

Circuit Court for Montgomery County
Case No. 165158FL

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 419

September Term, 2022

TARINA CHARLESTON

v.

LUCIEN L. JOHNSON

Wells, C.J.,
Arthur,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 16, 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.

Tarina Charleston (“Wife”) and Lucien Johnson (“Husband”) were granted an absolute divorce by way of judgment entered in the Circuit Court for Montgomery County. As part of that judgment, the court made determinations regarding marital property, use and possession of the marital home, child custody and support, and attorneys’ fees and costs. Wife noted an appeal, and Husband noted a cross-appeal.

In her appeal, Wife presents ten issues by way of an informal brief. For clarity, we have rephrased those issues and consolidated them into the following questions:

1. Did the court err in denying Wife’s request for a postponement?
2. Did the court err in granting the parties an absolute divorce?
3. Did the court err in making its determinations regarding custody?
4. Did the court err in denying Wife’s request for use and possession of the marital home and in ordering that the marital home be sold and that a trustee be appointed to effectuate the sale?
5. Did the court err in denying Wife’s request for attorneys’ fees and costs?
6. Did the court err in its calculation of the marital portion of Husband’s retirement account?

In his cross-appeal, Husband presents three issues by way of an informal brief. For clarity, we have rephrased those issues and consolidated them into the following questions:

1. Did the court err in awarding Wife a portion of Husband’s retirement funds and pension benefits?
2. Did the court err in not awarding Husband relief for Wife’s alleged failure to provide discovery and for her alleged failure to comply with a *pendente lite* consent order?

For reasons to follow, we hold that none of Husband’s or Wife’s claims of error have merit. Accordingly, we affirm.

BACKGROUND

Husband and Wife were married on October 16, 2010. Two children were born as a result of the marriage: an older child born in 2014 and a younger child born in 2017. During the marriage, the parties acquired property, including real property in Rockville, which the parties used as the marital home.

On October 15, 2019, Husband filed for divorce. On December 17, 2019, Wife filed a counterclaim for divorce.

In their respective complaints, each party asked the court to determine custody and to identify and distribute marital property. Both parties requested use and possession of the marital home for three years following the date of divorce.

The parties separated on approximately December 9, 2019, shortly before Wife filed her counterclaim. They remained separated throughout the divorce proceedings.

Pendente Lite Consent Order

On December 31, 2019, the court signed an interim consent order concerning the parties’ rights during the pendency of the litigation. Under that order, Wife would have use and possession of the marital home. In addition, the children would spend approximately half of their time with Husband and the other half with Wife. The order prohibited both parties from dissipating marital assets.

Wife's Request for Postponement

At the beginning of the proceedings, Wife was represented by an attorney. The court struck the attorney's appearance on December 3, 2020, after Wife retained a second attorney.

On February 1, 2021, four weeks before a trial on the issue of custody was to begin, Wife's second attorney moved to strike her appearance because she had been temporarily suspended from the practice of law. The court struck the attorney's appearance and, at Wife's request, postponed the trial until April 20, 2021. For reasons not entirely clear from the record, the court postponed the trial again, until August 30, 2021.

Meanwhile, on March 31, 2021, Wife retained her third attorney. On August 19, 2021, however, the third attorney filed an expedited motion to withdraw. In the motion, the attorney alleged a conflict of interest. Specifically, the attorney alleged that Wife had refused to follow her advice, had made false allegations against her, and had made unreasonable requests and demands.

Upon receipt of the motion to withdraw, the court ordered Wife to respond by August 25, 2021. Wife did not respond. The court struck the attorney's appearance.

On August 30, 2021, the parties appeared remotely for a trial on the merits. At the beginning of the trial, Wife noted that the court had stricken her attorney's appearance. She asked the court to postpone the trial because she did not have sufficient time to find new counsel and was "not prepared." The court responded that the trial had already been

continued multiple times and that the administrative judge would not allow a continuance. The court then denied the postponement request.

Trial Evidence and Court's Ruling

The trial took place over three days – August 30, 2021, August 31, 2021, and February 4, 2022. Over those three days, the court heard testimony from both parties, neither of whom was represented by counsel. The court also heard testimony from a court-appointed custody evaluator, who prepared a custody evaluation, which was admitted into evidence. In addition, the court received various documents regarding the parties' finances, including a joint statement from the parties concerning marital and non-marital property.

Based on that evidence, which we will discuss in greater detail below, the court granted the parties an absolute divorce based on a 12-month separation. In so doing, the court issued two written opinions.

One of the opinions was docketed on December 10, 2021, following the first two days of trial. That opinion included factual findings and a final determination as to custody of the parties' children. The other opinion was docketed on May 4, 2022, following the third day of trial. That opinion included factual findings and a final determination as to the grounds for divorce, the identification and distribution of marital property, use and possession of the marital home, and the parties' request for attorneys' fees and costs.

In its opinion regarding custody, the court found that, although both parents had expressed concerns about the other parent's fitness, neither parent was unfit. The court

found that both children were healthy and adjusting well to the interim custody arrangement, which had been in place for approximately two years. The court discussed, in great detail, the “best interest factors for residential and legal custody” as they related to the parties and the minor children. Based on the circumstances of the case and the evidence presented, the court concluded that the children would be best served by a continuation of the joint-custody arrangement that was already in place under the interim consent order.

In its opinion regarding marital property, the court found that both Husband and Wife had made substantial financial and non-financial contributions to the marriage and that both were in possession of significant marital and non-marital assets. Of note, the court found that Husband had accumulated \$410,338.00 in retirement funds during the marriage, all of which constituted marital property. The court also found that, during the marriage, Husband had earned certain pension benefits that he would receive upon retirement. In addition, the court found that Husband had over \$1 million in non-marital property.

As for Wife, the court found that she had accumulated \$156,490.00 in retirement funds during the marriage, all of which constituted marital property. The court found that Wife had an additional \$13,677.00 in non-marital property. The court took note of Husband’s argument that Wife had “removed a lot of money” from her retirement account and that those funds should be counted as marital property. The court, however, rejected that argument, finding “no evidence” that Wife had “dissipated assets.”

The court concluded that, based on the parties’ financial circumstances and contributions to the marriage, “an equal distribution of marital assets [was] fair and reasonable.” The court ordered Husband to transfer \$126,924.00 of his retirement funds to Wife. The court also ordered that Wife was entitled to an equitable portion of the pension benefits that Husband had earned during the marriage.

The court ordered that the marital home be sold by a trustee and that the net proceeds be split evenly between Husband and Wife. The court noted that Wife had requested use and possession “because she fixed up the home and wants to remain there.” The court concluded, however, that “use and possession [was] not appropriate in this case.” The court based that conclusion on a finding that neither party had shown “any substantial need for the children to remain in the home.”

On the issue of attorneys’ fees and costs, the court found that neither party was financially able to pay the fees of the other and that neither party had a substantial debt to an attorney. The court also found that neither party lacked substantial justification in filing their divorce actions. Consequently, the court declined the parties’ requests for attorneys’ fees and costs.

Husband and Wife noted their respective appeals. We shall add additional facts as they become pertinent.

WIFE’S APPEAL

I.

Wife first contends that the court erred in failing to grant her request for a postponement. She stresses that her (third) attorney asked to withdraw shortly before the

trial was to begin. Wife argues that she was unable to find a new attorney in such a short time and, consequently, that she was unprepared for trial.

Maryland Rule 2-508(a) states that, “[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” “[T]he decision to grant a continuance lies within the sound discretion of the trial judge[.]” *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). “We review the trial court’s decision for an abuse of discretion[.]” *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013). “[U]nless [the] court acts arbitrarily in the exercise of that discretion, [its] action will not be reviewed on appeal.” *Id.* (quoting *Das v. Das*, 133 Md. App. 1, 26 (2000)). “An abuse of discretion occurs where no reasonable person would take the view adopted by the court or if the court acts without reference to any guiding rules or principles.” *Id.* (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

We hold that the court did not abuse its discretion in denying Wife’s request for a postponement. When Wife made the request, the case had been pending for almost two years, and the court had already postponed the trial twice. Wife had requested one of those postponements, after the court struck the appearance of her second attorney. After that postponement, Wife managed to obtain new counsel rather quickly and had five months to prepare for trial. Husband, who did not have representation, was prepared for trial and opposed the postponement. Moreover, the court gave Wife the opportunity to respond to counsel’s withdrawal motion and to explain why she was unprepared for trial. Yet, not only did Wife fail to respond to counsel’s motion and the allegations contained

therein, but she offered no explanation for her postponement request other than that she did not have enough time to find new counsel.

The court was under no obligation to allow Wife more time to obtain a fourth attorney, particularly where Wife had already been given ample time to prepare for trial and where it appeared that Wife had failed to heed the advice of her most recent attorney. Under the circumstances, the court did not abuse its discretion in denying Wife’s postponement request.

II.

Wife’s next claim of error concerns a communication that she purportedly received from the court clerk on the final day of trial. Wife asserts that, after the remote proceedings concluded on February 4, 2022, the third day of trial, she received an email from a law clerk. The email asked her to “log back into Zoom so that [the court] could complete the divorce.” Wife claims that “none of the transcripts show that a divorce proceeding occurred or that [the court] completed the divorce.”

After reviewing the relevant transcripts, we see no merit in Wife’s assertions. The record shows that the court heard the vast majority of the evidence and argument on the first two days of trial, which occurred on August 30 and August 31, 2021. Following those proceedings, the court issued its written opinion regarding custody, which was docketed on December 10, 2021. The court withheld an opinion regarding the property

issues so that the parties could return to court for a limited hearing on a few distinct matters.¹

On February 4, 2022, the court held a virtual hearing on those matters. According to the transcript of that hearing, the court discussed and resolved all of the outstanding matters. At the conclusion of the hearing, the court thanked the parties and stated quite clearly that the proceedings were concluded and that it would issue a final opinion at a later date. On May 4, 2022, the clerk docketed the court’s written opinion regarding all the remaining issues.

From this record, it is clear that the divorce proceedings ended on the third day of trial and that the court had all the evidence needed to make its various findings. Thus, notwithstanding the email asking Wife to “log back into Zoom” following the third day of trial, we perceive no error.

III.

Wife claims that the court erred in its custody determination. She asserts that the court did not take into consideration the best interest of the children.² She contends that the children are young and “need stability.”

¹ Those matters included: determining which portions of the parties’ primary retirement accounts were marital and which were non-marital; resolving an issue, raised by Wife, regarding an expert’s report that had been received into evidence; determining whether Husband should be responsible for paying a portion of the fees associated with that report; and resolving a question regarding the children’s college fund.

² Wife also claims that the court failed to consider “the fact that [Husband] canceled the homeowners insurance on the [marital home,] which was undergoing renovations due to windstorm damage that occurred on March 2, 2018[,] which increased

Appellate review of a trial court’s decision regarding child custody involves three interrelated standards. First, any factual findings are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions are reviewed *de novo*. *Id.* Finally, if the court’s ultimate conclusion is “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 J.J.*, 231 Md. App. 304, 345 (2016) (citations and quotations omitted). “A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (citations and quotations omitted).

We hold that the court did not err in awarding joint physical and legal custody. Despite Wife’s claims to the contrary, the record shows that the court did consider the best interests of the children in making its custody determination. The record also shows that the court considered the children’s need for “stability.” When the court made its determination, the parties had been sharing custody for approximately two years. The court found that both children were healthy and were adjusting well to that interim custody arrangement. After considering all the relevant circumstances in some detail, the court concluded that the children would be best served by transforming the interim arrangement into a permanent one. We see no abuse of discretion.

IV.

the monthly mortgage payments for [Wife].” Wife does not explain how that factor was relevant to the court’s determination of custody.

Wife’s next several claims of error concern the court’s decisions regarding the marital home. First, Wife argues that the court should have granted her use and possession of the marital home “to provide her minor children with stability.” Second, Wife argues that the court, in ordering that the home be sold, “failed to offer either party an option for use and possession or a buyout plan.” Third, Wife argues that, because she had “always made all mortgage payments,” the court should not have ordered that the proceeds of the sale be split evenly, but should instead have awarded her a larger share.

Before discussing the merits of Wife’s claims, we must first set forth the relevant facts. At the beginning of trial, the parties agreed that the marital home was marital property. Later, the court asked Husband what he wanted to happen to the home. Husband responded that, although he preferred that the house be sold, he was open to the idea of Wife “buying him out.” When the court asked Wife the same question, she responded that she wanted “use and possession maybe for like two years or so,” and that then she would “sell.” The court asked Wife if she had “any desire to purchase [Husband’s] interest in the house.” Wife responded, “No.” Ultimately, the court ordered that the home be sold and that the proceeds be split evenly between the parties. In so doing, the court rejected Wife’s request for use and possession, finding that “use and possession [was] not appropriate in this case” and that Wife had not shown “any substantial need for the children to remain in the home.”

The record does not support Wife’s current contention, regarding the court’s alleged failure to provide a “buyout plan.” The court did offer such an option, but Wife rejected it. Instead, Wife asked for use and possession for two years and then for the

home to be sold. We cannot say that the court erred in ordering that the home be sold, as that is what both parties ultimately wanted. Thus, the only pertinent questions here are whether the court erred in denying Wife’s use and possession request and whether the court erred in ordering that the proceeds of the sale be split evenly.

We hold that the court did not err in denying Wife’s request for use and possession of the family home. Maryland law permits a court in a divorce proceeding to award a spouse use and possession of the family home for up to three years following the date of the divorce. Md. Code (1984, 2019 Repl. Vol.), §§ 8-208 and 8-210 of the Family Law Article (“FL”). In awarding use and possession, a court is required to consider the best interests of the children, the interest of each party in continuing to use the family home as a dwelling place or for the production of income, and any hardship imposed upon the opposing party. FL § 8-208(b). “The trial court’s decision ‘in awarding possession and use of a family home will not be disturbed on appeal in the absence of a showing that it was exercised in an arbitrary manner or a showing that [the trial court’s] judgment was clearly erroneous.’” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 199 (2016) (quoting *Court v. Court*, 67 Md. App. 676, 684 (1986)).

Here, the record shows that the court considered all of the statutory factors before reaching its decision. The court concluded, based on the evidence and arguments presented by the parties, that use and possession was unwarranted and that neither party had shown “any substantial need for the children to remain in the home.” We see nothing arbitrary or clearly erroneous in that decision.

Wife argues that use and possession was necessary to provide “the minor children with stability.” She asserts that the children “have been forced to alternate homes every two days,” which, she says, “has caused an interruption in their academic and social well-being.”

We are unpersuaded. Because the court ordered shared physical custody, the children would still alternate between the parties’ homes even if the court had granted use and possession to Wife. Thus, the court would not have ameliorated the alleged interruptions by granting Wife use and possession. In any event, the court expressly rejected the notion that the children’s well-being would be adversely affected by having to alternate between the parties’ homes. The court found, instead, that the shared custody arrangement, which had been in place for approximately two years leading up to the divorce hearing, had not impaired the children’s well-being. In these circumstances, the court did not abuse its discretion in denying Wife’s use and possession request.

We also hold that the court did not err in ordering that the proceeds from the marital home be split evenly between the parties even though, during the marriage, Wife had been paying the mortgage. Wife agreed at trial that the net proceeds from the sale of the home constituted marital property. Thus, the court was correct in treating those proceeds as marital property and in distributing them accordingly. *See* FL § 8-205. It is immaterial that Wife may have been responsible for paying the mortgage during the marriage, absent a showing that she made the payments with non-marital property. *See Dave v. Steinmuller*, 157 Md. App. 653, 663-64 (2004) (explaining that Maryland uses the “source of funds” theory for determining whether property is marital or non-marital).

To the extent that Wife claims that the court did not properly consider her contributions to the home in determining how the net proceeds should be divided, we disagree. A spouse’s contribution to the well-being of the family is but one of 11 statutory factors that a court must consider when determining a monetary award. FL § 8-205(b). The record establishes that the court properly considered all of the relevant statutory factors, including Wife’s contribution to the marital home, before reaching its decision.

To the extent that Wife claims that she should have received credit for the monetary contributions that she made to the marital home following the parties’ separation in 2019, we remain unpersuaded. Although a spouse may be entitled to a credit for contributions that the spouse makes to the marital home after the parties separate (*see Burak v. Burak*, 231 Md. App. 242, 279-80 (2016), *rev’d on other grounds*, 455 Md. 564 (2017)), a court is not obligated to grant such a credit. *Id.* at 280 (citations and quotations omitted). Rather, “the award of contribution is an equitable remedy within the discretion of the court.” *Id.* (citations and quotations omitted). Moreover, contribution is inapplicable where the payments are made from marital property. *Caccamise v. Caccamise*, 130 Md. App. 505, 525 (2000).

Here, Wife testified that she had been paying the home’s mortgage, which totaled \$3,451.30 per month, while the parties were separated. But she presented no evidence that the funds used to pay the mortgage were anything other than marital property. Hence, it does not appear that a credit for contribution was warranted.

Additionally, Husband presented evidence showing that he had paid approximately \$2,500.00 per month in rent and other living expenses during the parties' separation. Thus, even if contribution was applicable, we are not persuaded that such a remedy would be equitable, given that Husband would not receive any credit for the significant, albeit smaller, monthly sum he had to pay upon leaving the marital home. In those circumstances, we cannot say that the court abused its discretion in not granting Wife the equitable remedy of contribution.

V.

Wife claims that the court erred in denying her request for attorneys' fees. She argues that the court should have granted her request because Husband "refused all attempts to bring closure to any of the issues brought to court" and caused her "great financial strain." Wife also argues that the court erred in refusing to order Husband to reimburse her for a portion of the cost she paid to have a forensic accountant prepare a report regarding the parties' retirement accounts. She argues that Husband should have paid for the report because he relied on it at trial.

FL § 7-107(b) permits a court to "order either party" in a divorce proceeding "to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding." Before ordering such a payment, however, the court must consider: "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding." FL § 7-107(c). The court is "vested with a high degree of discretion in making an award of attorney's fees[.]" *Reichert v. Hornbeck*, 210 Md. App. 282, 368 (2013).

We hold that the court did not err in denying Wife’s request for attorneys’ fees or in denying her request for reimbursement of a portion of the expense of the expert’s report. In making its decision, the court considered the parties’ financial circumstances and found that neither party was able to pay the other’s fees and costs. The court also found that both parties were justified in bringing their respective claims and that neither party had incurred any significant deficits in terms of attorneys’ fees and costs related to the proceedings. In so doing, the court tacitly rejected any notion that Husband had “refused all attempts to bring closure to any of the issues brought to court” or that he had caused Wife “great financial strain.” The court did not abuse its discretion.

VI.

Wife’s final claim is that the court erred in its calculation of the value of Husband’s retirement account. The entirety of that claim is based on Wife’s motion to strike the expert’s report that she herself had commissioned. According to Wife, Husband had relied on the report during the first two days of trial. Later, Wife learned that, after the second day of trial, Husband had communicated with the expert who prepared the report. The court denied Wife’s motion to strike the report on the final day of trial.

In arguing that the court should have stricken the report, Wife asserts that because of Husband’s contact with the expert, she is unsure about whether the data analysis in the report was reliable. Wife’s claims have no merit. We fail to see how the validity of the report could have been affected by Husband’s contact with the expert. The report was

prepared in advance of trial, before any alleged communication between Husband and the expert.

In any event, the court did not rely exclusively on that report in calculating the value of Husband’s retirement account. Husband presented various pieces of documentary evidence, including account statements, that reflected the balance of his retirement account before and during the marriage. The court’s findings regarding the value of Husband’s retirement account were consistent with those documents. Therefore, even if the court somehow erred in not striking the report, the error would have been harmless. “It is the policy of this Court not to reverse for harmless error.” *Crane v. Dunn*, 382 Md. 83, 91 (2004).

HUSBAND’S CROSS-APPEAL

I.

In his cross-appeal, Husband asks whether it was “fair” for the court to order him to transfer over \$100,000.00 in retirement assets and a portion of his pension to Wife. Husband suggests that the court’s decision was unfair because, he says, Wife “did not adequately disclose assets during the divorce process” and because she did not perform “asset tracing” on her retirement funds in preparation for trial.

We hold that the court did not abuse its discretion in issuing that order. The court’s calculation of the parties’ individual retirement accounts, and its determination as to which portion of those accounts was marital, were based on the evidence presented at trial and were not clearly erroneous. The uncontroverted evidence established that the marital portions of Husband’s and Wife’s retirement funds were \$410,338.00 and

\$156,490.00, respectively. The court considered, in detail, the relevant statutory factors regarding a marital award. Based on those factors, the court awarded Wife \$126,924.00 of Husband’s retirement funds. That award equalized the parties’ shares of the marital retirement funds. Because the parties’ shares of all the other marital funds were more or less equal, and because Husband had over \$1 million in non-marital funds while Wife had only \$13,063.00, we fail to see how the court’s decision was unfair to Husband.

The court, therefore, did not err in awarding Wife a portion of Husband’s retirement funds. The court likewise did not err in awarding Wife a share of the marital portion of Husband’s federal pension. *See generally Conteh v. Conteh*, 392 Md. 436 (2006) (holding that pension benefits acquired during the marriage constitute marital property subject to equitable distribution).

II.

Husband raises two claims regarding the court’s refusal to award him certain relief.

First, Husband contends that the court failed to enforce the interim consent order, which stated that neither party could dissipate assets. Husband asserts that Wife’s financial statement showed that she “possibly” spent significant sums of marital funds in the months leading up to trial. Husband argues that he should have received relief “pursuant to Maryland Rule 15-203 (Direct Civil and Criminal Contempt).”

Second, Husband contends that the court denied him an appropriate “civil remedy” for Wife’s failure to provide discovery. Husband asserts that he should have received relief “pursuant to Maryland Rule 2-432 (Motion Upon Failure to Provide Discovery).”

We shall not consider either claim. As to the first claim, a court’s decision denying a contempt petition is not appealable. *See Pack Shack, Inc. v. Howard County*, 371 Md. 243, 258-60 (2002). As to the second claim, Husband has failed to identify what the discovery violations were, what relief he requested, or how the court erred. *See Abdullahi v. Zanini*, 241 Md. App. 372, 418 n.29 (2019) (noting that an appellate court generally will not consider a claim where the party “merely makes [a] bald assertion and provides no other argument or detail about [the] claim”).

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO BE EVENLY
DIVIDED BETWEEN THE PARTIES.**