

Circuit Court for Prince George's County
Case No. CAD1715885

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 369

September Term, 2020

MAISHA JONES

v.

ALONZO JONES, JR.

Graeff,
Arthur,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: November 23, 2020

*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.

Maisha Jones (“Mother”), appellant, and Alonzo Jones, Jr. (“Father”), appellee, were married in May 2011, and they are the parents of three minor children. The parties separated in 2017. On March 13, 2018, the court granted Mother a limited divorce, awarding her sole legal and physical custody of the children. The parties subsequently filed for absolute divorce. On June 5, 2020, the court issued a Judgment of Absolute Divorce, awarding the parties joint legal and physical custody of the children, ordering Mother to pay child support and partial attorney’s fees, and granting Father an additional 20% of the proceeds from the marital home as a monetary award.

On appeal, Mother presents the following questions for this Court’s review, which we have rephrased and reordered, as follows:

1. Did the trial court err in granting the parties joint legal and shared physical custody of the minor children?
2. Did the trial court err in awarding Father a monetary award?
3. Did the trial court err in awarding Father child support, including retroactive support and arrears?
4. Did the trial court err in awarding Father attorney’s fees and costs?

For the reasons set forth below, we shall affirm the judgment with respect to custody, vacate the judgment with respect to the monetary award, the child support award, and attorney’s fees, and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father were married on May 13, 2011. During the course of the marriage, the parties had three children, who were ages nine, seven, and three at the time of the trial. Mother also had sole physical custody of her 15-year-old daughter from a prior

marriage. In January 2012, the parties purchased a home in Bowie. It was titled as tenants by the entirety, but the mortgage was solely in Father's name. Both parties contributed to the purchase of the home, with Father paying the \$15,000 down payment, and Mother paying the \$2,000 earnest money deposit.

The parties maintained separate bank accounts throughout the marriage and divided the household expenses. Father paid the mortgage (\$1,500/month), utilities (\$350-\$400/month), property taxes, health insurance (including for Mother and Mother's daughter), and a portion of the childcare expenses. Mother paid for food, home repairs, clothing, leisure and entertainment activities for the family, and the remainder of the childcare expenses.

Father was employed as a mechanical engineer at the Social Security Administration, earning approximately \$97,000 per year. At the start of the marriage, Mother worked varying hours at several different area hospitals as a labor and delivery nurse. As a result, her income fluctuated between \$30,000-\$60,000 per year. There were significant periods, however, where Mother did not work due to difficult pregnancies and her decision to stay home for six months to a year after the children were born. Mother also received child support from her ex-husband.

In April 2013, Mother started a business with a partner called Ivenous Therapy Solutions, an out-patient medical infusion center for patients with chronic illnesses. Mother made a \$4,257 capital contribution to the business from a savings account set up to hold her daughter's child support payments. The business dissolved in 2017 due to a

partner dispute, but Mother started a new business called MedVenous, LLC in early 2018, which provided the same services in the same location. Mother's grandparents initially loaned her \$50,000 for the new business, and after a confidential settlement was reached in the dissolution litigation involving Ivenous, those funds were transferred to MedVenous. Mother was a 23% owner of MedVenous, sharing ownership interest with two other members, as well as her mother, who was a 30% shareholder. Mother testified that her income from the business was approximately \$60,000 per year.

Due to increased tensions in the marriage, the parties separated on June 12, 2017, and Father moved out of the marital home. On June 29, 2017, Mother filed in the Circuit Court for Prince George's County a Complaint for Limited Divorce or in the Alternative, An Absolute Divorce and Request for Pendente Lite Hearing. At a hearing on February 16, 2018, Mother requested sole legal and physical custody, child support, and use and possession of the marital home.¹ Mother requested no visitation for Father, or alternatively, daytime visits only, based on her assertion that he had an unstable housing situation and was living in his car. She testified that the children remained with her in the marital home, but Father was still paying partial daycare costs, the mortgage, and the utilities.

On March 13, 2018, the court granted a Judgment for Limited Divorce, awarding sole legal and physical custody of the three children to Mother, with reasonable access for Father at Mother's discretion. Mother also was awarded use and possession of the marital home for up to three years. The court then ordered that, in lieu of paying child support

¹ Father did not appear at the hearing.

directly to Mother, Father continue to pay the mortgage, utilities, and certain daycare expenses, totaling \$2,640 per month.

On April 25, 2018, Father filed a Motion to Modify Child Support, Custody and Visitation. He requested sole legal and physical custody, or alternatively, shared custody, and a modification of child support. In support of these requests, he stated that “[t]here are material changes in circumstances that require a modification.” On July 9, 2018, Father filed a Complaint for Absolute Divorce, Custody, and Other Relief.² On August 16, 2018, Mother filed a Supplemental Complaint for an Absolute Divorce and other relief, including that she be granted sole physical and legal custody, a monetary award, and continued use and possession of the home, followed by an Order transferring ownership of the property to her.

Trial ensued on July 18, 2019, August 19–20, 2019, and January 21, 2020. Father testified that, when he had visitation with the boys, he stayed at his parents’ house in Lanham, and otherwise he lived with a friend in White Marsh because it was closer to work in Baltimore. At the time the home study of his parents’ house was conducted, the children’s furniture had not yet arrived, but he testified that the home now had a bunk bed for the two younger boys and a separate room with a twin bed for the oldest child, plus

² Father’s complaint was initially fashioned as a “[s]upplemental” complaint, but he later filed a Line to amend the title.

dressers and closets.³ Father testified that he had seen the children no more than five times since the parties' separation in June 2017 because Mother had denied visitation and ignored his phone calls and texts. He stated: "[I]t got to the point where I just stopped trying to communicate."

Mother testified that, following the separation, Father initially was active in the children's lives, but "as the months went by," he "stopped reaching out as much" and refused to answer his phone when she or the children called from her cell phone. She stated that she bought a house phone for the boys to call him on, and they had spoken that way "a couple times." Mother testified that she invited Father to events, including the children's birthday parties, but Father "never show[ed] an interest." She stated that the boys had more than five visits with Father in 2018.⁴

Two private investigators testified on Mother's behalf. Jamie Spaulding, one of the private investigators, testified that, following the separation, he observed Father's vehicle "on numerous occasions and quite often at a truck stop" in Laurel, "as well as several other hotels and motels around the tri-state area." Derek Crumbley testified that he had surveilled Father on numerous occasions and had observed him spending the night at various locations, but never at his parents' home. He acknowledged, however, that he had

³ Father's mother also testified that there was furniture in the house for the children and corroborated her testimony with pictures of various rooms. She confirmed that Father lived with them when he had the children.

⁴ Father's counsel proffered in his opening statement that Father did not see the children from July 2018 to July 2019. When Father testified in January 2020, he stated that he had seen them in 2019 on Christmas and after Thanksgiving.

only witnessed Father with the boys on two occasions, once at the parents' house during the day and another time at a park. Mother testified that Father had told her that he was "homeless," and the boys reported going to a motel on certain occasions.

With respect to MedVenous, Mother testified that the business had no value because it was not profitable and was currently in six-figure debt due to recent litigation with CareFirst. She stated that she took a \$60,000 annual member draw from the company, and the business was her only source of income. She asserted that the company was her separate property because she started Ivenous with money from her daughter's account, and the capital for MedVenous came from money rolled over from Ivenous plus the loan from her grandparents.

On cross-examination, Father's counsel introduced MedVenous' bank statements for January, March, April, and May 2019. The statements showed numerous direct transfers from MedVenous' seven business accounts to Mother's checking account with the same bank.⁵ There also were various transfers from the business accounts to the MedVenous credit card, which Mother testified was used by the employees for business related expenses. Father also introduced MedVenous' bank statements from 2018,

⁵ In January 2019, there were two transfers from a business account ending in 5584 to Mother's account, one for \$2,000 and another for \$4,000. In March 2019, there was a \$5,000 transfer between the same accounts, and two more \$5,000 transfers from business account ending in 797. In April 2019, there was one \$5,000 transfer for account 5584 to Mother's checking, and two transfers for \$2,000 and \$5,000 from account 789 to her checking. In May 2019, there were four more transfers from account 797 totaling \$13,000 and another \$5,000 from account 7077 to her checking account.

showing numerous additional transfers from the business accounts to Mother's checking account.

Although Mother denied using the business accounts for her personal expenses, she testified that some of these transfers were member draw "advances" or "loan[s] from the business to cover [her] legal fees," which she intended to pay back. She also testified that she transferred money from the business accounts to "pay off [the] loans" on her personal credit card. Mother stated, however, that she sometimes purchased business items on her personal credit card and reimbursed herself from the business account.

Father then introduced Mother's personal bank statements for December 22, 2018, to May 21, 2019, showing deposits from the business accounts to her checking account. Father's counsel proffered that Mother's statement showed that she had deposited approximately \$92,000 in her account during this period alone, although not all the deposits were explicitly listed as coming from MedVenous' accounts.

The trial court made its oral ruling on May 1, 2020. It granted an absolute divorce based on the parties' one-year separation. The court determined that joint physical custody and shared legal custody were appropriate in this case. In doing so, it reviewed the necessary factors on the record pursuant to *Taylor v. Taylor*, 306 Md. 290 (1986), *infra*. In particular, the court found that both parties were fit parents, that they would be able to communicate and co-parent, and that they had the financial resources to do so.

With respect to the parties' relationship with the children, the court stated that Mother had been "manipulative" and "abuse[d] her power" with regard to Father's

visitation since the Judgment of Limited Divorce. It found that, contrary to Mother's argument that Father had "given up" trying to see the boys, the more accurate description was that Father had stopped trying to unsuccessfully fight with Mother, whom the court identified as the more "aggressive" party, and instead elected to wait for the court to establish a more concrete arrangement. In regard to Father's housing situation, the court found credible the reports that he resided at his parents' house when the boys were with him, and that there was sufficient space and furniture for them there. It stated that what Father did on his own time when he did not have the children was "his business."

The court then addressed the character and reputation of the parties. The court stated that, based on both the testimony and the court's personal observations of Mother during trial, it concluded that Mother was "controlling, manipulative, and at times overbearing." It found that the children had not maintained a relationship with Father's family while they had been in Mother's care, and Mother had not regarded Father "in a positive light around the children." The court also stated that it had been "far too long since the children have had regular quality time with their father" as a result of Mother's control issues.

The court next addressed the parties' requests for child support. It began the discussion of the parties' finances by acknowledging that, because Father was seeking a support award, it was his burden to rebut Mother's assertion that MedVenous had no value. Since he presented no evidence to the contrary, the court stated that it accepted that the value of the business was "zero."

The court stated, however, that it found the large volume of transfers between MedVenous' business accounts and Mother's account to be suspect, especially considering her stipulated income of \$60,000 in relation to her expenses and lifestyle. It stated that it could not "come to the conclusion that that's the only money that she's getting from MedVenous." It found that, from January to May 2019, Mother deposited \$91,656.75 into her personal accounts, an average of \$18,331.35 per month. Therefore, the court imputed to Mother an income of \$219,976.20 per year, retroactive to the 2018 order. The court found Father's income to be \$8,083 per month, or \$96,996 per year. Based on these numbers, the court calculated Mother's child support obligation to be \$838 per month, beginning May 1, 2020, and it ordered her to pay retroactive support dating back to the circuit court's 2018 Judgment of Limited Divorce. The court later specified in its written order that Father was entitled to "a credit for child support payments made to [Mother] retroactively from the Order dated February 26, 2018," in the amount of \$70,065, and Mother was to pay \$22,626 in arrears.

The court then valued the marital and non-marital property. It accepted the parties' joint proffer that the marital home was worth \$375,000, with \$162,000 in equity. Because Father did not oppose Mother's request to buy out Father's interest in the property, the court ordered Mother to obtain a commitment letter stating that she was able to purchase or refinance the house. If she was unable to obtain such a letter within 30 days, the court ordered the house to be sold.

The court next revisited its valuation of MedVenous. Although it noted that there was some indication that Father may have made monetary and non-monetary contributions, the court identified the business as non-marital property belonging to Mother because it was “based upon her nursing license.” The court reiterated that it was “Father’s responsibility to value the business,” which he did not do, but it then stated that it was valuing MedVenous at “approximately \$2 million, or somewhere in between the low and the high amount that was provided” by Mother’s counsel.⁶

With respect to Father’s request for a monetary award, the court addressed, as discussed in more detail, *infra*, the pertinent factors pursuant to Md. Code Ann., Fam. Law (“FL”) § 8-205(b) (2019 Repl. Vol.). In evaluating the economic circumstances of the parties, the court found that, based on the assets of the parties, Mother had a net worth of \$2,121,073.73, and Father had a net worth of \$269,734.14. The court stated that Mother “completely lacks credibility with regard to her business, its value, and her ultimate financial status.” It also found that Mother was responsible for the estrangement of the parties because, despite her allegations of adultery, she created a hostile environment in the home. The court then awarded Father “an additional 20 percent over and above the 50

⁶ Father’s counsel proffered in her opening statement and closing argument that the business had “brought in” more than \$1.7 million from January to May 2019, and there were deposits and credits in the amount of \$3.4 million in 2018. When Mother was asked about this valuation on direct, she testified that this was not true, and not only was the business not currently making a profit, it was more than six-figures in debt due to ongoing litigation with CareFirst. Both Mother and her counsel explicitly stated that the business had no value.

percent stated in the net proceeds of the sale of the house as a monetary award, giving [Father] a total of 70 percent.”

Finally, the court addressed both parties’ requests for attorney’s fees and costs. It found that Mother’s requests were “not justified,” and she had failed to “honestly and completely engage in discovery,” which had increased Father’s costs and caused the court “an inordinate amount of time to review.” It also stated that it found Father’s income to be disparate from Mother’s income. Accordingly, the court ordered Mother to pay 50% of Father’s legal fees.

On May 20, 2020, the court issued a Judgment of Absolute Divorce, Custody, Visitation, Child Support, Monetary Award and Other Relief, which was entered on June 5, 2020. The access for Father provided that he had the children on Monday at 10:00 a.m. through Tuesday at 7:00 p.m. each week, and every other week he had the children Thursdays at 10:00 a.m. through Sunday at 7:00 p.m., except as superseded by holiday and summer vacation time.

This appeal followed.

DISCUSSION

I.

Child Custody

Mother contends that the trial court erred and abused its discretion by giving Father joint legal custody and shared physical custody of the children. She makes two arguments in this regard. First, she argues that the court erred in applying “an initial custody

determination analysis at the time of the absolute divorce hearing, as opposed to a modification analysis.” She asserts that a modification analysis was required because a final custody determination had been made in the March 13, 2018, Judgment of Limited Divorce. The court, however, did not require Father to make a showing of a material change in circumstances before it altered the custody arrangement.

Second, Mother argues that the court abused its discretion in considering the joint custody factors established in *Taylor v. Taylor*, 306 Md. 290 (1984). Specifically, she argues the court’s analysis omitted the following evidence: (1) the children had resided exclusively with Mother since the limited divorce order, and Father did not make an effort to have a relationship with them; (2) Father did not provide any financial assistance for the children following the separation; (3) Father’s unstable living situation; (4) Father’s refusal to communicate with Mother about the children; (5) Mother was the primary care taker for the children throughout their lives and had provided a stable home for them; (6) Father’s lack of furniture at his parents’ house at the time of the home study; and (7) the conflict between Mother and his family that may have a negative impact on the children in a shared custody arrangement.

Father contends that the trial court properly awarded the parties joint legal custody and shared physical custody. He asserts that the “record reflects a change in circumstances” because the initial order was based solely on Mother’s testimony without hearing from Father. He argues that the court properly applied the *Taylor* factors based on the relevant evidence in reaching the custody decision.

This Court reviews child custody determinations under three interrelated standards of review:

[W]e point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Secondly,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003).

We begin with Mother’s argument that the court erroneously applied an initial custody determination analysis, as opposed to a modification analysis, because custody already had been established. We note that Md. Rule 8-131(a) provides that this Court will not decide an “issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” “The primary purpose of this rule is to ensure fairness to all parties in the case and to promote the orderly administration of law.” *Hosain v. Malik*, 108 Md. App. 284, 296 (1996).

Here, Mother never argued below that the court was required to find a material change in circumstances in assessing custody. Accordingly, this argument is not preserved for this Court’s review, and we will not address it. *See Burnett v. Spencer*, 230 Md. App. 24, 36 (2016) (Husband did not preserve his argument for appellate review because he failed to raise it in the circuit court.).

We thus turn to Mother’s argument that the court did not properly consider all the relevant evidence in its review of the *Taylor* factors. We have explained the requisite analysis as follows:

It is well established that the following factors (“the *Taylor* factors”) are considered by a court when determining whether sole or joint legal custody is appropriate: (1) capacity of parents to communicate and to reach shared decisions affecting child’s welfare, (2) willingness of parents to share custody, (3) fitness of parents, (4) relationship established between child and each parent, (5) preference of child, (6) potential disruption of child’s social and school life, (7) geographic proximity of parental homes, (8) demands of parental employment, (9) age and number of children, (10) sincerity of parents’ request, (11) financial status of parents, (12) impact on state or federal assistance, and (13) benefit to parents. *Taylor v. Taylor*, 306 Md. 290, 304–11, 508 A.2d 964 (1986). Not all of the factors are necessarily weighed equally; rather, it is a subjective determination. *See id.* at 302, 508 A.2d 964 (“Formula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made.”).

Baldwin v. Baynard, 215 Md. App. 82, 109–10 (2013).⁷

Mother acknowledges that the court explicitly reviewed many of these factors, but she argues that the court omitted from its analysis certain material evidence. We disagree.

⁷ Additional factors should be considered regarding physical custody, including character and reputation of the parties, potentiality of maintaining natural family relations, prior voluntary abandonment or surrender, ability of parties to meet the child’s developmental and emotional needs, and the history of any efforts by one parent “to alienate or interfere with the child’s relationship with the other parent.” *Azizova v. Suleymanov*, 243 Md. App. 340, 345–47 (2019), *cert. denied*, 467 Md. 693 (2020); *accord Montgomery Cty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977); Cynthia Callahan & Thomas C. Ries, *Fader’s Maryland Family Law* § 5-3(b), at 5-11 to 5-12 (6th ed. 2016). On appeal, however, Mother relies only on the *Taylor* factors, so we will focus our analysis on those factors as well.

The court's oral ruling shows that it carefully considered and addressed each of the pertinent *Taylor* factors.

Mother argues that the court failed to consider that Father "had made very little effort to establish a relationship" with the children after the separation, and he "refused to communicate with [Mother] regarding the children." The record reflects, however, that the court did consider Mother's allegations in this regard, and it expressly found that Mother had blocked visitation and was "manipulative with respect to the children and their ability to see their father." It interpreted Father's testimony that he had "given up" trying to see the boys to mean that he gave up trying to fight with Mother.

Mother next asserts that the court failed to consider that Father did not provide any financial assistance for the children following the separation. The record, however, shows that this assertion is not true. Both parties acknowledged at trial that Father continued to pay the mortgage and utilities for the home in which the children resided during the separation period, which the court ordered in 2018 be paid in lieu of child support.⁸

With respect to the assertion that the court failed to address Father's housing situation, that also is not supported by the record. The court stated that Father's parents' home, which at the time of trial had sufficient furniture, was an appropriate home for the boys. It found, appropriately, that what Father did when he did not have the children was his own business.

⁸ Father testified that he continued to pay the mortgage and utilities as ordered, but he stopped paying the daycare expenses (\$720-\$740/month) in June 2017 after his son indicated that he was going to his grandmother's home after school rather than daycare.

Finally, Mother’s assertion that the court failed to consider the fact that she was the primary caretaker for the children can be flatly rejected. The court explicitly acknowledged in its review of Mother’s fitness as a parent that she was “the primary caregiver and [had] taken good care of the boys.”

Based on our review of the record, the circuit court properly considered all the pertinent evidence pursuant to the *Taylor* factors. The court did not abuse its discretion in awarding joint legal custody and shared physical custody. *See Santo v. Santo*, 448 Md. 620, 646 (2016) (The trial court’s determination, “predicated on its thorough review of the *Taylor* factors, . . . was rational and guided by established principles of Maryland law.”); *Boswell v. Boswell*, 352 Md. 204, 223 (1998) (“Custody and visitation determinations are within the sound discretion of the trial court, as it can best evaluate the facts of the case and assess the credibility of witnesses.”).

II.

Monetary Award

Mother contends that the trial court erred and abused its discretion in awarding Father a monetary award. She asserts that the court erred in awarding Father 70% of the net proceeds from the sale of the marital home. In support, she argues that the court erred in valuing her interest in MedVenous at \$2,000,000 for the purposes of the monetary award. She notes that she testified that the business had zero value, and Father did not present evidence to contradict her assertion. She argues that the court’s erroneous valuation

significantly skewed the court's determination of her net worth, and therefore, affected the monetary award.

Father contends the court did not err or abuse its discretion in entering the monetary award in his favor. He argues that the court properly assessed the requisite factors pursuant to FL § 8-205(b) and provided an equitable result.

In deciding whether to grant a monetary award, a trial court follows a three-step process: (1) it determines what property is marital property; (2) it values the property; and (3) it decides whether to grant a monetary award "as an adjustment of the equities and rights of the parties[.]" FL §§ 8-203–205; *accord Malin v. Mininberg*, 153 Md. App. 358, 428 (2003). The relevant factors that the court must consider in assessing a monetary award are set forth in FL § 8-205(b) as follows:

- (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.

This Court also has explained that

“the purpose of the monetary award . . . is to achieve equity between the spouses where one spouse has a significantly higher percentage of the marital assets titled his name.” *Long v. Long*, 129 Md. App. 554, 577–78, 743 A.2d 281 (2000). Granting a monetary award allows a court “to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage strictly in accordance with its title.” *Ward v. Ward*, 52 Md. App. 336, 339, 449 A.2d 443 (1982). Consequently, when deciding whether to make an award, the court has broad discretion to reach an equitable result. *See Freese v. Freese*, 89 Md. App. 144, 153, 597 A.2d 1007 (1991), *cert. denied*, 325 Md. 396, 601 A.2d 129 (1992).

Hart v. Hart, 169 Md. App. 151, 160–61 (2006).

Mother contends that the court erred in valuing the property. As we explained in *Abdullahi v. Zanini*, 241 Md. App. 372, 412–13 (2019):

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, 569 A.2d 724 (1990). *Accord Murray v. Murray*, 190 Md. App. 553, 570, 989 A.2d 771 (2010). “Value,” under Maryland law, “means fair market value,” i.e., “the amount at which property could change hands between a willing buyer and a willing seller.” *Rosenberg*, 64 Md. App. 487, 525, 497 A.2d 485 (quoting *Black’s Law Dictionary* 537 (rev. 5th ed.)), *cert. denied*, 305 Md. 107, 501 A.2d 845 (1985).

Valuation is a question of fact subject to the clearly erroneous standard of review. *Blake*, 81 Md. App. at 720, 569 A.2d 724. “When the [circuit] court’s findings are supported by substantial evidence, the findings are not clearly erroneous.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230, 752 A.2d 291, *cert. denied*, 361 Md. 232, 760 A.2d 1107 (2000).

* * *

“[A]n owner of property is presumed to be qualified to testify as to his [or her] opinion of the value of property he [or she] owns.” *Colonial Pipeline Co. v. Gimbel*, 54 Md. App. 32, 44, 456 A.2d 946, *cert. denied*, 296 Md. 110 (1983). Once Wife testified with respect to her opinion regarding the value of the properties, the burden shifted to Husband to contradict this value. *See Brown v. Brown*, 195 Md. App. 72, 120, 5 A.3d 1144 (2010).

Here, Mother repeatedly proffered that the business had zero value, and both parties listed the value of the business as “unknown,” in the Joint Statement of Parties Concerning Marital and Non-Marital Property. Although Father presented evidence regarding MedVenous’ banking records, and counsel proffered that the company’s total receivables for 2018 was \$3.4 million, and more than \$1.7 million as of May 2019, Father did not introduce an expert witness or otherwise attempt to explain how the court should extrapolate the fair market value of the business from these records.

In its oral ruling, the Court initially stated that it “accepted the value” of the business as “zero” because it was Father’s burden to provide evidence to counter Mother’s assertion that the business had no value, and he failed to do so. Shortly thereafter, however, the court stated that MedVenous was Mother’s non-marital property with a “value of approximately \$2 million,” based on Father’s proffer and company bank statements showing “deposits and money going back and forth.” Given its finding that Mother’s net worth was

\$2,121,073.73, as opposed to Father's net worth of \$269,734.14, the court awarded Father an additional 20% of the "net proceeds of the house as a monetary award," giving Father a total of 70% of the proceeds from the sale of the house.

The court's ruling was inherently inconsistent, finding at one point that it accepted Mother's assertion that the business had zero value, and then finding that it had a value of approximately two million dollars. Moreover, the record does not contain evidence to support the finding that the business had a value of two million dollars. *See In re Dany G.*, 223 Md. App. 707, 719 (2015) ("Findings of fact that are clearly erroneous are marked by a lack of competent and material evidence in the record to support the decision.").

To be sure, bank records were introduced, and accounts receivable may be used as part of the calculation to value a business. *See Skrabak v. Skrabak*, 108 Md. App. 633, 644, 651-53, *cert. denied*, 342 Md. 585 (1996). That information alone, however, is not sufficient to establish the fair market value of a business. *See Rosenberg v. Rosenberg*, 64 Md. App. 487, 525 (Value with regard to marital property means fair market value.), *cert. denied*, 305 Md. 107 (1985); *Skrabak*, 108 Md. App. at 649 (Generally, the value of a business is reached by first placing a value on tangible assets, liabilities, and goodwill, and then combining those numbers.). Indeed, it would be difficult for a party to show the fair market value of a minority interest in a closely-held business without expert testimony. *See Long v. Long*, 129 Md. App. 554, 570 (2000) ("[B]usiness valuation is far more complex than [the court's] unassisted efforts to place a price tag on other marital asserts.").

Given the lack of evidence to support the circuit court’s assessment that MedVenous had a value of \$2,000,000, and Mother had a net worth of \$2,121,073.73, the court erred in its order granting a monetary award to Father. Moreover, we note that Mother had only a 23% interest in the business, which the court did not appear to consider in assessing Mother’s net worth.

Accordingly, we shall vacate the monetary award to Father, and remand for further proceedings.⁹ Because we vacate the monetary award ruling on this ground, and the same error impacted the award of child support and attorney’s fees, we will vacate those awards as well. *See St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016) (“[A] court’s determinations as to alimony, child support, monetary awards, and counsel fees involve overlapping evaluations of the parties’ financial circumstances[,]” and therefore, “when this Court vacates one such award, we often vacate the remaining awards for reevaluation.”).

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY**

⁹ For the purpose of providing guidance on remand, we shall briefly address some additional points that the parties debated. First, Mother contends that it was improper to award 70% of the proceeds of the sale of the marital home to Father as a monetary award, citing *Hart v. Hart*, 169 Md. App. 151, 164–65 (2006), for the proposition that an unequal division of sale proceeds as a monetary award circumvented the statutory prohibition against a court ordering the transfer of real property from one party to the other. We note, however, that *Hart* was decided before the effective date of Md. Code Fam. Law Article § 8-205(a)(2)(iii) (2006 Repl. Vol.), which authorizes a court to transfer from one party to the other any interest in “real property jointly owned by the parties and used as the principal residence of the parties.” *See* 2006 Md. Laws Ch. 431, effective October 1, 2006. This statute should be considered if the court is inclined to divide the proceeds of the sale of the home unequally on remand. Second, with respect to child support, if the court on remand grants Father’s request for a modification of child support, no retroactive child support can be awarded prior to the date of the filing of Father’s motion, i.e., April 25, 2018. *See* FL § 12-104.

**GRANTING JOINT LEGAL AND
PHYSICAL CUSTODY AFFIRMED.
JUDGMENT OTHERWISE VACATED
AND REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE SPLIT
EVENLY BY THE PARTIES.**