

Circuit Court for Anne Arundel County
Case No.: C-02-FM-19-003210

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 588

September Term, 2022

LANCE T. BRASHER

v.

CATHERINE A. BRASHER

Leahy,
Friedman,
Gill Bright, Robin
(Specially assigned)

JJ.

Opinion by Gill Bright, J.

Filed: December 7, 2023

This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

OVERVIEW

Following a three-day trial in the Circuit Court for Anne Arundel County, Lance Brasher (Husband”) and Catherine Brasher (“Wife”) were granted a judgment of absolute divorce with a Marital Property Determination that identified and allocated the marital property. Wife was awarded indefinite alimony, a monetary award, ownership of the marital home, and the restoration of her former name. The court denied both parties’ requests for attorneys’ fees. The court later held a hearing and placed “additional findings on the record” that did not impact the judgment of divorce.

Husband timely appealed and Wife timely noted a cross-appeal.

As the appellant, Husband presents five questions for our review¹, which we rephrase and reorder as three questions:

1. Did the trial court abuse its discretion in finding that Wife would not be self-supporting, and that the lifestyles of the parties would be unconscionably disparate without awarding Wife indefinite alimony of \$35,000 per month?

¹ Husband’s questions, as stated in his brief are:

I. Did the trial court err, abuse its discretion, and was clearly erroneous when it disregarded its finding that Catherine would be self-supporting and concluded that the lifestyles of the parties would be unconscionably disparate without an award of \$35,000 per month in indefinite alimony to Catherine?

II. Was the trial court’s decision to transfer ownership of the marital home to Catherine defective because it was based on the clearly erroneous finding of fact that Lance owned a residential property of his own?

III. Was the trial court clearly erroneous, and did err as a matter of law when it treated the monetary gifts made by Lance to his siblings as if the gifts were dissipated marital assets?

IV. Was the trial court clearly erroneous, and did it err as a matter of law when in valuing the marital home, it ignored the repeated offers of Lance as a ready and willing buyer for \$3,000,000, in favor of a lower appraisal value of \$2,247,000?

V. What remedies is Lance entitled to?

2. Did the trial court abuse its discretion in treating Husband’s monetary gifts to his siblings as dissipated assets?
3. Was the trial court clearly erroneous in finding that Husband owned a separate residential property and in its valuation of the marital home?

Wife presents four questions for review.² Two questions are in response to Husband’s appeal and the remaining two cross-appeal questions are conditional should we remand the case. The two questions we rephrase:

1. Did the trial court abuse its discretion when it denied Wife’s request to reopen the record to update account balances from the period between the trial court’s oral ruling and the judgment of absolute divorce?
2. Did the trial court abuse its discretion by not increasing the monetary award based on the trial court’s Revised Marital Property Determination statement?

For the reasons set forth below, we shall affirm the judgment of the circuit court regarding Husband’s questions. Wife’s questions, conditioned upon remand are now moot.³

² Wife’s questions, as stated in her brief are:

- I. Was the trial court’s alimony award to Catherine an abuse of discretion?
- II. Was the trial court’s award of the marital home to Catherine at a particular value an abuse of discretion?
- III. Was the trial court’s denial of Catherine’s motion to re-open the record to update liquid account balances following a substantial delay between trial and resolution an abuse of discretion?
- IV. Was the trial court’s declination to increase Catherine’s equitable distribution monetary award following a multimillion dollar correction to its marital property determination an abuse of discretion?

³ After oral argument, Husband filed a motion to dismiss the conditional cross-appeal for mootness on the ground that he had paid Wife the \$2.2 monetary award; to be paid in four equal installments. Husband disbursed one-half of the monetary award on April 17, 2023, and the balance on May 25, 2023. Wife accepted both installments and filed a line of satisfaction with the circuit court on October 5, 2023. “[T]he ‘general rule’ is that ‘an appellant cannot take the inconsistent position of accepting of benefits of a judgment and

(continued)

FACTUAL AND PROCEDURAL BACKGROUND

The parties met in 1981 when Wife was a sophomore at the University of Maryland at College Park and Husband had just completed his junior year at the United States Naval Academy (the “USNA”). Husband graduated in 1982 with a Bachelor of Science degree in economics and served in the Navy for five years. Wife graduated with a Bachelor of Science degree in psychology with a concentration in biology. After graduating, Wife worked as a research assistant conducting neuropsychiatric research in a laboratory at the University of Maryland.

On October 27, 1984, the parties married. Wife then relocated to San Diego where Husband was stationed. Husband was subsequently transferred to Seattle, Washington and Arlington, Virginia. While in the military, the parties lived in modest accommodations. Although Wife was unable to obtain employment in her career field while living in San Diego and Seattle, she worked in retail to earn income and assisted with

then challenge its validity on appeal.” *Turner v. Turner*, 147 Md. App. 350, 381 (2002) (citing from *C.f. Downtown Brewing Co., Inc. v. Mayor of Ocean City*, 370 Md. 145, 149 (2002)). “[T]he right to appeal may be lost by acquiescence in, or in recognition of, the validity of the decision below from which an appeal is taken....” *Id.* Husband’s motion fails on two grounds. First, Husband’s motion to dismiss was untimely filed more than ten days after the issue became moot. *See* Md. Rule 8-603(a)(4). Second, “the acquiescence rule does not apply where the right to the benefit received is conceded by the opposite party.” *Dietz v. Dietz*, 351 Md. 658, 687 (1998) (internal citation omitted). Husband’s issues on appeal include: the trial court granting Wife indefinite alimony; Husband’s mistaken characterization of dissipation; and Husband’s misguided representation that the trial court attributed ownership of real property to him. While those areas are interrelated to Wife’s monetary award, Husband does not contest Wife’s “right to have a monetary award..., the total amount of the award, and the rate at which that award is to be paid.” *Dietz*, 351 Md. at 687. Ultimately, we dismiss Husband’s motion as moot because Wife’s appeal is moot.

the family's living expenses. When the parties moved to Virginia, Wife gained employment and managed the brain research imaging laboratory at the National Institute of Mental Health Clinic.

In 1987, Husband resigned his commission with the U.S. Navy but continued his service with the military on reserve duty. While a reservist, he attended Harvard Law School from 1987 to 1990. The parties resided in Massachusetts and Wife was employed full-time in her field of study. On the weekends, Wife worked at a retail store. Wife's income was used to pay the parties' living expenses and to sustain the household. After completing his second year of law school, Husband clerked as a summer associate with Skadden, Arps, Slate, Meagher & Flom, LLP ("Skadden, Arps").

In 1990, upon graduating from Harvard Law School, Husband accepted full-time employment as an associate with Skadden, Arps, and the parties relocated to Washington, D.C. Wife was happy to relocate so that she could be near her parents to care for her mother who was suffering from multiple sclerosis and to assist with her parents' household chores.

That same year, the parties' first child was born and, in 1993, they had their second child. Prior to the birth of their daughters, Husband informed Wife that he preferred Wife to stay home and take care of their children. With Husband's associate salary, he could financially provide for the family while Wife maintained the household. With a newborn child and approximately \$30,000 in student loan debt, the parties were still able to purchase a 2,000 square foot home in Crofton, Maryland.

In 1996, Wife’s mother passed away and her father was diagnosed with Parkinson’s disease. Wife has three siblings; of which, two are attorneys. Because Wife’s siblings did not reside in the area, the caretaking function for their father became Wife’s responsibility.

In 1999, when Husband became a partner with Skadden, Arps, the parties’ household income substantially increased but so did Husband’s workload. In 2008, Husband incurred 2,400 billable hours that rose to 3,000 billable hours after he became a partner. In 2004, the parties purchased a waterfront home in a gated community in Crownsville, MD (the “marital home”) for over \$2.5 million and they invested between \$700,000.00 to over \$1 million in home improvements. The move placed Wife closer to her father’s home.

Husband is the youngest of eight siblings. His salary increases assisted in providing financial support to several of Husband’s siblings, who have experienced serious life changing and financial events, such as the death of a spouse, business setbacks and mental health trauma. Husband began contributing \$3,500 each month to fund seven IRA accounts for members of his family. He also established financial security for the parties’ children and financially helped Wife’s father, Husband’s mother, and their siblings. In 2010, due to the difficulty in tracking the investment accounts, Husband elected to no longer deposit funds into individual retirement accounts but to send cash directly to his siblings. According to Wife, she was unaware that Husband was providing monthly financial support to his siblings.

Husband and Wife are in reasonably good health except that in 2006, Husband was diagnosed with and treated for e-cell lymphoma cancer. For 6 months, he received

chemotherapy every three weeks; Husband's cancer is currently in remission. A few years later, Wife was diagnosed and treated for chronic appendicitis. She also suffers from psoriatic arthritis in her hands and feet.

While Husband spent many hours working during the week and on weekends, Wife served as the primary caregiver, by agreement of the parties. In that capacity, Husband never voiced any concern about Wife's parenting style or ability. Wife's goal was to expose the children to a variety of activities and interests. When the children were young, Wife joined moms' groups so that they could attend playdates. The children also played sports such as field hockey, soccer, and lacrosse. They took dance, art, and gymnastics classes, along with violin, piano, ice skating and horseback riding lessons. In addition to performing household chores and preparing the family meals, Wife drove the children to their schools, extracurricular activities, and all medical appointments. When the oldest daughter was in kindergarten, she developed asthma which caused Wife to regularly administer the child's nebulizer sometimes every two to four hours a night. From kindergarten to eighth grade, she received allergy shots; first once a week, then every other week, then once a month. When the children were school-aged, Wife sometimes worked as a school counselor or substitute teacher. She also volunteered on several parent-teacher organization committees. The children were emancipated in 2008 and 2011, respectively. As the primary caregiver, Wife's responsibilities were time consuming and involved significant dedication and effort. With the support of Husband, Wife attended a one-year cohort program at Johns Hopkins University and obtained a master's degree in mental health counseling.

Husband and Wife are nearing retirement age. The parties held several joint bank accounts and credit cards; and filed yearly joint federal and state tax returns. Husband maintained a ledger of the parties' income and expenditures, copies of financial documents, and copies of tax returns. The financial records were kept in a home office to which Husband and Wife had access.

In 2018 and 2020, respectively, Wife began suffering from depression and saw a psychiatrist and therapist. She took a medical leave of absence from her employment on January 2, 2019, and had not returned to work at the start of trial. Husband's yearly salary with Skadden, Arps is \$3.5 million. The parties have lived separate and apart since Husband left the marital home on March 1, 2019. Throughout the separation, Husband continued paying the mortgage, utilities, and property taxes on the marital home in addition to the parties' credit card bills. Husband also paid rent and utilities for the apartment he occupied. In October 2020, Husband liquidated a mutual fund held by Franklin Templeton and stock held by TD Ameritrade to pay the mortgage balance of the marital home.

On August 26, 2019, Wife filed a complaint for absolute divorce and other relief in the Circuit Court for Anne Arundel County, and on November 5, 2019, Husband filed a counter-complaint for absolute divorce or, in the alternative, limited divorce and related relief. After a three-day trial, the court took the matter under advisement and the parties each submitted written memoranda. In an oral ruling on January 21, 2022, the trial court made a Marital Property Determination; granted the parties an absolute divorce; awarded Wife \$35,000 each month for indefinite alimony; granted Wife a \$2.5 million monetary award; transferred ownership of the marital home to Wife; restored Wife's maiden name

to “Biro;” and divided the parties’ marital assets. Husband’s retirement, profit sharing, and deferred compensation plans were to be distributed on an “if, as, and when” basis. The court denied the parties’ requests for attorneys’ fees and instructed the parties to submit a proposed order.

Prior to the court’s order, Wife filed a motion to re-open the case and requested an evidentiary hearing to update and correct the values contained in the Joint Statement. She also requested that the court clarify its Marital Property Determination. At a hearing on May 6, 2022, the court noted its clerical error contained in the Marital Property Determination wherein several numbers had been inadvertently omitted. The judge determined that the discrepancy had no bearing on the outcome, as the correct numbers were accounted for in the court’s calculations and prior ruling. The court then generated a Revised Marital Property Determination. On that same day, the trial court signed a judgment of absolute divorce detailing its oral ruling from January 21, 2022.

STANDARD OF REVIEW

When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. 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). The award and duration of alimony is a finding of fact reviewed under the clearly erroneous and abuse of discretion standard. *Solomon v. Solomon*, 383 Md. 176, 196 (2004). “When the trial court’s findings are supported by substantial evidence, the findings are not clearly erroneous.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). The amount of the alimony

is reviewed under an abuse of discretion standard. An abuse of discretion occurs when “ ‘no reasonable person would take the view adopted by the [trial] court’ or when the court acts ‘without reference to any guiding rules or principles.’” *Santo v. Santo*, 448 Md. 620-625-26 (2016) (quoting from *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

“Similarly, whether all or a portion of an asset is marital property or non-marital property, and the value of each item of marital property is a question of fact and subject to the clearly erroneous standard of review. See *Abdullahi v. Zanini*, 241 Md. App. 372, 413 (2019). The division of marital from non-marital property is important in the context of the court’s decision to grant a monetary award “as an adjustment of the equities and rights of the parties concerning marital property” whether or not alimony is awarded. Maryland Code (1984, 2019 Repl. Vol.) Family Law Article (“FL”), § 8-205. The ultimate decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of discretion standard. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008).

“[I]n the arena of marital disputes where notoriously the parties are not in agreements as to the facts, therefore, we must be cognizant of the court’s position to assess the credibility and demeanor of each witness.” *Keys v. Keys*, 93 Md.App. 677, 688-89 (1992). “[We] will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Malin v. Miniberg*, 153 Md. App. 358, 415 (2003), *Tracey v. Tracey*, 328 Md. 380, 385 (1992). Judges are presumed to know the law and are “left with the discretion to determine the

proper disposition of the case. *Bagley v. Bagley*, 98 Md. App. 18, 31–32 (1993). “As such, a trial court is granted significant deference and is entitled to ‘accept—or reject—all, part, or none of the testimony of any witness.’” *Goicochea v. Goicochea*, 256 Md. App. 329, 340 (2022) (quoting *Omayaka*, 417 Md. 643, 659 (2011)). “As long as the court’s findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we might have reached a different result.” *Malin v. Miniberg*, 153 Md. App. at 415.

DISCUSSION

Husband claims that the court erred in granting Wife indefinite alimony; in not finding that Wife dissipated assets; and in transferring the marital home to Wife on the assumption that Husband also owned real property. We do not agree that the court erred.

I. Indefinite Alimony

Title 11 of the FL Article governs alimony. Under the Maryland Alimony Act of 1980, there are two types of alimony – rehabilitative alimony and indefinite alimony. *See* FL § 11-106. When deciding whether to award alimony, and its amount and duration, the trial court is required to consider the following factors:

- (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;
- (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;
 - (ii) any award made under §§ 8-205 and 8-208 of this article;
 - (iii) the nature and amount of the financial obligations of each party; and
 - (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.

FL § 11-106(b).

“[A]limony awards, though authorized by statute, are founded upon notions of equity[.]” *Goicochea*, 256 Md. App. at 357 (quoting *Tracey*, 328 Md. at 393. Its purpose is to rehabilitate the “economically dependent spouse.” *K.B. v. D.B.*, 254 Md. App. 647, 667 (2020), (quoting *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184 (2016)). Rehabilitative alimony attempts to ease the transition for the parties from the joint married state to their new status as single people living apart and independently, and to allow the dependent party an opportunity to gain training and employment in order to become self-supporting. *Solomon*, 383 Md. at 194-195 (quoting *Tracey*, 328 Md. at 391).

After considering the required factors detailed in FL § 11-101(b), a court may award indefinite alimony in exceptional cases if it makes a finding that (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or (2) 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. FL § 11-106(c). Unlike rehabilitative alimony, indefinite

alimony should be awarded only in “exceptional circumstances.” *Karmand v. Karmand*, 145 Md. App. 317, 330 (2002). “[S]elf-sufficiency per se does not bar an award of indefinite alimony if there nonetheless exists an unconscionable disparity in the parties’ standards of living after divorce. *Tracey*, 328 Md. at 392–93.

“[T]he issue of unconscionable disparity must be determined by projecting into the future, to a time of maximum productivity of the party seeking the award, and not by looking solely to the past.” *Whittington v. Whittington*, 172 Md. App. 317, 339-40 (2007). While there is not set formula to determine disparity, “[t]he greater the disparity, the more likely that it will be found to be unconscionable.” *Ware v. Ware*, 131 Md. App. 207, 229 (2000). Indefinite alimony is appropriate “if the standard of living of one spouse will be so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court.” *Karmand*, 145 Md. App. at 338.

Here, Husband does not challenge the court’s alimony award of \$35,000 per month, rather he contends that the court erred in granting indefinite alimony as opposed to rehabilitative alimony. Wife argues that the court did not err in its findings. The record reflects a detailed evaluation by the court of the factors enumerated in FL § 11-101(b). Afterwards, the court considered whether it should award rehabilitative alimony or indefinite alimony. “[E]conomic ‘self-sufficiency per se does not bar an award of indefinite alimony if there nonetheless exists an unconscionable economic disparity in the parties’ standards of living after divorce.” *Innerbichler*, 132 Md. App. at 248 (quoting *Tracey*, 328 Md. at 392–93).

We observe that Husband was the primary financial contributor to the marriage. It was Husband's salary that enabled the family to not only live a comfortable life but also garner substantial investments and savings. Although Wife holds a master's degree, she spent the majority of the marriage maintaining the household, including cooking and cleaning, child rearing, scheduling and handling doctor's appointments, and monitoring the children's extracurricular activities. Wife's last employment was as a school counselor from August 2012 to January 2019.

The court found that Wife is not currently self-supporting, as evidenced by Husband contributing to Wife's expenses during the separation, but that she is able to become partially self-supporting. Based on Wife's assets, she has the potential to earn annual pre-tax investment income over \$376,570 or after-tax monthly income of \$23,046. This amount; however, is based solely on market conditions and may fluctuate. The court did not agree with Wife's assessment of \$47,392.24 in financial obligations and reduced the bulk of her home improvement costs, as speculative; cut the projected medical expenses, as unreasonable; and removed the monthly mortgage expense, as the marital home is not encumbered by a mortgage. Wife's monthly financial obligation was decreased to \$21,165.81 which barely covers Wife's projected investment income.

Husband, on the other hand, earns income in excess of \$3.5 million annually. While Husband's salary will decrease in the future upon retirement, his savings, investments, and retirement income will not impact his standard of living. The court did not find credible Husband's assertion that he is operating on a monthly deficit, as a significant portion of Husband's expenses consist of financially assisting his adult children and contributions to

his siblings. Husband’s monthly income of approximately \$291,666.67 far exceeds his monthly expenses totaling \$76,310.00, inclusive of gifts to family members while Wife’s income is approximately ten percent (10%) of Husband’s revenue stream.

Wife’s projected net income is a mere fraction of Husband’s income after expenses. The court found that “even if [Wife] was able to generate up to \$300,00.00 annually from her assets, this is not sufficient to sustain [Wife’s] affluent lifestyle and history of savings.” The record supports the court’s conclusion that, because of Wife’s age and market fluctuations affecting Wife’s investment income, she will remain partially self-supporting even after the distribution of marital assets. Nevertheless, the court found that Wife is unable to continue the affluent lifestyle previously enjoyed during the marriage even with combining her monthly after-tax investment income of \$23,046 and her monthly salary as a school counselor, compared to Husband’s estimated monthly after-tax monthly revenue stream of \$291,666.67. As the court observed, “the parties respective standards of living would be unconscionably disparate, if [Wife] was forced to pay all of her living expenses without any further assistance from [Husband].”

An unconscionable disparity may be based on the relative percentage the dependent spouse’s income was of the other spouse’s income. However, a finding of mathematical disparity alone will not automatically trigger an award of indefinite alimony; and the trial judge must carefully consider each of the factors spelled out in FL § 11-106(b). *Ware*, 131 Md. App. at 232. “The interplay of those factors may frequently have a strong bearing on whether a disparity can fairly be found to be an unconscionable disparity.” *Id.* at 232-33.

It is clear that the trial judge carefully assessed the credibility of the witnesses in making his determination. Our role is not to make such assessments. The judge explained:

While the court appreciates that the parties have lived a modest lifestyle compared to their wealth, they also lived their lifestyle in a manner that allowed them to accumulate more money than they know what to do with, pay their mortgage off early, buy large purchases without accumulating debt, regularly give monetary gifts that met the maximum, IRS gift giving guidelines to a very large extended family and to save millions of dollars each year with the goal of creating generational wealth.

If Ms. Brasher relied on her projected monthly income of \$23,046, she would live a very different lifestyle without future financial contribution from Mr. Brasher. In this case, that result would be particularly inequitable given that but for Mr. Brasher's adultery Ms. Brasher's station in life would have remained the same.

Under these circumstances, it would lead to an unconscionable disparate result if Ms. Brasher paid all of her living expenses with her projected income and monetary award when Mr. Brasher has the financial resources to comfortably pay Ms. Brasher a monthly alimony amount indefinitely.

We recognize that “even where the trial court must issue a statement explaining the reasons for its decision, the court need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis.” *St. Cyr*, 228 Md. App. at 187. The record reflects that the court performed the required analysis. We do not find that the court was clearly erroneous in its valuation of the parties' income and expenses or in finding that unconscionable disparity would result. We need not review the court's award of monthly alimony to Wife in the amount of \$35,000, as Husband does not contest the amount.

II. Marital Property

Marital property is “property, however titled, acquired by one (1) or both parties during the marriage.” FL § 8-201(e)(1).

A. Dissipation

Dissipation occurs “where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown.” *Sharp v. Sharp*, 58 Md. App. 386, 401 (1984). “The doctrine of dissipation is aimed at the nefarious purpose of one spouse’s spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets.” *Omayaka*, 417 Md. at 654. A court’s judgment regarding dissipation is a factual one and, therefore, is reviewed under a clearly erroneous standard. *Id.* at 652.

The party asserting a claim of dissipation has the initial burden of production.” *Goicochea*, 256 Md. App. at 340 (quoting *Omayaka*, 417 Md. at 656) (internal citation omitted). “Once that party has made a *prima facie* showing of dissipation, the burden of production ‘shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate[,]’ *i.e.*, that they were made for family purposes.” *Id.*

Husband argues that the court erred in finding that he dissipated property. He contends that his monetary contributions to his siblings occurred during the course of the parties’ marriage and prior to its breakdown. While generally, Husband’s actions may not have been deemed as dissipation, “dissipation may [still] occur on occasions in which (1)

the marriage is not undergoing an irreconcilable breakdown, and/or (2) the dissipating spouse’s principal purpose was a purpose other than the purpose ‘of reducing the amount of funds that would be available for equitable distribution at the time of the divorce.’” *Goicochea*, 256 Md. App. 350 (citing *Omayaka*, 417 Md. at 652, quoting, *Welsh v. Welsh*, 135 Md. App. 29, 51 (2000)).

Here, the court found that Husband had a practice of giving his siblings the maximum tax-free amount of money allowed by the IRS and he also purchased cars for them. While Husband claimed that Wife knew about the gifts, the court “[did] not find his testimony credible” and that Husband’s giving was without Wife’s knowledge or consent.” “[Husband] has a long time practice of giving his siblings a maximum amount of money allowed by the IRS as annual gift exclusion, along with the purchase of cars, without [Wife’s] prior knowledge or approval.” It is clear that the court found Husband’s actions an improper diversion or depletion of marital funds stating that “the marital estate would be worth at least \$2 million more but for Husband’s gifts.”

During the separation, the parties’ joint bank account contained an initial balance of \$605,000. At the time of trial, Wife admitted that only \$50,000 remained in the account. The court carefully considered and addressed Wife’s spending from the joint bank account and whether she depleted funds with the intent to reduce the marital assets. The court found that Husband did not present credible evidence to show that Wife withdrew funds to avoid an inclusion in their marital assets and that he had not met the *prima facie* burden of proving dissipation. Given the size of the estate, Wife’s withdrawal did not measurably reduce the estate and her post-separation spending was commensurate with her spending

patterns before the marriage began to deteriorate. The court found that “[Wife’s] current living expenses, maintenance of the home and ongoing attorney’s fees justified withdrawal” of funds from the parties’ joint bank account. “When a spouse uses marital property to pay his or her own reasonable attorney’s fees, such expenditures do not constitute dissipation of marital assets.” *Allison v. Allison*, 160 Md. App. 331 (2004). The court’s finding that Husband did not establish that Wife dissipated assets is supported by substantial evidence and is not clearly erroneous.

B. Real Property

When the division of marital property by title is inequitable, the court may adjust the equities by granting a monetary award. *Innerbichler*, 132 Md App. at 227. When a party petitions for a monetary award, the trial court must first follow a three-step procedure. *See* FL §§ 8–203, 8–204, and 8–205. *See also* *Ware v. Ware*, 131 Md. App. 207 at 213. First, for each disputed item of property, the court must determine whether it is marital or nonmarital. Second, the court must determine the value of all marital property. Third, the court must decide if the division of marital property according to title will be unfair; if so, the court may make a monetary award to rectify any inequity. *Dobbyn v. Dobbyn*, 57 Md. App. 662, 679 (1984). After the court determines which property is marital property, and the value of the marital property, the court may transfer ownership of an interest in real property jointly owned by the parties and used as the principal residence of the parties when they lived together, subject to any encumbrance. *See* FL § 8-205(a)(2)(iii).

In the present case, the marital home is not encumbered by any liens. Wife has remained in the home and has been an active member in the community including serving

as president of the HOA; Husband had not lived at the residence since 2019. To offset Husband’s depletion of marital assets, the court transferred the marital home valued at \$2,247,000 million to Wife.⁴ Husband does not contest the court granting Wife a monetary award or Wife obtaining ownership of the marital home. He contends the court erred because the transfer of the marital home was based on the court’s erroneous finding that Husband owned a separate residential property. Husband’s argument is without merit. As we see it, although the word “purchased” was used by the court, in reference to Husband’s current housing, the record before the court did not show that he actually owned separate real property and no such property appears in the court’s calculations. Husband did not list ownership of real property on the parties’ Joint Statement and the court’s Revised Marital Property Determination stated that the only real property Husband and Wife owned was the marital home. The allocation of an asset as marital property or non-marital property is a question of fact. The court was not clearly erroneous in assigning the parties’ marital property. Further, we hold that the court’s misstatement was a mere slip of the tongue and did not impact its distribution of the parties’ assets.

Husband also disputes the trial court’s conclusion regarding the fair market value of the marital home because he was willing to purchase it for \$3 million. The court disagreed

⁴ In the judgment of absolute divorce, the court ordered Husband to transfer to Wife the deed to the marital property. A court has no authority to transfer ownership of property from one party to the other. FL § 8-202(a)(3). However, a court may *transfer ownership of an interest* in the parties’ jointly owned marital home. *See* FL§ 8-205 (emphasis supplied). The issue was not raised on appeal or cross-appeal and will not be addressed by this court.

and found Wife’s expert’s valuation of “\$2.2 million to be more credible than [Husband’s] amount.” Similar to deciding whether property is marital property or non-marital property, the court’s valuation of the marital property is a question of fact. The court valued the marital home at \$2,247,000. We have held:

In its assessment of the credibility of witnesses, the [trial court] was entitled to accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence. The finding that [Wife] had testified truthfully was therefore not erroneous—clearly or otherwise—merely because the [trial court] *could* have drawn different “permissible inferences which might have been drawn from the evidence by another trier of the facts.”

Omayaka, 417 Md. App. at 659 (quoting from *Hous. Opportunities Comm’n of Montgomery Cty v. Lacey*, 322 Md. 56, 61 (1991)) (emphasis in the original). The court was entitled to assess and weigh the credibility of the witnesses in its decision. Its findings were supported by the evidence and not clearly erroneous. After the court values the marital property, it determines whether a monetary award is appropriate. The court’s decision to grant a monetary award and the amount of the award is reviewed under the abuse of discretion standard. Because the Husband does not challenge the \$2.5 million monetary award to Wife, the court need not evaluate the factors detailed in FL § 8-205(b). Nevertheless, because marital property and a monetary award are interrelated, we find the court’s decision to award Wife a \$2.5 million monetary award was not arbitrary or an abuse of discretion.

In sum, the court’s findings were not erroneous nor did it abuse its discretion in granting Wife indefinite alimony of \$35,000 per month; and in not finding that Wife

dissipated marital assets. Further, the court’s misstatement that he owned real property was an inadvertent slip of the tongue and was not a clearly erroneous finding nor an abuse of discretion.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY IS AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0588s22cn.pdf>