Circuit Court for Montgomery County
Case No.: 158331FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 407

September Term, 2021

ASLAM ANSARI

v.

RIFAT ZUIBAIDA

Berger,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 9, 2022

*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.

Appellant, Aslam Ansari ("Husband"), filed a complaint for absolute divorce in the Circuit Court for Montgomery County. The court granted Husband an absolute divorce and granted appellee, Rifat Zuibaida ("Wife"), half of an Allianz annuity account, rehabilitative alimony, a monetary award, and attorney fees. In this appeal, Husband asks the following four questions:

> I. Whether the Circuit Court erred by determining the Allianz Annuity Account to be marital property and thus allowing one half of that account to be assigned to [Wife].
>
> II. Whether the award of the One Thousand Eight Hundred Dollars and 00/100 cents of monthly rehabilitative alimony for a period of five years (commencing upon the conclusion of the use and possession) payable by [Husband] is a correct amount.
>
> III. Whether the Circuit Court erred by determining the monetary award of Fifty Thousand Three Hundred Eight-Nine Dollars ($50,389.00) is to be paid by [Husband] to [Wife].
>
> IV. Whether the Circuit [C]ourt erred by ordering [Husband] pay [Wife] Ten Thousand Dollars for [Wife's] attorney fees.

Finding no error or abuse of the court's discretion, we shall affirm the judgment.

BACKGROUND

The parties were married in India in 2002. Husband, who has a Ph.D. in chemistry, had originally come to the United States in 1986 for work. In 2003, Wife left India and joined Husband in Maryland. In 2004, the parties' son was born. For most of their marriage, Husband worked as a chemist for various pharmaceutical companies and Wife stayed home and raised their son.

In July of 2015, Wife called the police during an argument in which Wife alleges Husband made threats of physical abuse. In August of 2015, Husband moved out of the marital home. After Husband left the marital home, Wife gained employment first at McDonalds, earning $11 an hour; and later worked at Costco preparing food samples, earning $12.75 an hour.

Husband filed a complaint for absolute divorce in December of 2018. Wife sought limited or absolute divorce and requested an initial order regarding custody and child access. Specifically, Wife requested several different avenues of relief, namely: (1) sole legal and primary physical custody of their son; (2) that she be awarded "use and possession of the marital home *pendente lite* and for up to three years after the date of the final divorce[;]" (3) for the court to "make a monetary award to [Wife] after adjusting the parties' rights in the marital property[;]" and (4) an award of legal fees.

In June of 2019, the court held a hearing and entered a pendente lite consent order ("PL Order"). The PL Order provided that the parties' minor son would continue to reside with Wife in the marital home and that Husband would have reasonable access to their son. It further provided that Husband would continue to pay the mortgage, homeowner's insurance and property taxes associated with the marital home, the parties' auto insurance, as well as the health insurance for Wife and the minor child. Additionally, Husband was ordered to pay child support in the amount of $700 per month. The court found that Husband owed $2,000 in arrears, which he was ordered to pay $200 per month, and set Husband's monthly payment at $900 per month until arrears had been paid.

In March of 2020, Wife was laid off from her employment with Costco due to the COVID-19 global pandemic. Since that time, Wife has received $125 per week in unemployment. One month later, Husband was also laid off due to the pandemic. Husband agreed to a non-compete clause which "essentially prevented him from working in his area of expertise for one year from the date of separation[,]" and received a severance package of $14,134.62. Since that time, Husband has received $430 weekly in unemployment benefits.

A two-day divorce trial took place in March 2021. The court heard extensive testimony regarding the parties' financial information, real property purchased by the parties during the marriage, and Husband's employment history. The parties disagreed about what constituted marital property:

> As to precisely what property constitutes marital property, plaintiff husband contends: the marital home; its furnishings; and the parties' two cars, a 2010 Toyota Camry operated by [Wife], and a 2006 Toyota Highlander operated by [Husband]; a Bank of America checking account, account number 4551 in husband's name; and a Capital One checking account, account number 7654, also in husband's name. In wife's name there's a Bank of America checking account, account number 1564; a Bank of America savings account 0291; a Sandy Springs money market account 2209; a Bank of America account IRA; real estate; and a bank account in India.
>
> Husband contends that his Allian[z] IRA annuity, valued at $131,346, is not marital property. In addition[,] husband testified that a payment of $115,495 to him in 2015 from a previously unknown retirement account from a job he held prior to the marriage and left in 1996 at University of California at San Francisco, is not marital property.
>
> Wife agrees that the Carlsbad Drive marital home, the two cars, the Bank of America checking, savings, and

> retirement accounts in her name, the Bank of America checking and Capital One checking in husband's name are all marital property.
>
> In addition[,] wife claims that husband's Allian[z] annuity, his TransAmerica annuity, a payment from the University of California retirement system, a 401(k) from his employment with Origene Technologies, and an M&T Bank checking account are also all marital property for the Court's consideration in distribution of marital property as well as a monetary award.

Husband maintained that the Allianz annuity account was comprised of retirement funds he earned while employed with the University of California San Francisco ("UCSF") prior to the parties' marriage, and thus was not marital property. Wife contended that the account constituted marital property because Husband received the funds from UCSF over a decade into their marriage and Husband was likely contributing to the fund throughout the marriage. Husband had not complied with an order to compel documents relating to the account, and failed to provide any documentation regarding the balance of the funds on the date of their marriage.[1]

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[1] As the court observed, Husband:

> worked as a post-doctorate fellow and staff scientist early in his career at the University of California for San Francisco, from 1988 to 1992. He testified that he earned approximately 45,000 a year, and he did not receive benefits. He was notified in 2015 that he had in excess of $90,000 in retirement funds with the University of California retirement system. He testified that he was unaware of these retirement benefits until notified in 2015.
>
> Plaintiff husband has an M&T checking account, account number 7218, into which he deposited the $90,549.37

(continued)

At the conclusion of the trial, the court determined that Husband's "credibility was strained beyond belief[,]" as the evidence demonstrated that "he continually moves large sums of money around[.]" Further, the court found that Husband's "attempted explanations are not credible," and that he "conveniently provides no documentation in support of his claims." The court pointed specifically to several properties purchased from unknown funds, concluding that Husband had not disclosed "considerable amounts of money:"

> Conveniently all of these down payments, which [Husband] says must have come from his savings account, are unable to be confirmed, as [Husband] has never provided any documentation as to what the Court can only conclude is a very healthy and substantial savings account or accounts. Based on plaintiff [H]usband's lack of candor in his testimony, and his failure to produce any documentation, the Court infers that plaintiff has considerable amounts of money which he has not disclosed.

The court ultimately determined that the parties' marital property was as follows:

> [I]n summary, the Court finds the following to be non-retirement marital property, and its values. The 1380 Carlsbad Drive home with equity in the amount of $160,566; the 2010 Toyota Highlander of $6,000; the 2006 Toyota Camry at $4,500; the Bank of America, husband's Bank of America account, account number 4551, with $3,234.14; husband's

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> check received from the University of California retirement system on March 10th of 2015. [Husband] testified that he does not recall if he had funds already in the M&T Bank account prior to this deposit. Conveniently, [Husband] failed to provide any additional records or documentation regarding this account, as requested in discovery and as ordered by the Court by a sanctions order.

> Capital One account, account number 7654, with $4,001.12; husband's BB&T account with $4,108.48; wife's Bank of America checking, account 1564, with $1,875.41; wife's Bank of America savings, account 0291, with $2,862.21; wife's India real estate at $4,000; wife's India bank account for $200.
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> The Court finds the following to be retirement marital property, and its values. The TransAmerica account, which the Court finds no longer exists. The husband's Allian[z] annuity account, which is valued at 128,278.22 is marital property. Husband's Origene Technologies 401(k), which plaintiff withdrew while separated, which he claimed he did not know existed until 2021 but withdrew in 2017. The Court finds that plaintiff withdrew this money to deprive the defendant of any award of these marital funds. The Court finds that the plaintiff has dissipated a marital asset valued at $50,721. And the wife's Bank of America IRA is marital property valued at $4,238.04.

The court granted Husband's request for an absolute divorce based upon the parties' over 12-month separation. The court granted Wife use and possession of the marital home until their son graduated from high school in 2022 and determined that Wife was entitled to 50% of the Allianz annuity account, a monetary award of $50,389.00, monthly rehabilitative alimony in the amount of $1,800 for five years, and an award of $10,000 in attorney's fees.

Husband timely filed this appeal.

STANDARD OF REVIEW

This Court has stated that, "it is a question of fact as to whether all or a portion of an asset is marital or non-marital property." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). Accordingly, "[f]indings of this type are subject to review under the clearly erroneous standard embodied by Md. Rule 8–131(c); we will not disturb a factual

finding unless it is clearly erroneous." *Id*. Further, "[w]hen the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous." *Id*. at 230.

Additionally, "[a]n alimony award will not be disturbed on appeal unless the trial court abused its discretion or rendered a judgment that was clearly wrong." *Reuter v. Reuter*, 102 Md. App. 212, 229 (1994). Moreover, "as to the court's decision to grant a monetary award, and the amount thereof, we apply an abuse of discretion standard of review." *Richards v. Richards*, 166 Md. App. 263, 272 (2005). Lastly, "[a]n award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Petrini v. Petrini*, 336 Md. 453, 468 (1994).

DISCUSSION

Husband asserts that the court erred in awarding Wife half of his Allianz annuity account because he "mistakenly deposited his retirement funds (Allianz Annuity Funds) into the family IRA account" and that accordingly, the funds "were in fact non marital assets and should not have been included in the award to the Appellee." Further, Husband contends that the court erred in making an alimony award because it "did not go through the factors listed in Family Law [§] 11-106[,]" and that the monetary award should be vacated because "[a]ssets brought into the marriage by [Husband] hav[e] been erroneously counted as marital property [and] ultimately distorted what was included as the marital property and thereby the monetary award[.]" Lastly, Husband contends that under *Doser v. Doser*, 106 Md. App. 329 (1995), because he challenges the alimony and monetary awards, this Court must "vacate the award of attorney's fees if the Court also vacates or changes the award below regarding the issues of alimony and/or monetary award."

Wife responds that Husband failed to meet his burden "to show that the trial court's findings of fact were clearly erroneous or not supported by any competent evidence when viewed in the light most favorable to [Wife]." Wife asserts that the court "reviewed ample evidence from which it could make a determination of the parties' marital and non-marital assets, the need for alimony, as well as a monetary award and legal fees[,]" and thus should be affirmed. We agree and address each of Husband's assertions below.

I. Allianz Annuity Account

Husband asserts that he "mistakenly deposited his retirement funds (Allianz Annuity Funds) into the family IRA account" and thus, the court erred in determining that the funds were marital property. Wife responds that the court correctly noted that "in addition to not showing any records that revealed his balance in [the Allianz] account at or near the date of marriage, the Allianz Annuity account clearly comes from com[m]ingled marital funds[,]" and therefore should be affirmed.

Marital property includes "property, however titled, acquired by 1 or both parties during the marriage." Md. Code Ann., Fam. Law ("FL") § 8-201(e)(1). This Court has held that "the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property." *Murray v. Murray*, 190 Md. App. 553, 570 (2010). Although "the court must consider the statutory factors enumerated in [FL §] 8-205(b)[,]" we have made clear that, "'the court has broad discretion in evaluating pensions and retirement benefits, and in determining the manner in which those benefits

are to be distributed.'" *Woodson v. Saldana*, 165 Md. App. 480, 489 (2005) (*quoting Welsh v. Welsh*, 135 Md. App. 29, 54 (2000)).

"[I]t is well-settled that non-marital property, especially that in the form of funds, can lose its separate property status as a result, among other things, of its commingling with marital property or by its use in the acquisition of other property." *Murray*, 190 Md. App. at 572. We recently stated that where there is "insufficient evidence" to demonstrate what percentage of disputed funds make up marital funds, that they will be presumed marital funds. *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 276 (2021) ("Because there is insufficient evidence to prove how many of the 15.699 shares were directly traceable to Mr. Wasyluszko's pre-marital shares, we shall presume that they are marital in nature.")

Here, the record reveals that Husband testified that the Allianz account "was funded by his TransAmerica account assets[,]" which the court found to be marital property:

> According to [Husband's] testimony, he does not know or remember the source of funds for the TransAmerica account. He specifically denied that the 130,000 came from a Sandy Spring savings account, account number 0927, that he had closed out with a withdrawal in excess of $90,000, and a Sandy Springs checking account, account number 0906, with a balance of $41,447 in 2012.
>
> [Husband] testified that $80,000 of his 130 in the Sandy Spring account came from a real estate transaction in Berkley, California, from the sale of a home from a prior marriage. [Husband] was clear that his previously undisclosed Sandy Springs account was not the source of funds in the TransAmerica annuity in 2015. [Husband] testified that the TransAmerica account was opened prior to the University of California retirement check deposit. With this explanation from [Husband], this leaves the source of funds for the 130,000 in the TransAmerica account unknown, and not directly

> traceable to a source of funds which are not marital property, in an account opened during the marriage.
>
> Additionally, by depositing the $24,000 check from the University of California retirement system into an existing account opened during the marriage, with funds from unknown sources, plaintiff com[m]ingled non-marital funds with marital funds, thereby making all of the funds in the TransAmerica IRA marital property.

In sum, the court concluded that due to the commingled nature of the TransAmerica account, the "Allian[z] account is marital property, as it is directly traceable to marital funds in the TransAmerica account." Husband has pointed to no evidence within the record before us that demonstrates that this was an error on behalf of the court. He provided no bank statements to the contrary, and has made no assertion that the court's findings were not supported by the evidence. Accordingly, we cannot say that the court's decision that the Allianz annuity account constituted marital property was clearly erroneous under these facts. *Innerbichler*, 132 Md. App. at 230.

II. Rehabilitative Alimony

Husband asserts that the court "did not go through the factors listed in Family Law [§] 11-106[,]" and "failed to say anything in her opinion about the fact that [Wife] was substantially younger tha[n Husband] and has a college degree." Husband further contends that the factors set forth in FL § 11-106(b)(1) ("the ability of the party seeking alimony to be wholly or partly self-supporting") and FL § 11-106(b)(11)(i)[2] ("the financial need and financial resources of each party, including: (i) all income and assets, including property

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[2] Husband erroneously cites to FL § 11-106(b)(12) when referencing FL § 11-106(b)(11)(i).

that does not produce income") specifically weigh in his favor. Wife responds that the court correctly assessed the factors under FL § 11-106(b) and awarded alimony after determining that Wife was not self-supporting based upon her limited work experience, and that Husband's financial statement and testimony were not credible.

The court must consider several factors before making an award of alimony under FL § 11-106(b):

> (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
>
> (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
>
> (3) the standard of living that the parties established during their marriage;
>
> (4) the duration of the marriage;
>
> (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
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> (6) the circumstances that contributed to the estrangement of the parties;
>
> (7) the age of each party;
>
> (8) the physical and mental condition of each party;
>
> (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
>
> (10) any agreement between the parties;
>
> (11) the financial needs and financial resources of each party, including:

> (i) all income and assets, including property that does not produce income;
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> (ii) any award made under §§ 8-205 and 8-208 of this article;
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> (iii) the nature and amount of the financial obligations of each party; and
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> (iv) the right of each party to receive retirement benefits; and
>
> (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

Here, the court considered each of the factors set forth in FL § 11-106(b) in extensive detail and found as follows:

> The ability of the party seeking alimony to be wholly or partly self-supporting. In general, a party is self-supporting if the party's income exceeds the party's reasonable expenses as determined by the Court.
>
> Looking at the totality of the evidence, including the distribution of a marital property award, the Court finds that [Wife] currently is not able to be wholly or partially self-supporting, based upon her limited work experience and history.
>
> Two, the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment. Defendant wife will be 52 years old. She has a degree in Urdu from India. She has received no formal education or training since she has been in the United States. She has taken and passed her citizenship test. She was a homemaker during the majority of the marriage, when the family lived together. Only since separation has she had to seek out employment. Based on her experience and lack of work history, she has worked at McDonald's for $11 an hour, and Costco for 12.75 an hour. She did handle the family finances

for many years. She is in good health, reasonably intelligent, and with sufficient time and training she should be able to find full-time sufficient employment.

The standard of living that the parties established during the marriage. The parties appeared to live comfortably or modestly off of the plaintiff's salary, but not luxuriously or extravagantly. They both drove older model cars and live in a two-story home in Montgomery County, valued at $350,000.

Duration of the marriage. The parties have been married for 19 years.

Contributions, monetary and non-monetary, of each party. Again, both parties were monetary and non-monetary contributors during the marriage. The Court finds both parties' overall contributions to be valuable and critical to the well-being of the family.

The circumstances that contributed to the estrangement of the parties. Both agree that an argument precipitated the separation and estrangement of the parties.

Age of each party. The husband is 68. Defendant will be 52.

The physical and mental condition of each party. The plaintiff again has a number of physical ailments, including a pacemaker, diabetes, high blood pressure, and heart disease. He has continued, he was able to continue to work without incident or problem until he was laid off in 2020. The defendant wife is 51, soon to be 52, and is in good health.

The ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony. The plaintiff husband has been less than forthcoming with respect to his financial status, source of funds, bank accounts, and retirement accounts. He has intentionally withheld documents that would have allowed for a thorough analysis of his financial status. In the words of defense counsel, he has played fast and loose with the rules, and the Court agrees. His actions in withholding this information are an attempt to directly impact any monetary award to his wife.

Based on plaintiff's lack of credibility as to his financial status, his intentional defiance of a court order to produce documents regarding his financial accounts, his vague and less than credible testimony as to the source of funds and movement of funds within his accounts, and the evidence that he has moved money into savings accounts which he has not disclosed, again leads the Court to infer that he is in a much better position financially than he has portrayed, and that he is able to meet his living expenses and needs while assisting his wife to meet her needs.

Any agreement between the parties. The parties have been unable to reach any agreements other than the custody of their minor son. There are no agreements as to any other monetary issues.

The financial needs and financial resources of each party, including all income and assets, including property that does not produce income, any awards made under 8-205 and 8-208, the nature and amount of the financial obligations of each party, and the right of each party to receive retirement benefits.

The court determines the appropriate level of reasonable need based on all statutory alimony factors, including the standard of living established during the marriage. Both parties are currently unemployed and receive unemployment benefits. Wife's assets are limited to her interest in the marital home and her meager bank accounts in her name. Husband has considerably more assets and resources available to him than his wife.

As to the financial needs and resources of the parties, the Court looks to the financial statements filed by each party, and examines the actual amounts spent and the expenses incurred. The Court has reviewed the financial statements of both parties, as well as their respective testimony as to their actual living expenses.

The Court finds plaintiff husband's financial statement to be a work of fiction. When questioned, he did have to acknowledge that he was not actually incurring or paying the majority of the expenses listed on his financial statement.

> Wife's financial statement was more modest, and appeared to be in line with her expenses, with the expenses actually incurred, with the exception of the mortgage, as neither was currently paying the mortgage at the time of this trial.
>
> The Court has considered the monetary award previously made. The parties' primary financial obligation is the mortgage on the marital home. Neither party is currently receiving retirement benefits. Though defendant wife is not retirement age, the plaintiff is 68 years old and is of retirement age.
>
> The Court finds, based on the evidence presented, an award of alimony is appropriate. The Court may award alimony for an indefinite period if the Court finds that due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting, or even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.
>
> Having reviewed the totality of the evidence in this case, the Court does not find that an award of indefinite alimony is appropriate. Therefore the Court will award defendant wife rehabilitative alimony for a period of five years. Her work history and work experience are extremely limited. She was a homemaker for the marriage while the family was together. English is not her first language. She has only sought employment since the parties' separation, and her work has only been part-time, and her highest rate of pay has been $12.75 an hour. On a full-time basis, 12.75 per hour will not allow her the ability to meet her needs and living expenses. A period of rehabilitative alimony will allow her time and opportunity to seek any additional training so that she can obtain sufficient employment.

We disagree with Husband that the court did not consider the factors under FL § 11-106(b), including §§ 11-106(b)(1) or (11). Indeed, the court found that under FL § 11-

106(b)(1), Wife was "not able to be wholly or partially self-supporting, based upon her limited work experience and history." Further, the court considered the financial needs and resources of each party under FL § 11-106(b)(11), including the parties' income and assets, and concluded that "Husband has considerably more assets and resources available to him than his wife[.]"

Nor is Husband's contention that the court "failed to say anything" about the facts that Wife "was substantially younger tha[n Husband] and has a college degree" correct. The court plainly acknowledged the parties' ages in its consideration of Wife's request for alimony and noted that "[H]usband is 68. [Wife] will be 52." Further, the court noted that while Wife had "no formal education or training since she has been in the United States[,]" that she did have a degree in Urdu from India. The record reflects that the court not only considered these factors but determined that they supported an award of rehabilitative alimony.

Moreover, in making its alimony determination, the court questioned Husband's credibility and found that his financial statement was akin to "a work of fiction[,]" noting that Husband acknowledged "that he was not actually incurring or paying the majority of the expenses listed on his financial statement." Because "the hearing judge is in the best position to ascertain the credibility of a witness[,] we generally defer to the hearing judge's credibility determinations." *Att'y Grievance Comm'n of Md. v. Miller*, 467 Md. 176, 204 (2020), *holding modified by Att'y Grievance Comm'n of Md. v. Collins*, 477 Md. 482 (2022). Accordingly, we "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). Giving due regard to the circuit court's credibility determinations, we see no reason to set aside the court's judgment in this case.

In sum, the court engaged in an extensive consideration of each of the factors set forth in FL § 11-106(b) and determined that Wife was entitled to a rehabilitative alimony award for five years due to her "extremely limited" work history and experience. Given the court's findings, including the fact that English was not Wife's first language and that her highest rate of pay since living in the United States -- $12.75 per hour -- "will not allow her the ability to meet her needs and living expenses[,]" we are unpersuaded that the court's alimony award "was clearly wrong." *Reuter*, 102 Md. App. at 229.

III. Monetary Award

Husband asserts that the court erred in making a monetary award to Wife because "[a]ssets brought into the marriage by [Husband] hav[e] been erroneously counted as marital property [and] ultimately distorted what was included as the marital property and thereby the monetary award[.]" Wife responds that the circuit court "was very deliberate in considering the parties' resources and other relevant factors" and thus should be affirmed.

The court must assess a number of factors before making a monetary award under FL § 8-205(b):

> (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;
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> (4) the circumstances that contributed to the estrangement of the parties;
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> (5) the duration of the marriage;
>
> (6) the age of each party;
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> (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;
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> (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.

Moreover, if a spouse proves by a preponderance of the evidence that "the other spouse dissipated assets acquired during the marriage to avoid inclusion of those assets toward consideration of a monetary award[,]" those assets may be included as marital property. *Omayaka v. Omayaka*, 417 Md. 643, 656 (2011). A party demonstrates "prima facie" evidence of dissipation upon a showing that marital assets were taken by the other spouse without agreement. *Id*. The burden then shifts to the other spouse for proof that the funds were not in fact dissipated. *Id*. If evidence "of use for marital or family purposes is

not produced," the property taken will be considered "extant" marital property. *Id*. "From that 'extant' property in the name of one spouse, the other spouse may be given a monetary award to make things equitable." *Id*.

Here, the court considered the factors set forth in FL § 8-205 in detail:[3]

> The value of all property interests of each party. The Court finds that jointly the parties have marital property valued at $171,066. Plaintiff husband has marital property titled in his name valued at $190,342.98, and the wife has marital property titled in her name alone valued at $13,175.66. The total value of all marital property, net of debt, is $374,584.64. Ninety-four percent of the non-joint marital assets are held by the plaintiff, versus six percent held in wife's name alone. There is a significant disparity in property interests of each party.
>
> The economic circumstances of each party at the time the award is to be made. Defendant wife, who was a homemaker for years, never having worked outside of the home until the separation. When she did find employment, it was for low wage positions at McDonald's and Costco. She is currently unemployed, receiving unemployment benefits of $103 per week, or approximately $412 per month. She has minimal savings and a small IRA. She is unable to sustain herself without support from [Husband], who is ordered to pay the mortgage, homeowners insurance, car insurance, and property taxes.
>
> [Husband] has a graduate degree, a Ph.D., and has worked his career as a biochemist for a number of companies. He was laid off due to the pandemic, and accepted a severance package of $14,000, which precluded him from seeking a job in his field of expertise. He is currently unemployed, receiving unemployment benefits of $430 weekly.

[3] The monetary award factors FL §§ 8-205(b)(1), (4), (5), (6), (7) overlap with the alimony factors set forth in FL §§ 11-106(b)(4)-(8), addressed in section II, *supra*. Accordingly, and because the court's discussion of those factors is substantively the same for both the alimony and monetary awards, we will not repeat the court's discussion of those factors here.

* * *

How and when specific marital property or interest in property was acquired, including effort expended by each party in accumulating the marital property. The Court has discussed the specific marital property in detail, and each party's interest therein. As the sole financial earner during the marriage, [Husband] financially acquired the assets. Wife maintained the marital home.

The contributions by either party of property described in 8-201(e)(3) of this title is not applicable.

Any award of alimony and award or other provision that the Court has made with respect to the family use personal property or the family home. Wife seeks alimony, which will be discussed in detail in this opinion, as well as the marital home.

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 or an interest in property. It is clear to the Court that the plaintiff has funds and accounts which he has not disclosed in this litigation. Specifically, he has failed to provide any documentation as to any of his savings accounts which he referenced in his testimony. Records show plaintiff moving money to his savings accounts. Plaintiff's testimony when questioned as to the source of large sums of money is that it must have come from his savings accounts. Evidence shows plaintiff has money coming from unknown sources that he cannot recall or would not recall for the Court.

Despite court orders, plaintiff failed to provide bank records from M&T Bank, TransAmerica, Allian[z], or Origene. [Husband]'s repeated response that he does not remember where the money came from is not credible. He testifies that he is unemployed, unable to find work, and struggling. A review of his accounts, with deposits of thousands of dollars apart from his unemployment benefits, and he does not remember where the money came from, is simply not credible.

Based upon the evidence presented, the Court finds plaintiff's property interest to be significantly more than what

> he has actually disclosed in this litigation. The Court finds that plaintiff has intentionally withheld documentation as to the nature and extent of his financial status, to prevent those monies from consideration or inclusion in a marital monetary property award or distribution.
>
> * * *
>
> [Husband] is ordered to make an equalizing payment as to a monetary award to [Wife]. I believe the total amount, and I'll double-check my math, the equalizing payment is $50,389.10.

We disagree that the court erroneously counted funds that were not marital property when considering the assets of the parties. Instead, the court identified $50,721 in marital assets dissipated by Husband:

> Husband's Origene Technologies 401(k), which [Husband] withdrew while separated, which he claimed he did not know existed until 2021 but withdrew in 2017. The Court finds that [Husband] withdrew this money to deprive [Wife] of any award of these marital funds. The Court finds that [Husband] has dissipated a marital asset valued at $50,721.

Husband failed to demonstrate that those funds were used for marital or family purposes, and the court correctly determined that those funds were extant marital property. *Omayaka*, 417 Md. at 656.

Further, the record reflects that Husband had failed to produce three years of statements relating to the Origene Technologies 401(k), even after being ordered to do so more than once. Accordingly, Husband was ordered to pay Wife an "equalizing payment" in the form of a monetary award of $50,389.10.[4] The court did so after considering each

[4] It is unclear from the record why this figure differs slightly from the $50,721 the court determined was dissipated by Husband. Nonetheless, given the court's findings (continued)

of the factors set forth in FL § 8-205(b) and that "[t]here is a significant disparity in property interests of each party[,]" including that "[n]inety-four percent of the non-joint marital assets are held by the [Husband], versus six percent held in [W]ife's name alone."

On appeal, Husband does not dispute that he dissipated marital assets. Nor does he point to any evidence that assets were "erroneously counted as marital property" as he alleges, or provide any legal or factual support for his contention that the monetary award to Wife was "erroneous." Accordingly, based on the testimony in the record before us, we cannot say that the court's monetary award to Wife was clearly wrong or an abuse of discretion.

IV. Attorney's Fees

Husband asserts that the court abused its discretion in awarding attorney's fees to Wife. In support, Husband cites to *Doser*, where we stated that "[t]he factors underlying awards of alimony, monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other." 106 Md. App. at 335 n.1. Wife responds that the court properly considered the facts before it and the factors under FL § 7-107 in making the fee award, and that it should thus be affirmed.

Before awarding fees in a divorce action, the court must consider two separate factors: "(1) the financial resources and financial needs of both parties; and (2) whether

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regarding Husband's financial resources and dissipation of certain marital assets, we see no abuse of discretion in the award. *See Malin v. Mininberg*, 153 Md. App. 358, 430 (2003) ("It is well settled that the trial court has broad discretion in determining whether to grant a monetary award and, if so, in what amount.")

there was substantial justification for prosecuting or defending the proceeding." FL § 7-107(c). This Court has made clear that "[t]he court's exercise of its discretion when awarding attorney's fees must be based upon the statutory criteria and the facts of the case." *Broseus v. Broseus*, 82 Md. App. 183, 199 (1990) (emphasis omitted).

Here, the court awarded $10,000 in attorney's fees to Wife after a consideration of both factors set forth in FL § 7-107(c). The trial court held that:

> The evidence has clearly established that defendant wife's financial resources are extremely limited, and that [Husband] has made a concerted effort to intentionally conceal his financial resources. The Court has previously inferred, based on [Husband]'s lack of credibility and the overwhelming evidence of hidden assets, that his financial resources are considerable. [Husband] has paid his attorney's fees out of marital assets and funds.
>
> As to the substantial justification prong, it is clear that [Wife] had no alternative but to defend [Husband]'s efforts to leave her essentially penniless. Based on [Husband]'s failure to provide discovery, [Wife] had to file motions to compel discovery and sanctions, which were granted. Despite a court order to produce discovery, [Husband] ignored the court order. [Wife] [] had to file a motion for contempt regarding the failure to pay child support. Under these circumstances in this case, [Husband] has the ability to pay, so the Court will order [Husband] to pay $10,000 in attorney's fees for [Wife].

The court considered the financial resources and needs of the parties and determined that Wife's financial resources were "extremely limited," and that given evidence of Husband's hidden assets, that "his financial resources are considerable." Further, the court found that Wife was substantially justified in defending the action, and in fact, "had no alternative but to defend" the litigation. We cannot say that, under the statutory criteria

and the facts of this case, that the award of $10,000 in attorney's fees to Wife was "clearly wrong." *Petrini*, 336 Md. at 468.

Nor do we agree that our decision in *Doser* compels a different result. There, we stated that when "this Court vacates one [alimony, monetary, or fee] award, we often vacate the remaining awards for re-evaluation." *Doser*, 106 Md. App. at 335 n.1. Here, we hold that based upon the facts before us, the alimony, monetary, and fee awards are each supported by the record, and we find no reason to vacate any of the awards for re-evaluation by the trial court.

To conclude, considering the circuit court's extensive consideration of the facts before it, Husband's failure to demonstrate any clear error on behalf of the court, and the absence of any abuse of discretion, we shall affirm. We decline to address any of the issues raised by Husband for the first time in his reply brief. *See Anderson v. Burson*, 196 Md. App. 457, 476 (2010), *aff'd*, 424 Md. 232 (2011).

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