The trial court stated in its Amended Decision:

The trial court had an opportunity to observe first-hand [Husband]’s appearance and demeanor on the witness stand, including eye movements, body language, pace of speech and mannerisms to assess his credibility. Based on its credibility assessment, the trial court exercised its discretion to believe all, some, or none of his testimony. The trial court did not find [Husband]’s testimony credible in several respects, including his testimony he used marital funds to pay his legal fees or for other purposes that would not be considered dissipation of marital assets. That credibility determination was the basis for the trial court’s conclusion that [Husband] engaged in dissipation of material assets. In the trial court’s view, [Husband] simply did not present credible evidence sufficient to show that the expenditures were appropriate.

We find this explanation, without more, to be as insufficient for a finding of dissipation, as was the court’s first ruling. While the trial court stated it had the “opportunity” to observe Husband’s appearance and demeanor, it failed to state why it disbelieved the weight of the evidence that showed that the attorneys’ fees were incurred and why it disbelieved Husband’s testimony that he reimbursed his mother, even when his testimony was corroborated by the withdrawals from the marital bank account. The trial court next stated that it “did not find Husband’s testimony credible in several respects,” and stated that the court disbelieved Husband’s testimony that “he used marital funds to pay his legal fees or

for other purposes that would not be considered dissipation of marital assets,” without explaining what it was that the court disbelieved.

That was the primary issue before the trial court on remand. But the trial court did not explain as to why it found this testimony lacked credibility, particularly when the weight of the evidence shows that Husband incurred the attorneys’ fees, and Husband testified that his mother paid them and that he reimbursed his mother. If the court did not believe Husband, then we ask the court to explain why that is so.

While the trial court is entitled to find dissipation based on a disbelief of Father’s testimony—provided that the trial court adequately explain why Father’s testimony was not credible—we encourage the trial court to hold further proceedings to better inform the trial court’s judgment. We ask the court to consider taking testimony from any witness who might clarify exactly how the funds from the parties’ bank accounts were used. We note that the trial court, upon the first remand from this Court, issued its amended judgment without having a remand hearing.³ The majority thinks a remand hearing would aid in a finding of dissipation or not.

CONCLUSION

As we explained in our earlier opinion, we rejected an interpretation of the burden of production to be so strict as to require a direct tracing of the funds. *Dentz*, 2021 WL

³ Upon remand, the trial court asked the parties to submit a letter to the judge on the issue of whether the trial court should take more evidence. Although Father stated in his letter that “there is no need for a remand hearing or additional evidence or testimony,” Father added that “[s]hould the [c]ourt conclude that a remand hearing is necessary, . . . Mr. Dentz will be prepared to submit evidence on the issues the [c]ourt wants addressed.”

22103, at *7. We respectfully ask the trial court to elaborate on its ruling and, if necessary, take further evidence to bolster the court's determination. There is nothing obvious to us in the cold record that would indicate Husband's lack of credibility, and so without sufficient explanation from the trial court regarding why Husband lacked credibility, we are constrained to remand for the circuit court to reconsider the dissipation award consistent with this opinion.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

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Dissent by Friedman, J.

Filed: December 1, 2021

I respectfully dissent.

Sumithra Dentz came forward with evidence that Trevor Dentz took marital assets without her consent for a purpose unrelated to the marriage at a time when the marriage was undergoing an irreconcilable breakdown. *See Omayaka v. Omayaka*, 417 Md. 643, 651, 656 (2011). Specifically, she put on evidence that Trevor withdrew over \$100,000 from marital brokerage accounts without her consent after they had separated. *Dentz v. Dentz*, No. 57, 2021 WL 22103, at *5 (Md. Ct. Spec. App. Jan. 4, 2021). That was enough to make a *prima facie* case of dissipation. *Omayaka*, 417 Md. at 656-57.

The burden then shifted to Trevor to “produce evidence sufficient to show that the expenditures were appropriate.” *Omayaka*, 417 Md. at 657.⁴ Trevor’s evidence was his own testimony that he had withdrawn the money from the brokerage accounts to repay his mother for her payment of his attorney’s fees.⁵ If believed, this would certainly have been “evidence sufficient to show that the expenditures were appropriate.” *Id.* Of course, Trevor also had other options for satisfying this burden. For example, he could have put his mother on the witness stand to describe the transactions. Or he could have produced cancelled

⁴ Imposing this burden of production on Trevor is, of course, fair and reasonable. He is the only party likely to have evidence to show if the money was used for a proper purpose. Moreover, we should not lose sight of the importance of the general rule that one shouldn’t use marital assets for nonmarital purposes. Thus, while *Allison* provides an exception for attorney’s fees, *Allison v. Allison*, 160 Md. App. 331, 339-40 (2004), that exception cannot be allowed to swallow the general rule.

⁵ Trevor—and the majority here—make much of the additional evidence of the transaction: Trevor’s attorney’s invoice. Slip Op. at 5. I have no doubt, nor apparently did the circuit court, that Trevor was billed and that his mother paid that bill. The only real question, rather, is whether Trevor used the money from the brokerage account to repay his mother.

checks, withdrawal slips, account balance statements, or the like to show the paper trail.⁶ He chose not to provide such evidence.⁷ The only evidence, therefore, was Trevor’s testimony, and the circuit court found it not credible and thus insufficient. I see nothing extraordinary in this finding and certainly don’t think it was an abuse of discretion.

Despite Trevor’s failure to satisfy his burden of sufficient production, however, the caselaw is clear that the ultimate burden of persuasion remains on the party alleging dissipation. *Id.* at 656. Thus, the burden of persuading the court that Trevor dissipated the funds remained on Sumithra. Given the state of the evidence, however, it was no contest. Sumithra produced evidence to show that Trevor withdrew marital funds without her consent. Trevor failed to produce sufficient credible evidence to show that he used the marital funds to repay his mother for the attorney’s fees. The circuit court’s ultimate decision was not only not an abuse of discretion, it was absolutely correct. I would, therefore, affirm.⁸

⁶ My suggestion that Trevor could have produced a paper trail is not inconsistent with this Court’s holding in the earlier appeal that Trevor is not required to provide a paper trail. *Dentz*, 2021 WL 22103, at *7. I am only noting that he could have, not that he was required to do so.

⁷ Although the circuit court did not specifically draw an inference from Trevor’s decision not to produce other, better evidence in support of his claimed repayment, it certainly could have. *Omayaka*, 417 Md. at 657 n.4.

⁸ I also note that the majority opinion all but orders the circuit court to hold a hearing and entertain new evidence upon second remand. This seems to be in reaction to the suggestion that Trevor had evidence to satisfy his burden, but that the trial court refused to allow him to produce that evidence. Slip Op. at 8 n.3. This is simply not borne out by the correspondence. In fact, Trevor specifically waived the right to introduce evidence at the first remand hearing. *See Am. Decision & J. of Absolute Divorce 2-3* (Mar. 16, 2021) (“Although it was the trial court’s understanding that [Trevor’s] position was that additional evidence and testimony were necessary in light of the Court of Special Appeals’

decision, neither party’s filing regarding that issue included a request to present additional evidence or testimony.”); *see also* Letter from Susan Carol Elgin, Kaufman, Ries & Elgin, P.A., to Judge Robinson (Feb. 9, 2021) (“On behalf of Trevor Dentz, I submit there is no need for a remand hearing or additional evidence or testimony.”). In light of that waiver, I would not give Trevor a *third* bite of the apple.