

Circuit Court for Montgomery County  
Case No. 140706-FL

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 511

September Term, 2018

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MARK WHITE

v.

DENISE WHITE A/K/A/ DENISE CONTENT

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Fader, Chief Judge,  
Gould,  
Wilner, Alan M. (Senior Judge, Specially  
Assigned)

JJ.

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Opinion by Wilner, J.

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Filed: June 3, 2019

\*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.

This is a divorce case. The parties were married in 1998 and had three children, two of whom, at the time of divorce, were emancipated adults. Appellee (Denise) was given primary parenting time (residential custody) of the minor child, and the parties share joint decision-making authority (legal custody). That is not an issue in this appeal; nor is the divorce, which was based on 12 months of separation, or child support of \$460 per month payable by appellant (Mark).

The issue is the court's decision to award appellee (1) half of the marital portion of appellant's pension, (2) a monetary award of \$54,153, and (3) a contribution to her attorneys' fees of \$3,000.

With respect to the pension, appellant complains that the court erred in dividing the marital portion of the pension "without delineating the property value of the pension and without determining the marital and non-marital portions" of it.

The monetary award was based principally on two retirement savings accounts that once had a combined balance of \$108,372 but, due to withdrawals, had a zero balance at the time the divorce action was filed. Because there were no funds in the accounts when the divorce was granted, appellant claims that a monetary award cannot be based on them. Appellant complains as well that the court erred in assigning no value to the furniture that was in the marital home and which appellee took with her when she left the home.

With respect to the attorneys' fee, appellant contends that the court gave no "legal reason" for awarding that fee and did not consider the parties' ability to pay the attorney.

Appellee has not filed a brief responding to these assertions, so we need to look, as we would in any event, at the record and, in particular, the judge’s explanation for her rulings. What we find is that she gave a detailed and coherent explanation for her rulings. The judge referenced the three statutory components of determining a monetary award – determining what was marital property (Md. Code, Family Law Article (FL), § 8-203), valuing that property (FL § 8-204), and applying the statutory factors in determining whether a monetary award was appropriate and, if so, how much (FL § 8-205). In its analysis, the court dealt with Steps 1 and 2 together— identifying and valuing the marital property.

The first item was the marital home. The parties agreed that there was a mortgage on the home, that the monthly payment was \$2,800, that they had stopped making those payments long before they separated, and that the mortgage was foreclosed in 2016. They averted a sale by declaring bankruptcy, but appellee testified that the home was still “underwater.” Based on that evidence, which was uncontroverted, the court found that the value of the home was zero and that no monetary award could be based on it.

The next item was the furniture that had been in the home, which the court found to be marital property. Appellant said that they had agreed to divide the furniture but that appellee took it all with her when she left the home in October 2015. The court noted that no evidence was offered by either party as to the cost of the furniture or as to its monetary value, and, as a result, the court could neither divide it nor place any value on it. The court then turned to appellee’s car, which it found to be marital property. The

only evidence as to value came from appellee, who testified that the value was approximately \$16,000 but that the car was subject to a loan with a \$24,000 balance. That being the only evidence, the court found the value of the car to be zero.

The next items were appellant's pension with his former employer, Washington Metropolitan Airport Authority (WMAA) and a Lincoln Financial supplemental retirement savings plan, involving two accounts. With respect to the pension, based on exhibits in evidence, the court found that appellant was employed by WMAA from March 1988 to April 2016, that he was employed for 238 months while married to appellee, and that 70 % of the pension was therefore marital property. Rather than attempting to place a value on the marital portion, the court chose to divide the pension, which FL § 8-205 authorizes it to do. *Deering v. Deering*, 292 Md. 115 (1981); *Fulgium v. Fulgium*, 240 Md. App. 269, 286 (2019).

The court concluded that the Lincoln Financial accounts also were marital property. The problem with those accounts was that the funds had been withdrawn in their entirety and dissipated by appellant. As of March 31, 2016, there was \$97,834 in Account No. 1. With accrued interest, the balance in the account was \$101,889. As of September 30, 2016, there was \$6,483 in Account No. 2. Appellant depleted both of those accounts without informing appellee. Based on exhibits in evidence, the court found that a total of \$108,372 had been withdrawn. Appellant said that he needed \$44,000 for attorneys' fees, but the court found that, even if that were true, it did not account for the total amount of withdrawal. The court also rejected appellant's claim

that he did not need to advise appellee of those massive withdrawals or seek her consent to them because, in his view, as they were separated at the time, he did not consider her to be his wife any longer. On those facts, the court valued the Lincoln Financial accounts at \$108,372. It is evident, in doing so, that the court found the depletion to be a dissipation that constituted a fraud on appellee's marital rights.

Finally, with respect to appellant's income and assets, the court noted that, on his own financial statement, he showed total income of \$1,200 per month from wages, monthly expenses of \$468, and a net of \$0, total assets of \$10, and a net worth of \$0. The court found his financial statements to be "disingenuous" and "unreliable." It noted that there were suggestions by appellant of adultery on the part of appellee, but that no proof of that was forthcoming.

Having completed Step 2, the court proceeded to Step 3 and evaluated the marital property in accordance with the 11 factors set forth in FL § 8-205. In relevant part, it found, from the evidence before it:

- That appellant was the principal breadwinner during the marriage, but that appellee contributed to the marriage by undertaking many responsibilities in the home, including taking care of the children, including the children from appellant's former marriage;
- With respect to the economic circumstances of the parties, that the financial statements submitted by the parties were not reliable, so that factor was neutral;

- That the financial circumstances and general dissatisfaction led to the parties' estrangement;
- That the marriage lasted nearly 20 years, which favored a monetary award;
- That the parties were in their fifties, nearing retirement, which also favored a monetary award;
- That no evidence was presented with respect to the physical and mental condition of the parties;
- That as to how and when specific marital property was acquired, appellee produced no evidence regarding her retirement account, but she did produce evidence of appellant's retirement plans, which the court credited;
- That no evidence was presented regarding any property the parties owned as tenants by the entirety; and
- That appellee abandoned any request for alimony, which the court found favored a monetary award.

Weighing these factors, the court concluded that a monetary award was appropriate. As noted, it found that 70% of appellant's pension was marital property and awarded half of that 70% (35%) to appellee, to be paid in accordance with a Qualified Domestic Relations Order (QDRO). The balance of the monetary award was based on the court's conclusion that appellant had improperly dissipated the marital funds in his two Lincoln Financial accounts – \$108,372. The court awarded half of that

amount -- \$54,186 to appellee. In an apparent, but tacit, attempt to give appellant a tax benefit, it provided that that amount would be payable monthly as spousal support.

With respect to attorneys' fees, the court correctly concluded that it needed to consider the ordinary factors of labor, skill, time, and benefit as well as the financial resources of the parties. The attorney testified to \$3,000 of effort. The court observed that, for just that proceeding, five hours had been expended by the attorney, and it anticipated that at least three additional hours would be needed. A QDRO needed to be prepared. The court noted that, in his answers to interrogatories, appellant asserted that he did not have a pension, and that it took counsel considerable time to investigate that claim and disprove it. Although not mentioned, the court already had found appellant's financial statement, in which he claimed zero assets, to be disingenuous and unreliable. Taking all this into account, the court awarded an attorney's fee of \$3,000.

As noted, appellant makes essentially three complaints – that the court failed to value his pension, that it ignored the fact that there was nothing left in the retirement savings accounts and failed to value the furniture, and that, in awarding the attorney's fee, it failed to consider that appellant had no ability to pay the fee. None of these complaints have any merit whatever.

As we have observed, the court is not required in all cases to place a value on a pension but may, as an alternative, order a direct transfer of all or part of the marital portion of the pension, which is what the court did. *See* FL § 8-205(a)(2); *Deering v. Deering*, 292 Md. 115 (1981); *Fulgium v. Fulgium*, 240 Md. App. 269, 286 (2019).

With respect to the retirement savings accounts, the court did not ignore the fact that there was nothing left in those accounts, but attributed that to the dissipation of those funds, which constituted a fraud on appellee’s marital rights. In *Omayaka v. Omayaka*, 417 Md. 643, 651-52 (2011), the Court held that “dissipation occurs where one spouse used marital property for his or her own benefit for a purpose unrelated to a marriage at a time where the marriage is undergoing an irreconcilable breakdown” or when “marital assets were taken by one spouse without agreement by the other spouse.” Proof that a spouse made sizable withdrawals from bank accounts under his or her control is sufficient to support the finding that the spouse had dissipated the withdrawn funds. *Id.* at 657. The Court added that such a dissipation may be set aside unless the recipient took in good faith, without notice, and for value. *Id.* at 653. An appellate court “will not set aside a trial court’s determination regarding dissipation of marital assets unless the determination is clearly erroneous.” *Id.* at 654.

There was nothing clearly erroneous in the trial court’s finding of dissipation in this case. Appellant wiped out over \$108,000 of marital assets at a time when the marriage was in deep trouble, for no marital purpose, and without the knowledge or consent of appellee. As for the furniture, there was no evidence of where it was currently or what its value was. Appellee took the furniture in October 2015. The divorce hearing was in April 2018.

Appellant’s complaint regarding the award of attorneys’ fees fares no better. The court did not fail to consider appellant’s lack of funds to pay that fee. It simply



rejected for lack of credibility appellant's protestation of poverty, which it had a right to do.

**JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.**