

Circuit Court for Anne Arundel County
Case No. C-02-FM-20-002389

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 714

September Term, 2023

TEMITOPE AMUSA

v.

MARYAM AMUSA

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 4, 2024

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

This appeal arises from an order issued by the Circuit Court for Anne Arundel County granting Temitope Amusa (Mr. Amusa), appellant, a Judgment of Absolute Divorce from Maryam Amusa (Ms. Amusa), appellee. The court awarded Ms. Amusa sole legal and primary physical custody of the minor children, with visitation to Mr. Amusa. The court found that Mr. Amusa dissipated \$91,488.50 in marital assets, and it awarded Ms. Amusa a monetary award of \$55,000. The court ordered Mr. Amusa to pay \$3,259 per month in child support based, in part, on a finding of voluntarily impoverishment, and it ordered that arrears in the amount of \$106,375 be reduced to judgment against Mr. Amusa.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion in awarding Ms. Amusa sole legal and primary physical custody?
2. Did the circuit court err in finding that Mr. Amusa was voluntarily impoverished and in imputing income to him in the calculation of child support?
3. Did the circuit court abuse its discretion in calculating the total child support arrearage based on a prior determination of outstanding arrears?
4. Did the circuit court err in finding that Mr. Amusa dissipated marital assets and in granting a marital award to Ms. Amusa?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. and Ms. Amusa were married on May 31, 2007, in North Carolina.¹ They owned a home in Laurel, Maryland, in Prince George’s County (the “marital home”). They have three children together. At the time of the merits hearing, in February 2023, Ka.A was fifteen years old, K.A was eleven years old, and Kh.A was six years old.

On October 17, 2019, Mr. Amusa filed a complaint for absolute divorce, child custody, and other equitable relief in the Circuit Court for Prince George’s County. On November 15, 2019, Ms. Amusa filed a counter-complaint for absolute divorce. Both parties stated that there was no reasonable expectation of reconciliation.

On January 8, 2020, the circuit court granted Ms. Amusa’s Motion to Account for Assets and for Injunction to Prevent Dissipation of Assets. The order enjoined Mr. Amusa from “disposing of or otherwise encumbering any of the property alleged to be marital property or property acquired during the separation, including but not limited to cash and other liquid assets as well as any other personal or real property.” The order also required Mr. Amusa to give an accounting of all marital property or alleged marital property disposed of since May 31, 2007, and all accounts in his name, or in the name of others, in which he had deposited marital funds.

On February 11, 2020, Mr. Amusa filed the accounting in accordance with the court’s January 8, 2020 order. In the accounting, Mr. Amusa stated that, in September

¹ The record reflects that the court granted Ms. Amusa’s request to change her name to Maryam Obashola Ishola-Lemomo. Because the name listed on appeal, however, is Maryam Amusa, we will use that name.

2019, he voluntarily relinquished a 2017 Ford Explorer, which was registered in his name only. Mr. Amusa removed only his personal clothing and effects from the marital home, which he had vacated at the time he filed the accounting. Mr. Amusa stated that he had never owned property in Nigeria. With respect to property he owned in Georgia, that was destroyed in a fire that Ms. Amusa started while cooking in 2012 while he was deployed to Afghanistan, and he and Ms. Amusa sold the property in 2017. Finally, Mr. Amusa stated that he deposited marital funds in either the Navy Federal Credit Union (“Navy Federal”) account disclosed to Ms. Amusa in discovery or in a separate Navy Federal account opened for Ms. Amusa.

On July 30, 2020, the court issued an order transferring venue of the divorce proceeding to the Circuit Court for Anne Arundel County, based on an unopposed motion filed by Ms. Amusa. Ms. Amusa filed the motion after she moved to Anne Arundel County with the three minor children.

I.

Pendite Lite Orders

On September 21, 2020, Mr. Amusa filed an Expedited Motion for Pendente Lite Hearing. On October 21, 2020, after a hearing, the court issued a Consent Order incorporating the agreement the parties reached on the record. It granted Mr. Amusa access to the minor children every Wednesday from 6:00 p.m. through 8:00 p.m. and alternating weekends beginning Friday at 6:00 p.m. through Sunday at 6:00 p.m. The order required Mr. Amusa to take the children to Arabic School on Sunday mornings during his visitation

time. Mr. Amusa was to have “unrestricted access to communicate, whether telephonically via text message, telephone call, or FaceTime, with all minor children via [Ms. Amusa’s] phone or one of the children’s phone each day.”

With regard to child support, the consent order required Mr. Amusa to pay Ms. Amusa \$1,500 per month. Arrears, if any existed, would be assessed at the merits trial. Mr. Amusa filed his first Financial Statement on November 5, 2020, after the first *pendente lite* hearing.

A second *pendente lite* hearing was scheduled for December 10, 2020. Mr. Amusa filed an Amended Financial Statement that day. On January 12, 2021, the magistrate issued his report and recommendation.

The magistrate recommended that Mr. Amusa’s every other weekend visitation be extended to Tuesday mornings and that he continue to have access for a dinner visit every Wednesday. With respect to child support, the magistrate found that Mr. Amusa’s income was \$12,491 per month, the total of his bi-weekly salary and disability payment. Based on that income and the Child Support Guidelines in place at the time, Ms. Amusa requested support. The magistrate recommended that Mr. Amusa pay child support in the amount of \$3,523 per month to Ms. Amusa, effective November 1, 2020, the first month that “all the expenses listed in the calculation existed.”² In response to Ms. Amusa’s request to make child support retroactive to the date of filing, November 15, 2019, the Magistrate

² New guidelines became effective on July 1, 2022. Md. Code Ann., Family Law (“FL”) §12-204 (2023 Supp.).

recommended that Mr. Amusa pay child support arrears in the amount of \$37,546. The parties could argue for alterations at the merits hearing.

On January, 22, 2021, Mr. Amusa filed Exceptions to the Magistrate's Report and Recommendations. On April 19, 2021, the court dismissed Mr. Amusa's exceptions as untimely filed. On April 21, 2021, the court issued an Amended Pendente Lite Order, adopting the magistrate's recommendations.

II.

June 2021 and July 2022 Petitions for Contempt

On June 15, 2021, Ms. Amusa filed a Petition for Contempt, alleging that Mr. Amusa failed to make complete child support payments in accordance with the April 21, 2021 order. On August, 9, 2021, the magistrate held a show cause hearing.³ The magistrate found that Mr. Amusa made some support payments, but they were not as ordered, and he made no child support payment in August 2021. Mr. Amusa stated that he did not pay the full amount of his required child support payments due to health complications. The magistrate found that Mr. Amusa's income had not changed since the December 2020 *pendente lite* hearing, and his health complications had not affected his income.

The magistrate stated that Mr. Amusa had the ability to pay the child support, and his failure to comply with the court's order was "willful" and contumacious. The magistrate calculated Mr. Amusa's recent child support deficiency as \$24,830, which when combined with his prior arrearage of \$37,546, resulted in a total arrearage of \$62,376. He

³ Mr. Amusa retained new counsel prior to the hearing.

recommended increasing Mr. Amusa's monthly arrearage payment to \$300 per month and that Mr. Amusa be held in contempt. To purge the contempt, Mr. Amusa could pay a \$4,000 lump sum payment by September 30, 2021, in addition to the monthly child support payment. The magistrate recommended that future payments be made through the Anne Arundel County Office of Child Support Enforcement "via an immediate earnings withholding order" and that Ms. Amusa be granted attorney's fees in the amount of \$1,500.

On September 16, 2021, the court ratified and affirmed the magistrate's findings and ordered that Mr. Amusa be found in contempt, pay monthly child support of \$3,823 (monthly support of \$3,523 plus \$300 a month in arrears), to be paid via an earnings withholding order, and pay \$1,500 of Ms. Amusa's counsel fees by October 15, 2021.

On July 22, 2022, Ms. Amusa filed a second Petition for Contempt.⁴ On September 19, 2022, the court held a show cause hearing. Mr. Amusa did not appear, but his counsel was present. Mr. Amusa's counsel stated that Mr. Amusa was in Nigeria for his father's funeral. Ms. Amusa testified that the funeral was on August 17, 2022, and other family members had since returned from Nigeria. The magistrate found that, since the August 2021 hearing, Mr. Amusa had made only one \$600 payment, through the child support office, to Ms. Amusa, and Mr. Amusa "willfully and blatantly refuse[d] to comply with the

⁴ That same day, Mr. Amusa filed a Motion to Modify Child Support. The court dismissed the motion on September 13, 2022, in response to Ms. Amusa's motion to dismiss for failure to file a financial statement. Mr. Amusa filed a second motion to modify child support on September 28, 2022, which was also dismissed based on his failure to file a financial statement. He filed a third motion to modify child support on December 30, 2022, and an updated financial statement on January 6, 2023. The court denied the third motion as moot at the merits hearing.

Amended *Pendente Lite* Order.” She stated: “If ever there was a matter to be referred to a judge for possible incarceration for failing to comply, this is one.” Because Ms. Amusa did not request jail time, however, the magistrate was “left with recommending [Mr. Amusa] be found in contempt,” and she did not issue a bench warrant. The magistrate recommended that Mr. Amusa be permitted to purge the contempt with a \$15,000 payment by October 30, 2022, and, if the payment was not made in full by October 30, pay a penalty of \$50 per day.⁵ The magistrate recommended the \$15,000 assessment be reduced to judgment if not paid in full by November 5, 2022. The magistrate recommended that Ms. Amusa be awarded counsel fees in the amount of \$674.08. On February 7, 2023, the court issued an order ratifying and affirming the magistrate’s findings.

III.

Ms. Amusa’s Supplemental Counter-Complaint and Second Motion to Account for Assets and for Injunction to Prevent Dissipation of Assets.

On July 24, 2022, Ms. Amusa filed a Supplemental Counter-Complaint for Absolute Divorce. She alleged, among other things, that after the last contempt hearing, Mr. Amusa “purposely impoverished himself to avoid remitting support on behalf of the minor children.” Ms. Amusa alleged that Mr. Amusa had “failed to contribute to the support and maintenance of the minor children since June 2021.” Mr. Amusa did not file an answer.

⁵ Mr. Amusa filed Exceptions to the Magistrate’s Findings, which the court denied in a February 7, 2023 order.

On November 17, 2022, Ms. Amusa filed a Second Motion to Account for Assets and for Injunction to Prevent Dissipation of Assets. She alleged that Mr. Amusa had repeatedly failed to disclose requested information regarding marital assets and has “taken significant efforts to hide and liquidate marital assets,” including fraudulently withdrawing the entire balance of his Thrift Savings Plan, liquidating his Navy Federal accounts, and selling marital property without preserving, or accounting for, the proceeds. On December 21, 2022, the court ordered that the motion would be considered at the merits hearing set for February 7, 2023.

IV.

Merits Hearing

The court held a two-day merits hearing on February 7 and 8, 2023. The court first addressed Mr. Amusa’s pending motion to modify child support and Ms. Amusa’s pending motion for an injunction and accounting of assets. The court held that the motions were moot given that it would address the issues raised therein at the conclusion of the merits hearing. The court then granted Mr. Amusa’s oral request to amend his complaint to include 12-month separation as a ground for absolute divorce.

Mr. Amusa testified that he and his wife separated in the first week of February, 2020, when she left the marital home with the three minor children. Prior to the separation, Ms. Amusa would continuously take the children and leave “for days sometimes.” When she left with the children in February 2020, Mr. Amusa filed a police report and went to family and friends in search of his children. Mr. Amusa stated that he had no

communication with Ms. Amusa after she left the marital home. In 2018, prior to their separation, Mr. Amusa sometimes spent nights away from home because his wife had physically attacked him.

Counsel for Ms. Amusa introduced bank statements from Navy Federal showing payments to a rental property beginning in January 2020 through May 2020. Mr. Amusa did not “recall the payment[s]” and testified that he “did not leave the marital home.” Ms. Amusa stated, however, that Mr. Amusa moved out in early 2019 because they were arguing. He returned to the marital home on his daughter’s birthday to bring her a present and would come back to the house in the evenings “here and there.”

Mr. Amusa was working in the Pathways Internship Program, a five-year program in the Department of Defense, at the time he filed for divorce.⁶ He was an IT Specialist in the program, and he worked there from December 2014 until 2021. His starting salary was \$52,000 and then increased as he worked his way up in the program. Pay statements provided by Mr. Amusa showed that, on November 21, 2020, he had earned \$96,410 in year-to-date gross earnings. A subpoena was issued prior to trial ordering Mr. Amusa to produce documents responsive to outstanding discovery requests at the merits hearing, including any W-2 forms from 2019 to present. Mr. Amusa did not produce the requested W-2 forms at the hearing, stating: “I don’t have any pay statements.”

⁶ Mr. Amusa has a master’s degree in Information Assurance from the American InterContinental University.

Mr. Amusa testified that he stopped working in the summer of 2021 because there “was too much going on.” Due to injuries he sustained in the military, he took medications that prevented him from working on-site fulltime. He was shot in Iraq and had been assessed as “a hundred percent disabled.” He had “70 percent PTSD” and could not “work in an environment with a lot of noise, a lot of people.”

During the pandemic, Mr. Amusa was allowed to work remotely, but his disabilities and medications “hinder[ed] him from going to the site every day to work” once his team returned on-site. When asked whether he was fired or quit his job at the DOD, Mr. Amusa responded that he “did not quit his job,” but he missed a lot of days and “just couldn’t go to work anymore,” so they asked him to turn in his laptop. When pressed, Mr. Amusa testified that he was fired from his job in August 2021.

Mr. Amusa stated that he had been looking for employment on Indeed, ClearanceJobs.com, and with the DOD since he was fired, but the tech field was not doing well and “[t]hey’re laying people off left and right.” He had been doing volunteer work with the Wounded Warriors program in Washington, D.C., for approximately 18 months, talking with clients on the phone about twice a week. He was “consistently looking for employment,” but his disability did not allow him “to work where a lot of people are because of [his] PTSD.”

In 2019, Mr. Amusa’s disabilities were determined to be permanent and total. He received \$3,956 monthly as a disability benefit from the VA, and he also borrowed money

from family for expenses. Mr. Amusa did not produce any medical documentation supporting his testimony that he was unable to work due to his disability.

Mr. Amusa testified that his VA benefit was no longer deposited into his Navy Federal account. A few months prior to the merits hearing, he opened a PNC account and directed his monthly VA payments to be deposited in that account. He did not produce any of the PNC bank statements. When asked whether he knew that there was an attempt to garnish his Navy Federal account, Mr. Amusa acknowledged that he got a phone call from Navy Federal, but he stated that he did not drain the account to avoid garnishment. He also testified that he took out a loan for home improvements after the court order was entered prohibiting him from encumbering any property.

Mr. Amusa established a Thrift Savings Plan (“TSP”) at the DOD after his third year of employment. He withdrew the entire amount of money in the account toward the end of 2021 to support his father in Nigeria, who had stage IV cancer. After penalties and taxes were deducted, \$56,830.85 was deposited from the TSP account to Mr. Amusa’s Navy Federal account.⁷

Mr. Amusa did not produce any documentation at the merits hearing, despite a trial subpoena and a pretrial order requiring him to provide TSP documentation. He stated that he was not aware that, pursuant to court order, he was not permitted to dispose of the money in his TSP. Mr. Amusa did not recall indicating on the TSP withdrawal form that he was

⁷ Mr. Amusa valued his TSP account at \$25,000 in his March 2021 marital property statement.

not married, and he was not aware that he was required to obtain Ms. Amusa's consent prior to withdrawing funds from the TSP. Mr. Amusa did not inform Ms. Amusa that he was withdrawing the TSP funds, and Ms. Amusa never received any information regarding the withdrawal or any share of the money.

Mr. Amusa testified regarding cash withdrawals from his Navy Federal account, including \$10,000 on September 10, 2021, after the sale of his car to purchase another vehicle. He stated that there should be a bill of sale, but he did not present it at the hearing. Mr. Amusa withdrew another \$10,000 within six days of the first withdrawal to take care of an emergency. He made additional withdrawals of approximately \$10,000 on December 27, 2021, December 31, 2021, and January 5, 2022, each for emergency purposes related to his father's illness. A transplant was attempted, but his father passed away on August 14, 2022. Mr. Amusa used the remaining money for his father's funeral. He did not have any evidence of wire transfers or other documentation showing the money was used for medical expenses.

With regard to travel expenditures after the separation, Mr. Amusa traveled to various places. With respect to travel to Ohio, New Hampshire, Massachusetts, Texas, New Jersey, and New York, he stated that these trips were for work, but he was not reimbursed for his travel expenses. When asked whether he flew from Dulles airport to the Netherlands on Air France in June 2021, Mr. Amusa stated: "No. Well, my mom is here. Sometimes I buy – I help her buy her ticket[s]." He asserted that charges related to the Netherlands could have been for on-line purchases of products, such as cream for his disabilities. Mr. Amusa

paid \$200 monthly for a housekeeper, \$100 per month for vacations, \$50 per month in religious contributions, \$25 per month in “gifts to [his] neighbors,” and \$100 per month for personal haircuts.

Mr. Amusa testified about his relationship with his children. Prior to the separation, he would visit his children’s school, and he knew his daughter’s classmates, as well as the school administrators and teachers. He assisted his children with their school projects and took them to Disney World twice; “[t]he family was happy.” After the separation, his son’s grades fell significantly.

Mr. Amusa did not see the children from February 2020 through October 2020. After the October 22, 2020 *pendente lite* consent order was issued, he began visitation with his children. He took them to the pool, the beach, the ferris wheel, and to visit his cousins. Visitation was continuous until a few months prior to the February 2023 hearing, when Ms. Amusa “just denied access.” Mr. Amusa attempted to contact his children because his wife blocked his calls, but he was unable to resume visitation.

Mr. and Ms. Amusa agreed that they had significant difficulties communicating about the children. They disagreed, however, on who was at fault for the difficulties.

The parties also disagreed on the lack of visitation after Mr. Amusa returned from Nigeria in August 2022, six weeks after his father’s death. He testified that when he returned, Ms. Amusa blocked his calls, and he went to the pickup location “every Wednesday and every other Friday as scheduled,” but Ms. Amusa would not show up with the children. Ms. Amusa testified that, beginning in June 2022, Mr. Amusa failed to show

up for visitation and did not respond to her attempts to reach him. She went to the meeting location in August, September, and October, but he was not there. She stopped going the week before Thanksgiving. Ms. Amusa testified that Mr. Amusa “has a pattern of reaching out when it is” close to court time, but he did not call to wish his youngest son a happy birthday.

Mr. Amusa next testified about marital property. He stated that he had two registered vehicles. Ms. Amusa used one of them, the Ford Explorer, but it was his vehicle. When he could no longer afford payments for two vehicles, he returned the Ford Explorer to the bank.⁸ He could not recall if he received any profits from the sale of the Ford Explorer after it was returned to the bank. He could not afford another vehicle for Ms. Amusa to use.

Mr. Amusa also had a Lexus, but it was in an accident in 2019 or 2020. Mr. Amusa denied selling the car, stating that it was totaled in an accident. After “insurance came in,” he disposed of the vehicle. A check for \$18,642, issued by “SELL YOUR CAR HERE LLC,” was deposited into Mr. Amusa’s Navy Federal account. The memo line on the check noted the Lexus model listed on Mr. Amusa’s March 2021 marital property statement. Ms. Amusa did not receive any portion of the proceeds from this payment.

Mr. Amusa paid the mortgage on the marital home, which was purchased in 2016 with a VA loan. He testified that the mortgage payments were current at the time of the hearing, but he did not produce any supporting documentation requested in the subpoena.

⁸ At the time Mr. Amusa voluntarily turned in the car, there was only one past due payment on the account.

He asked the court to award him use and possession of the marital home because Ms. Amusa had established another residence, and he would be unable to afford another residence near the children due to his unemployment.

Mr. and Ms. Amusa also owned a single family home in Georgia, which was sold in 2019 for \$189,900. In his accounting filed with the court, Mr. Amusa indicated that the property was destroyed in a fire in 2012 and sold in 2017. Mr. Amusa clarified that the property was repaired after the fire in 2012 and sold “[a]round 2019.” The family moved to Maryland in 2013.

There was conflicting testimony as to whether there were tenants in the Georgia property. Mr. Amusa stated there were never any tenants in the property; Ms. Amusa stated there were tenants in the property, noting “that’s the only way Mr. Amusa could [pay] the two mortgages.” Ms. Amusa learned of the property sale through her counsel.⁹

Mr. Amusa testified that he paid \$1500 per month in child support for almost a year before losing his job. Since losing his job, he paid Ms. Amusa two or three hundred dollars per month. Mr. Amusa denied that he “failed to provide support” to the kids, stating that “she disappeared with the kids.” He testified that, “when we had an agreement, we both

⁹ There was also a dispute regarding the ownership of marital property in Nigeria. Mr. Amusa denied owning any property in Nigeria. Ms. Amusa testified that Mr. Amusa owned property in Nigeria that they visited together. She stated that the land was a gift from her father-in-law, and Mr. Amusa built a house on it. She testified that there was a deed to the land, but she did not have access to it.

agreed [\$]1,500, and I paid that.”¹⁰ At the time of the hearing, Mr. Amusa stated that he did not “even have \$1,500. I have no amount.”

Ms. Amusa testified that she was employed at the Fort Meade Child Development Center, earning \$20.65 per hour. She also received 401(k) retirement benefits. Ms. Amusa withdrew \$4,000 from her 401(k) in December 2022 to pay bills, rent, and childcare. Ms. Amusa provided health insurance for her children and paid for all childcare expenses. She requested that the court decline to award any portion of her retirement account to Mr. Amusa.

There were “a lot of incidents” of domestic violence during their marriage. In June 2019, Ms. Amusa and Mr. Amusa were arguing, and Mr. Amusa pushed her down the stairs and took her phone. When he left the house, she retrieved her phone and called the police because she had “blood on [her] nose.” Ms. Amusa stated that she had a miscarriage in 2009 while visiting family in Nigeria after Mr. Amusa beat her. In May 2011, Mr. and Ms. Amusa had an argument in front of the children that led to a physical altercation. Ms. Amusa testified that, every time they “have an argument, he’s just always beating me up, . . . and . . . I try as much as possible to fight for myself . . . [a]nd that’s the reason why . . . we’re both fighting each other.”

¹⁰ On cross-examination, Ms. Amusa’s counsel questioned whether the \$1,500 child support payment negotiated in September 2020 considered his disability benefit, because Mr. Amusa had not disclosed it.

Ms. Amusa testified that Mr. Amusa took her car after an argument and said: “[I]t’s my car. I can do whatever I want to do with the car.” Ms. Amusa had purchased her own vehicle at the time of the hearing.

Ms. Amusa moved out in February 2020 for her and the children’s safety. Mr. Amusa continuously made false reports to the police about men in the house, and he would enter the house uninvited while the family was sleeping, “open all the doors and just leave.” After the third time Mr. Amusa came into the house unannounced, Ms. Amusa decided to move out. She and the children received counseling after she moved out to address Mr. Amusa’s abusive behavior.

Ms. Amusa stated that the children were doing well in school. The two older children were enrolled in the Chesapeake Math and Technology Institute based on a lottery, and the youngest child attended the local elementary school. Ms. Amusa arranged for tutoring to assist Ka.A., and his grades had improved. The children also attended a Saturday program to supplement their math curriculum. Mr. Amusa was not involved in decision making regarding schools and did not attend parent-teacher conferences. On the weekends, Ms. Amusa took the children to Arabic school. Mr. Amusa did not have any involvement in enrolling the children in Arabic school or in selecting their pediatricians. She had never seen Mr. Amusa at the mosque. She made decisions regarding education and religion because “Mr. Amusa was pretty much gone throughout the marriage . . . on deployment here and there.”

Because of the children’s very structured schedule, she did not believe the existing visitation arrangement should continue. She wanted to reduce Mr. Amusa’s visitation time because he forgot to pick up the children from childcare on two occasions, and he “yells at” and “beat[s] up the kids.” On one occasion, Mr. Amusa broke K.A.’s glasses because K.A. “talked back at him.” There were other instances where Mr. Amusa would strike the children and leave a mark. She was not present when this happened, and she did not seek medical attention. There were never black eyes or bruises. Ms. Amusa testified that she had not seen any signs of physical discipline since spring 2019. Two additional reasons that she wanted Mr. Amusa to have reduced visitation were because Mr. Amusa disparages her in front of the children, and he did not spend time with them during his visitation hours. Because of their difficulties communicating, Ms. Amusa requested sole legal custody. Ms. Amusa asked the court to order that the home be sold and that the court award Mr. Amusa’s portion of the proceeds to her as a monetary award.

V.

Circuit Court Opinion

On May 10, 2023, the circuit court issued a written opinion granting the parties an absolute divorce on the grounds of voluntary separation. The court addressed custody, visitation, division of marital property, a monetary award, and child support.

A.

Custody

The court noted that Ms. Amusa was seeking primary physical and sole legal custody, and Mr. Amusa was requesting shared physical and joint legal custody. The court next addressed the custody factors it had to consider pursuant to *Taylor v. Taylor*, 306 Md. 290 (1986). Regarding the first factor, the capacity of the parents to communicate and reach shared decisions affecting the children’s welfare, the court found that the parties did not have the “capacity to communicate effectively and cannot work together to reach shared decisions affecting the children’s welfare.”

With respect to the acceptability of joint legal custody to the parents, the court noted that Ms. Amusa thought joint custody was unacceptable because the parents could not communicate. It noted its concerns with Mr. Amusa’s “inconsistency and past behaviors,” including domestic violence and controlling behavior. The court stated that the control was clear in Mr. Amusa’s testimony and his “lack of understanding about the concept of marital property,” noting that Mr. Amusa testified that “money or the car was his so what is the problem if he chose to spend it or get rid of it.” The court stated that this “power differential” gave the court concern “about the efficacy of joint legal custody.”

Examining the third factor, the relationship between the child and parent, the court noted that the children had resided primarily with Ms. Amusa since the breakup in 2020, and the court had no concern about Ms. Amusa’s relationship with her children. Although Mr. Amusa testified that he had positive interactions with the children, Ms. Amusa testified

that he was abusive toward the children. The court noted that there had been extended periods since 2020 when Mr. Amusa had “not seen or interacted with the minor children.”

The court did not have any information regarding the fourth factor, preference of the child. With respect to the potential disruption of the child’s social and school life, the fifth factor, the court noted that the parties lived near each other, and it found that disruption was unlikely. Regarding the sixth factor, demands of parental employment, the court determined that, based on testimony regarding their daily routine, Ms. Amusa’s employment did not interfere with her ability to meet the children’s needs. The court noted Mr. Amusa’s current unemployment and that his past employment involved prolonged absences and frequent travel.

In evaluating the sincerity of the parents’ request, factor seven, the court found that each parent appeared to sincerely care about the children, and this factor did “not favor one party over the other.” For factor eight, the financial status of the parents, the court stated that Mr. Amusa was unemployed, but he received \$3,956 monthly in disability benefits, and Ms. Amusa earned monthly income of \$3,717. There was no evidence of state or federal assistance to the parties, so the court did not favor either party with regard to factor nine.

The court next considered the factors set forth in *Montgomery County v. Sanders*, 38 Md. App. 406 (1977), noting that “the best interests of the children are paramount.” With regard to the fitness of the parents, the court stated that Mr. Amusa had “not made significant financial contributions to the well-being of the children” during the litigation,

which concerned the court because he appeared to “be putting his own financial interests ahead of his children’s.” The court also noted Mr. Amusa’s use of physical discipline in the past. In contrast, the court described Ms. Amusa’s constant presence in the children’s lives and found that she bore the majority of the financial burden since the separation. The court did “not find [Mr. Amusa] to be unfit and d[id] find [Ms. Amusa] to be a fit parent.”

Evaluating the character and reputation of the parties, the court found that Mr. Amusa was “deliberately evasive” during the litigation, “lacked candor,” and was “degrading towards” Ms. Amusa. The court found that Ms. Amusa was credible in describing incidents of domestic violence, including beating her in the presence of the children. It found that Mr. Amusa “intentionally spent marital funds for his own purposes and did not pay child support as required by” court orders. The court did not credit Mr. Amusa’s testimony that Ms. Amusa attacked him, and it stated that “[t]here was no evidence against Ms. Amusa’s character.”

The court next addressed the desire of the parents and agreements between the parties, noting that both parties wanted custody of the children. Although there had been an agreement, the court found that the parties were now “unable to honor the terms of the agreement.” With regard to the potentiality of maintaining natural family relations, the court found that there was no testimony regarding the children’s relationship with any extended family members or the parties’ willingness to foster those relationships. The court did not consider the preference of the children because it did not hear any testimony

on this factor. The court also found that material opportunities affecting the future life of the children did not weigh in favor of either parent.

Regarding the age, health, and sex of the children, the court noted that there were no “major health concerns” raised at the hearing. In addressing the proximity factor, the court found that, because the parties lived close to one another, visitation “would presumably be easy.”

With regard to the length of separation from the parents, the court noted that the children had resided with Ms. Amusa since February 2020, with only occasional visits with Mr. Amusa. The court credited Ms. Amusa’s testimony that Mr. Amusa “did not call for birthdays or big events, although his contact would increase around pending court hearings.” The court noted that Mr. Amusa had not seen the children since June 2022, and it found that both parties were at fault for the “significant separation” between Mr. Amusa and his children. Finally, on the issue of prior voluntary abandonment or surrender, the court determined that “at times [Mr. Amusa] did voluntarily abandon his children.”

The court found that Mr. Amusa abused Ms. Amusa. Therefore, it would establish the visitation schedule to minimize contact between the parties and ensure Ms. Amusa’s safety. With respect to the children, the court found that there was evidence of physical discipline, but it did not amount to abuse.

After considering all the factors, and noting the parties’ “very dysfunctional relationship,” the court granted sole legal custody to Ms. Amusa. Citing Mr. Amusa’s abusive and controlling behavior toward Ms. Amusa and the “utter lack of communication

between the parties,” the court found that forcing Ms. Amusa to interact with Mr. Amusa to make legal decisions would not be in the best interests of the children. The court ordered Ms. Amusa to inform Mr. Amusa “of any and all decisions and issues concerning the children . . . in writing.”

The court then granted primary physical custody to Ms. Amusa, noting that Ms. Amusa had been the children’s primary caregiver and the court’s concerns regarding Mr. Amusa’s “consistency and refusal to put the children’s best interests above his own concerns.” The court established the following visitation schedule:

For the first month from the date of the Order, Husband shall have access with the minor children every Wednesday evening from 5:30 pm to 8 pm. Should Husband consistently exercise this visitation during the first month, Husband shall have additional access with the children consisting of one weekend a month for the next 3 months. A weekend is defined as Friday at 5:30 pm until Sunday evening at 8 pm. Husband must elect which weekend he elects by the 20th day of the preceding month. Should Husband consistently exercise his access, for these 3 months, Husband’s weekend access shall be expanded to every other weekend for the next 3 months. Weekend is defined as Friday at 5:30 pm until Sunday evening at 8 pm. Finally, after those 3 months and moving forward, Husband’s weekend access shall be expanded from after school/camp on Fridays until drop off at school/camp on Mondays.

The court also established a visitation schedule for vacations and holidays.

B.

Monetary Award

The court next addressed Ms. Amusa’s request for a monetary award. The court found the home in Laurel to be marital property, and it valued the home at \$470,000. With regard to the Georgia property and the Nigerian property, the court stated that there was

insufficient evidence to assess these properties. Although the court recognized that Mr. Amusa's lack of cooperation in providing information about the properties made it difficult for Ms. Amusa to meet her burden of proof to establish the existence and value of properties, she nevertheless failed to meet it, and these properties would not be considered in the monetary award analysis.

The court then valued the parties' vehicles. The court found that Mr. Amusa's testimony regarding the Lexus was not credible, and it valued the Lexus at \$18,642.53, based on its sale price, and it considered that amount as marital property. With respect to the other vehicles, there was insufficient evidence regarding valuation.

With regard to pension and retirement, the court stated that Mr. Amusa's TSP had an approximate value of \$72,845.97 before he withdrew it in December 2021, noting that Mr. Amusa withdrew it without Ms. Amusa's consent, and he lied on the form to withdraw it. Ms. Amusa had a 401(k), valued at \$9,960 before her \$3,496.64 loan. There was insufficient information regarding whether Mr. Amusa had any other retirement benefits or pension.

Regarding the parties' bank accounts, the court had difficulty determining their value. The court noted "numerous and substantial cash withdrawals from 2019 until 2022" from Mr. Amusa's account, most of which Mr. Amusa "denied remembering." The court also noted that Mr. Amusa had a PNC account of an unknown value, which he did not disclose in discovery and revealed for the first time during testimony at the merits hearing.

Before considering the statutory factors for making a monetary award, Md. Code Ann., Family Law (“FL”) §§ 8-202–8-205 (2023 Supp.), the court addressed the dissipation of marital property. The court found that Mr. Amusa “intentionally and significantly dissipated the monetary value of his bank accounts after the separation of the parties,” noting the evidence that he unilaterally withdrew the entire balance of his TSP account, \$72,845.97, in 2021. Although Mr. Amusa testified that he used some of that money for his father’s medical expenses, it “was not for the benefit of the immediate family unit (i.e., Wife and minor children).” Thus, although the effort to help his father was “noble,” it still “constitute[d] marital dissipation.” The court also found that Mr. Amusa dissipated marital assets by taking domestic and international trips, which were documented in credit cards statements, and it found that his denials of the trips were not credible. Finally, the court found that Mr. Amusa dissipated marital assets when he sold the Lexus for \$18,642.53. The court calculated the minimum total value of dissipated assets at \$91,488.50, which resulted from adding the value of the TSP account and the sale of the Lexus. The court found that the loan of \$3,496.64 from Ms. Amusa’s 401(k) account was used for the children and did not constitute dissipation.

After making these findings of facts, the court considered the relevant statutory factors to consider for making a monetary award. With regard to the contributions, monetary and non-monetary, of each party to the well-being of the family, the court stated that both parties contributed to the household expenses. The court noted that Ms. Amusa

cared for the home and children while Mr. Amusa was deployed or away for work. Mr. Amusa's non-monetary contributions were "sporadic."

The court incorporated its prior discussion of the value of all property interests and then considered the economic circumstances of each party at the time. Mr. Amusa was unemployed but received \$3,956 in VA disability per month. Ms. Amusa earned \$3,717 per month, in addition to retirement benefits. The court noted that she had to take out a loan against her 401(k) to pay bills, including childcare and grocery expenses.

Regarding the circumstances that contributed to the estrangement of the parties, the court found that Mr. Amusa was physically violent and controlling, citing his demeaning behavior and relinquishment of Ms. Amusa's car. The court did not credit Mr. Amusa's testimony that he was blindsided by Ms. Amusa's decision to leave as "[h]e had been the one to file for divorce in 2019." The court found that both parties shared responsibility for the estrangement, but it found that Mr. Amusa's actions predominantly caused the marital split. The court noted the duration of the marriage was 16 years, and Mr. Amusa was 39 years old and Ms. Amusa was 38 years old.

The court next discussed the physical and mental condition of each party. The court cited testimony regarding Mr. Amusa's health conditions, and it noted that, although Mr. Amusa said that his PTSD prevented him from working full time, he was able to regularly volunteer with the Wounded Warriors Project. Ms. Amusa "appeared physically healthy," despite allegations of mental and physical abuse, and the court noted that she sought counseling after the separation.

The court then discussed how and when specific marital property was acquired, including the efforts expended by each in accumulating the marital property or interest therein, noting that it considered this factor. It noted that neither party requested alimony.

Finally, the court addressed the catch-all provision of the statutory analysis, which permits the court to consider any other factor necessary or appropriate to the determination of a fair and equitable monetary award. The court stated that it considered in its marital property award analysis Mr. Amusa's dissipation of assets, concealment of resources, "lack of cooperation and candor during the discovery phase of this case," and complete lack of credibility. The court noted Mr. Amusa's "evasive answers" to questions regarding finances and his inability to remember trips to London, the Netherlands, Luxembourg, Stockholm, and Antwerp, despite credit card statements showing transactions there.

After considering all the relevant factors, the court ordered that Ms. Amusa receive one-half interest in any of Mr. Amusa's deferred compensation/retirement accounts to the extent they exist. Ms. Amusa could keep her 401(k). The court stated that, "[c]onsidering [Mr. Amusa's] blatant dissipation of marital funds in the amount of \$91,488.50, his treatment of [Ms. Amusa] and his utter lack of candor, the Court will grant [Ms. Amusa] a monetary award constituting sixty percent of the dissipated funds," which equated to \$55,000 of the \$91,488.50 that Mr. Amusa dissipated. It ordered that amount to be paid within 30 days or be reduced to judgment.¹¹

¹¹ The judgment was recorded on July 27, 2023.

C.

Marital Home

The court denied Mr. Amusa's request for use and possession of the marital home on the grounds that he would not have custody of the children. The court ordered that the home be immediately listed for sale and the proceeds be divided evenly between the parties. The court ordered that any outstanding monetary award or child support payment be deducted from Mr. Amusa's share of the proceeds.

D.

Child Support and Arrearages

In considering Ms. Amusa's request for child support, the court first addressed her request that it find that Mr. Amusa had voluntarily impoverished himself by "making the free and conscious choice to not successfully seek employment." The court found that Mr. Amusa had voluntarily impoverished himself, and it imputed income to Mr. Amusa in the amount he made in his prior employment. Mr. Amusa had trained for more than five years in the IT field and had seven total years of experience in that field with the DOD. The court did not credit Mr. Amusa's claim that his disabilities rendered him unable to work, noting that he was able to successfully work for seven years with his disabilities, and he was able to volunteer in D.C. twice per week with the Wounded Warriors program over an 18-month period. The court was "unpersuaded" by Mr. Amusa's assertion that he could not find work because his field was not hiring, stating that "[d]emand for IT work remains

high.” The court found that Mr. Amusa’s explanations for his ongoing unemployment were not convincing.

Relying on the factors in FL § 12-201(m) pertaining to potential income, the court imputed Mr. Amusa’s prior salary of \$96,410 based on pay documentation in the record. Noting that the court “may not determine potential income for a parent who is unable to work because of a physical or mental disability,” the court found that Mr. Amusa’s unemployment was not due to his disability. The court combined the imputed income with Mr. Amusa’s monthly VA benefit, resulting in a monthly income of \$11,990. Ms. Amusa’s monthly income was \$3,409, and the court gave her credit for insurance and child care expenses.¹² The court then ordered a child support award of \$3,259 per month based on the Child Support Guidelines in effect at the time Ms. Amusa filed her claim for support.

The court next addressed outstanding child support arrearages. As discussed in more detail, *infra*, the court found an arrearage of \$123,990.

This appeal followed.

DISCUSSION

I.

Legal and Physical Custody

Mr. Amusa contends that the circuit court abused its discretion in awarding Ms. Amusa sole legal and primary physical custody because its findings “were not in line with

¹² In February 2023, Ms. Amusa paid \$125 per month in child care expenses and \$173 per month in health care insurance for the children.

the evidence.” He asserts that the evidence shows that he made consistent efforts to communicate with Ms. Amusa regarding decisions related to the children, but she purposely excluded him from decision making. Mr. Amusa takes issue with the court’s concern with his past behaviors, asserting that, “other than [Ms. Amusa] stating in general terms that [he] would beat her and the children up, there was nothing else presented to the trial court to support [Ms. Amusa’s] bare allegations.” Mr. Amusa claims that the testimony does not support a finding that he voluntarily abandoned the children; rather, it shows that Ms. Amusa refused to let him see them.

Ms. Amusa contends that credible testimony shows that Mr. Amusa’s involvement in matters involving the children was sparse, and he went months without attempting to contact her or the children. She asserts that the testimony reflected “consistent and regular acts of domestic violence in the relationship,” evidenced by the miscarriage she suffered after a beating, the incident where Mr. Amusa pushed her down the stairs in front of the children, and the altercation that caused her son’s glasses to break. In addition, Ms. Amusa argues that evidence of Mr. Amusa’s controlling and intimidating behavior, including his view of marital property, liquidation and concealment of marital assets, and voluntary relinquishment of Ms. Amusa’s only vehicle, support the court’s decision to grant her sole legal custody and primary physical custody.

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). The Supreme Court of Maryland has explained these three levels of review as follows:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Where there is no clear error, we will uphold the court's findings unless there is an abuse of discretion, meaning that "no reasonable person would take the view adopted by the trial court," or the court acts "without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (cleaned up); *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018).

As the Supreme Court has explained:

Such broad discretion is vested in the [circuit court] because only [the circuit court judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

In re Yve S., 373 Md. at 586.

"Decisions as to child custody and visitation are governed by the best interests of the child." *Gordon v. Gordon*, 174 Md. App. 583, 636 (2007). In determining the best interests of the child in custody disputes, various factors are relevant. As this Court has explained:

The criteria for judicial determination [of child custody] includes, but is not limited to, 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4)

potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Id. at 637 (quoting *Sanders*, 38 Md. App. at 420). *Accord Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013) (court is responsible for utilizing factors to “weigh the advantages and disadvantages of the alternative environments.”).

Additionally, when the court is considering whether to grant joint custody, the following factors are relevant:

(1) capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare; (2) willingness of parents to share custody; (3) fitness of parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child’s social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of parents’ request; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to parents; and (14) other factors.

Taylor, 306 Md. at 304–11. *Accord Jose v. Jose*, 237 Md. App. 588, 600 (2018). With this background in mind, we will address the specific contentions raised.

Mr. Amusa does not argue that the court failed to conduct the appropriate analysis regarding the requisite factors. Rather, he contends that the custody decision was inconsistent with the evidence, and the court incorrectly discounted his testimony and relied heavily on Ms. Amusa’s testimony.

We disagree and conclude that there was extensive evidence in the record to support the court’s custody ruling. We have set out in detail the testimony and the court’s ruling. We need not reiterate all of it, but we note that there was ample evidence in the record

demonstrating that the parties could not effectively communicate, and that Mr. Amusa was controlling, demeaning, and physically abusive toward Ms. Amusa. Although Mr. Amusa attempts to discredit Ms. Amusa's testimony regarding physical abuse as a "bare allegation," the court found that Ms. Amusa credibly testified that Mr. Amusa beat her when they argued, causing her to suffer a miscarriage in 2019, a bloody nose, and bruises. The court credited Ms. Amusa's testimony that the children witnessed much of the abuse because "they were always with her."

The court also made substantial findings regarding Mr. Amusa's controlling and demeaning behaviors. The court noted that he did not understand the concept of marital property and considered money and the car that Ms. Amusa relied upon for work and school transportation as "his so what is the problem if he chose to spend it or get rid of it." Mr. Amusa testified that money spent during the separation was "[his] money from [his] account," and Ms. Amusa's Ford Explorer "didn't belong to her, it belonged to me . . . That is my vehicle." He liquidated his TSP without her required consent and spent it on, among other things, domestic and international travel. He showed blatant disregard for court orders directing him to preserve marital property and pay child support.

Regarding physical custody, Mr. Amusa asserts that he was "consistently present" for the children since he began his internship in 2014, and the court erred in finding that he voluntarily abandoned the children. Although Mr. Amusa testified to his time with the children, the court was within its discretion to discredit his testimony as not credible. *See Nouri v. Dadger*, 245 Md. App. 324, 342 (2020) (credibility determinations are for the fact

finder). The testimony and evidence indicate several lengthy periods of time where Mr. Amusa did not make significant efforts to see the children.

The court found that Ms. Amusa credibly testified that Mr. Amusa did not call or visit his children on their birthdays. The evidence is undisputed that Mr. Amusa financially abandoned his children by failing to pay the full amount of court ordered child support from November 2020 through February 2023. The court's finding that Mr. Amusa refused to "put the children's best interests above his own" because he "spent marital funds for his own purposes" is supported by the record. Mr. Amusa took several international trips during the separation, including one to South America to pursue his photography hobby, and he had a housekeeper, while paying only a fraction, or in some months none, of his child support obligation.

The court carefully and thoughtfully analyzed all the requisite factors in determining that awarding sole legal and primary physical custody to Ms. Amusa was in the best interests of the children. The court did not abuse its discretion in this regard.

II.

Voluntary Impoverishment

Mr. Amusa contends that the court erred in finding that he was voluntarily impoverished and imputing income to him in the calculation of child support. He asserts that the court's analysis of the factors for determining voluntary impoverishment "did not track" with the evidence of his disability, his efforts to obtain employment, and the requisite factors to consider. He argues that the court disregarded testimony that he could

not work in large groups or travel, and that his disability rating increased over the years. Mr. Amusa asserts that the court erred in imputing his income at \$96,410 and in failing to consider the factors related to a determination of potential income. Finally, he claims that the presumptive correctness of the court’s child support calculation was “overcome by evidence that application of the guidelines would be unjust or inappropriate” because he cannot possibly pay the amount owed and the substantial obligation could affect his job prospects.

Ms. Amusa contends that the court did not err in finding that Mr. Amusa was voluntarily impoverished and imputing income to him in calculating child support. She asserts that the court properly assessed the relevant factors and found that Mr. Amusa’s disability rating did not impact his ability to work. She notes that Mr. Amusa did not produce any corroborating evidence to indicate that he was unable to work or that he had been actively seeking employment, and she points to the timing of when Mr. Amusa stopped working, which was shortly after the first contempt hearing for failure to pay child support. With respect to the amount of income imputed to Mr. Amusa, she asserts that the court could have imputed more income, noting that Mr. Amusa’s 2020 financial statement listed income of \$105,708 plus disability benefits.

In determining child support, a court must determine the income of each party. *John O. v. Jane O.*, 90 Md. App. 406, 419–20 (1992). “[I]f a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income.” FL § 12-

204(b)(1). A determination of potential income may not be made for “a parent who is unable to work because of a physical or mental disability.” FL § 12-20 4(b)(2)(i).

A parent is voluntarily impoverished when he or she “has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources.” *Goldberger v. Goldberger*, 96 Md. App. 313, 327, *cert. denied*, 332 Md. 453 (1993).¹³ *Accord Dillon v. Miller*, 234 Md. App. 309, 319 (2017) (quoting *Durkee v. Durkee*, 144 Md. App. 161, 182 (2002)). In determining whether a parent is voluntarily impoverished, courts consider the following factors:

1. his or her current physical condition;
2. his or her respective level of education;
3. the timing of any change in employment or financial circumstances relative to the divorce proceedings;
4. the relationship of the parties prior to the divorce proceedings;
5. his or her efforts to find and retain employment;
6. his or her efforts to secure retraining if that is needed;
7. whether he or she has ever withheld [child] support;
8. his or her past work history;
9. the area in which the parties live and the status of the job market there; and

¹³ The legislature amended FL § 12-201 during the 2020 session to codify this definition. 2020 Md. Laws Ch. 384 (S.B. 847). The current statute, effective July 1, 2022, states that voluntary impoverishment means “a parent has made the free and conscious choice, not compelled by factors beyond the parent’s control, to render the parent without adequate resources.” FL § 12-201(q) (2023 Supp.).

10. any other considerations presented by either party.

Goldberger, 96 Md. App. at 327 (quoting *John O.*, 90 Md. App. at 422). Although a trial court must consider each factor before finding voluntary impoverishment, it is not required to “articulate on the record” its analysis of each factor. *Dunlap v. Fiorenza*, 128 Md. App. 357, 364, *cert. denied*, 357 Md. 191 (1999). We review a trial court’s “factual findings on the issue of voluntary impoverishment . . . under a clearly erroneous standard, and the court’s ultimate rulings [for] . . . abuse of discretion.” *Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015), *aff’d*, 447 Md. 647 (2016).

Here, the circuit court’s statements reflect that it carefully considered the requisite factors for a determination of voluntary impoverishment. The primary reason that Mr. Amusa gave for being unable to work was his disability. The court noted Mr. Amusa’s testimony regarding his 100 percent disability rating from his military service. This disability rating, however, did not prevent the court from finding that Mr. Amusa was capable of working. *See Hiltz v. Hiltz*, 213 Md. App. 317, 345 (2013) (A disability determination by a government agency coupled with testimony of an unemployed spouse’s own impairment is not *prima facie* evidence of an inability to work, and when impairment is not apparent, expert testimony and medical reports are necessary). The court explained that it “was not persuaded that [Mr. Amusa’s] disabilities render[ed] him unable to work” because he had successfully worked for seven years with his disabilities, and he performed volunteer work two days per week with the Wounded Warriors program in Washington, D.C. Mr. Amusa worked for two years after he received his 100 percent disability rating,

and he testified that he traveled for work several times during that time. The court found that he was terminated after absences beginning in 2021, which Mr. Amusa attributed, in part, to court appearances.¹⁴

The court also discussed Mr. Amusa’s training, past work history, and efforts to find a new job, stating that he had a master’s degree, more than five years of training in the IT field, and more than seven total years of experience at DOD. Given the high demand for IT professionals, and the lack of corroboration that Mr. Amusa had applied for jobs, the court did not credit Mr. Amusa’s testimony that he could not find work for the past 18 months. The circuit court did not err or abuse its discretion in finding that Mr. Amusa was voluntarily impoverished.

We next address the court’s finding with regard to Mr. Amusa’s potential income. The law at the time the complaint was filed in this case provided that potential income, i.e., income attributable to a parent who was voluntary impoverished, was to be determined by the following factors: (1) age; (2) mental and physical condition; (3) assets; (4) educational background, special training, or skills; (5) prior earnings; (6) efforts to find and retain employment; (7) the status of the job market in the area where the parent lives; (8) actual income from any other source; and (9) any other factor bearing on the parent’s ability to obtain funds for child support. *Goldberger*, 96 Md. App. at 328. A determination of potential income will “necessarily involve a degree of speculation.” *Durkee*, 144 Md. App.

¹⁴ The court also noted that the record showed that Mr. Amusa missed only a few days of work due to court appearances and found his explanations regarding his continued unemployment “unconvincing.”

at 187. As long as the court’s factual findings are not clearly erroneous, and the imputed amount is realistic and “not so unreasonably high or low as to amount to an abuse of discretion, the court’s ruling may not be disturbed.” *Id.* (quoting *Reuter*, 102 Md. App. at 223).

While this litigation was pending, the legislature amended FL § 12-201 to provide a list of factors to consider when determining potential income. 2020 Md. Laws ch. 384 (S.B. 847). The statute includes the *Goldberger* factors, plus others, as follows:

(m) “Potential income” means income attributed to a parent determined by:

(1) the parent’s employment potential and probable earnings level based on, but not limited to:

(i) the parent’s:

1. age;
2. physical and behavioral condition;
3. educational attainment;
4. special training or skills;
5. literacy;
6. residence;
7. occupational qualifications and job skills;
8. employment and earnings history;
9. record of efforts to obtain and retain employment; and
10. criminal record and other employment barriers; and

(ii) employment opportunities in the community where the parent lives, including:

1. the status of the job market;
2. prevailing earnings levels; and
3. the availability of employers willing to hire the parent;

(2) the parent’s assets;

(3) the parent’s actual income from all sources; and

(4) any other factor bearing on the parent’s ability to obtain funds for child support.

FL § 12-201(m).

Here, the court stated that it considered the evidence that addressed the statutory factors listed in § 12-201(m),¹⁵ and it imputed income equivalent to what Mr. Amusa was making when he stopped working, which the court found to be \$96,410, or \$8,034 a month. Adding his disability income of \$3,956 a month to the imputed income, the court found that Mr. Amusa had a monthly income of \$11,990. The record supports the court's findings in this regard.

With respect to Mr. Amusa's contention that "it would be unjust or inappropriate" to impute income in the amount of \$96,410 to him, where his unemployment was "due to a combination of factors that were mostly, if not all, out of his control," we are not persuaded.¹⁶ As indicated, the court rejected the argument that Mr. Amusa's unemployment was due to factors out of his control. Moreover, with respect to his argument that this child support obligation may affect or limit his job prospects, there is no evidence in the record that Mr. Amusa's clearance-status has affected his ability to find

¹⁵ Section 12-201(m) applies only to cases filed on or after July 1, 2022. 2021 Md. Laws ch. 305 (H.B. 1339). Although Ms. Amusa filed her Supplemental Counter-Complaint for Absolute Divorce alleging involuntary impoverishment on July 24, 2022, Mr. Amusa filed the initial complaint in this case on October 17, 2019. Thus, although §12-201(m) was not the applicable standard here, there was no reversible error in the court's application of §12-201(m) because it incorporates the *Goldberger* factors.

¹⁶ FL § 12-202(a)(2) provides that the presumption of correctness with regard to a child support obligation calculated under the guidelines "may be rebutted by evidence that application of the guidelines would be unjust or inappropriate in a particular case." § 12-202(a)(ii) (emphasis). Thus, the court must consider the claim only if it is raised by a party.

employment.¹⁷ There was evidence, however, that Mr. Amusa had been deliberately evasive about his past salaries, had been uncooperative in responding to document requests and subpoenas requesting information related to his earnings and efforts to find employment, failed to produce any documentation or other evidence to support his claims that he was unable to work, and withheld child support payments while traveling internationally for personal enjoyment.

To the extent the substantial arrearages are a hardship, we agree with Ms. Amusa that they are a “self-imposed hardship.” Choosing not to seek employment despite “education, skills, experience, and prior employment, and . . . job openings in [the] field . . . [cannot be] at the expense of [the] children.” *Durkee*, 144 Md. App. at 186–87 (court properly considered spouse’s prior employment and education in calculating potential income based on most recent salary). The court did not abuse its discretion in imputing income to Mr. Amusa.

III.

Outstanding Child Support Arrearage

Mr. Amusa next challenges the court’s determination that he owed Ms. Amusa \$123,990 in child support arrearages. He contends that the court should have made independent findings to calculate child support arrears rather than rely on findings made at earlier hearings for failure to pay *pendente lite* child support. He also asserts that the court

¹⁷ It is unclear from the evidence whether Mr. Amusa lost his clearance. We do note, however, that he testified that he had been looking for jobs on ClearanceJobs.com and the DOD.

abused its discretion in relying on and failing to reduce the prior calculations of arrears given that he “did not have the means to pay such a high amount of child support at the time” and the “negative effect on [his] ability to attain a job.”

Ms. Amusa contends that Mr. Amusa did not raise the issue of the arrears calculation at the merits hearing, and therefore, the issue is not properly before the Court. Alternatively, she argues that the court did not abuse its discretion in its order regarding child support arrearages due.

A.

Proceedings Below

In addressing child support arrearages, the court stated:

In order to address outstanding child support arrearages, the Court reviewed and took note of the court file. First, the Court notes that Husband had a monthly child support obligation pursuant to an Amended Pendente Lite Order, dated April 21st, 2021. Husband was ordered to pay child support in the amount of \$3,523 per month commencing on November 1st, 2020. Then, the Court notes that an order was signed on February 6th, 2023, ratifying a Report and Recommendation filed on October 11th, 2022, from a Show Cause hearing that took place on September 19th, 2022. That Order ratified that, as of the September hearing, Husband had an outstanding child support arrearage of \$106,375. Further, the Court finds Husband’s child support obligation continued in October 2022, November 2022, December 2022, January 2023 and February 2023. Testimony proved Husband did not pay child support during those months. This results in an additional outstanding obligation of \$17,615, for a new total arrearage of \$123,990. The Court notes that there is an additional outstanding judgment, in favor of Wife, and against Husband, in the amount of \$4,000, for outstanding child support, entered on February 2nd, 2022.

B.

Analysis

We address first Ms. Amusa’s contention that the issue regarding child support arrearages is not properly before us. “[A]n appellate court ordinarily will not consider any point or question unless it plainly appears by the record to have been raised in or decided by the trial court.” *Robinson v. State*, 404 Md. 208, 216 (2008) (citation and quotation omitted). *Accord* Md. Rule 8-131(a) (appellate court ordinarily will not decide issues not raised in or decided by the trial court). *DiCicco v. Baltimore Cty.*, 232 Md. App. 218, 225 (2017) (issues that are not raised below are deemed to be waived).

Here, Mr. Amusa did not argue at the merits hearing that the prior arrears calculation was incorrect or that it should be adjusted based on revised figures. Indeed, in arguing against an award of attorney’s fees, Mr. Amusa’s counsel acknowledged the arrearages, stating:

I don’t think [attorney’s fees are] fair, your Honor. Again, Mr. Amusa simply doesn’t have the ability to pay that . . . He also has over \$100,000 in arrearages for child support that he can’t simply afford, Your Honor. We understand that that is backward looking, but to continue this going forward, we are literally trying to take blood from a turnip.

Under these circumstances, we conclude that Mr. Amusa’s argument with respect to child support arrearages is waived.

Even if this contention were properly before us, we would find it to be without merit. Retroactive modification of child support arrears is prohibited under FL § 12-104(b). FL § 12-104(b) (“The court may not retroactively modify a child support award prior to the

date of the filing of the motion for modification.”). *Accord Harvey v. Marshall*, 389 Md. 243, 272 (2005) (father was not entitled to modification of arrears, even though they adversely affected his credit rating, ability to purchase a home, and save for his children’s education). The court did not err or abuse its discretion in relying on the prior award of child support arrears to calculate the total arrears.

IV.

Dissipation of Assets

As indicated, the court found that Mr. Amusa dissipated marital assets with a value of \$91,488.50. This represented \$72,845.97 that he withdrew from his TSP account and \$18,642.53 from the sale of the Lexus he owned. After considering Mr. Amusa’s “blatant dissipation of marital funds in the amount of \$91,488.50, his treatment of [Ms. Amusa] and his utter lack of candor,” the court awarded Ms. Amusa sixty percent of the dissipated funds, which equated to \$55,000 of the \$91,488.50 that Mr. Amusa dissipated.

Mr. Amusa contends that the court erroneously found that he dissipated marital assets, and it abused its discretion in awarding Ms. Amusa a \$55,000 monetary award. He asserts that Ms. Amusa did not meet her burden to show that he spent money to avoid its equitable distribution. Moreover, Mr. Amusa argues that the court gave too much weight to Ms. Amusa’s testimony, and it abused its discretion in considering the pre-tax amount of the TSP instead of the amount Mr. Amusa received after taxes and in granting Ms. Amusa a monetary award based on a 60/40 split in favor of Ms. Amusa.

Ms. Amusa contends that she clearly demonstrated, and the trial court properly found, that Mr. Amusa dissipated assets. She asserts that Mr. Amusa engaged in evasiveness, fraud, and concealment of information from the onset of this litigation, and repeatedly violated a court order enjoining him from disposing of marital property. Ms. Amusa argues that the court properly found that Mr. Amusa’s testimony was not credible, and he did not meet his burden of proving that his use of the funds was for family expenses. Ms. Amusa asserts that the court properly assessed the factors in FL § 8-205(b) when determining the monetary award, including Mr. Amusa’s “limited non-monetary contributions to the family[], violent role in the estrangement of the parties and his predominant role in the causation of the marital split,” as well as his lack of cooperation, candor, and credibility throughout the proceedings.

This Court “will not set aside a trial court’s determination regarding dissipation of marital assets unless the determination made is clearly erroneous.” *Omayaka v. Omayaka*, 417 Md. 643, 654 (2011) (quoting *Beck v. Beck*, 112 Md. App. 197, 216 (1996)). “If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Id.* at 652 (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)). *See also Goicochea v. Goicochea*, 256 Md. App. 329, 340 (2022), *cert. denied*, 483 Md. 277 (2023). Because this action was tried without a jury, the circuit court is given significant deference in its assessment of the credibility of the witnesses and “is entitled to ‘accept – or reject – all, part, or none of the testimony of the witness.’” *Goicochea*, 256 Md. App. at 340.

Dissipation of marital assets arises when one spouse, without consent of the other spouse, “spen[ds] or otherwise deplete[s] marital funds or property with the principal purpose of reducing the amount of funds that would be available for equitable distribution at the time of the divorce.” *Id.* at 339–40 (quoting *Omayaka*, 417 Md. at 653) (alteration in original). When a court determines that a party has dissipated assets, it values the dissipated assets “with the other existing marital property.” *Id.* at 340 (quoting *Sharp v. Sharp*, 58 Md. App. 386, 399 (1984)).

The party alleging dissipation of assets has the initial burden of proof. *Omayaka*, 417 Md. at 653. Once that party has established a prima facie claim of dissipation, the burden shifts to the party who spent the money to produce evidence to show the expenditures were for marital or family purposes. *Id.* at 654–56; *Goicochea*, 256 Md. App. at 341. Evidence of large withdrawals from financial accounts under the control of the spouse “is sufficient to support the finding that the spouse had dissipated the withdrawn funds.” *Omayaka*, 417 Md. at 657.

Ms. Amusa satisfied her burden to establish a prima facie claim of dissipation of assets related to the liquidation of the TSP and sale of the Lexus. The court found, consistent with the evidence, that Mr. Amusa’s “TSP account was completely withdrawn in December of 2021, after the separation of the parties, and was done so unilaterally by” Mr. Amusa. This withdrawal was made after the court ordered him not to dispose of property alleged to be marital property, and in doing so, he failed to disclose that he was married to Ms. Amusa. The court also found, and the evidence supported, that Mr. Amusa

sold the Lexus, which was “purchased with marital funds and when sold, the remaining balance was deposited into” Mr. Amusa’s bank account. Because evidence of unilateral withdrawals of significant sums from an account controlled by one spouse is prima facie evidence of dissipation, the burden shifted to Mr. Amusa to show that he used the proceeds from the car and the TSP account for marital or family expenses. *See Omayaka*, 417 Md. at 658. The court properly determined that Mr. Amusa did not make that showing.

Mr. Amusa argues that the timing of the withdrawals shows that he used the money because he lost his job and needed money to pay for his father’s medical treatment. As the court noted, however, even if “noble,” Mr. Amusa’s contributions to his father’s medical expenses were not “for the benefit of the immediate family unit (i.e., Wife and the minor children),” and therefore, his actions constituted marital dissipation. *Heger v. Heger*, 184 Md. App. 83, 97 (2009) (dissipation of property can occur when one spouse uses marital property for his “own benefit for a purpose unrelated to the marriage”) (quoting *Karmand v. Karmand*, 145 Md. App. 317, 345 (2002)). *Accord Omayaka*, 417 Md. at 652 (dissipation can occur when party’s “principal purpose was a purpose other than . . . [the reduction] of funds that would be available for equitable distribution”) (quoting *Welsh v. Welsh*, 135 Md. App. 29, 51 (2000)).

The court also noted trips that Mr. Amusa took without the family, both domestically and internationally. Although Mr. Amusa “denied remembering most of these trips,” the court did not find his denials credible, noting that credit card receipts documented the travel. Mr. Amusa argues that the receipts show that he merely “purchas[ed] things from

international companies” because several charges show transactions from different countries on the same date. The ultimate decision on the credibility of Mr. Amusa, however, was for the circuit court. *See Goicochea*, 256 Md. App. at 340. The court was entitled to reject Mr. Amusa’s testimony, “whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka*, 417 Md. at 659. With regard to Mr. Amusa’s credibility, the court was clear that it found him not credible and that the use of the money from the TSP account “was not for the benefit of the family unit.”

Mr. Amusa’s argument that the court abused its discretion in valuing the TSP at the pre-withdrawal value of \$72,845.97, instead of the post-tax value of \$56,830.85, is also unavailing. Mr. Amusa’s unilateral decision to withdraw the entire balance of the TSP account resulted in taxes and penalties that substantially reduced the TSP’s value. Had Mr. Amusa complied with the court order requiring him to preserve marital assets, the value of the TSP would not have been reduced by penalties and taxes. We perceive no abuse of discretion in the court’s assessment of the TSP at its pre-withdrawal value and agree with Ms. Amusa that Mr. Amusa should not “profit from his deception.”

Mr. Amusa also contends that the court’s 60/40 split of the dissipated funds was improperly punitive and was not based on the factors set forth in FL § 8-205(b). Monetary awards achieve equity between the parties when a significantly higher percentage of marital assets is titled in the name of one spouse. *Long v. Long*, 129 Md. App. 554, 577 (2000). A court’s decision to grant a monetary award is reviewed for an abuse of discretion. *Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019).

The court considers the following factors in evaluating a request for a monetary award: the contributions, monetary and non-monetary, of each party to the well-being of the family; the value of all property interests of each of the parties; the economic circumstances of each party at the time the award is to be made; the circumstances that contributed to the estrangement of the parties; the duration of the marriage; the age of each party; the physical and mental condition of each party; how and when marital property was acquired, contribution to the acquisition of real property held by tenants of the entirety; alimony; and any other factor considered appropriate to a fair and equitable monetary award. FL § 8-205(b). In making a monetary award, the court is not required to “fully enunciate how its consideration of the statutory factors resulted in the particular monetary award.” *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 282 (2022) (award did not create a lopsided result, and thus, a specific explanation of the court’s calculation beyond consideration of the factors in the statute was not needed). The weight given to each factor is left to the discretion of the court. *Skrabak v. Skrabak*, 108 Md. App. 633, 654, *cert denied*, 342 Md. 584 (1996).

Mr. Amusa claims that the court’s 60/40 split based on Mr. Amusa’s “blatant dissipation of marital funds . . . his treatment of his [w]ife and his utter lack of candor” was not based on the requisite statutory factors. We disagree. The court engaged in a detailed analysis of the relevant statutory factors. The court found that Mr. Amusa’s “non-monetary contributions to the family were sporadic” under FL § 8-205(b)(1) and that, under FL § 8-205(b)(4), Mr. Amusa predominantly caused the marital estrangement due to physical

violence, demeaning conduct, and controlling and intimidating behavior. With regard to FL § 8-205(b)(7), the court also noted evidence of mental cruelty and physical abuse leading to a miscarriage and the need for family counseling after the separation.

The court considered Mr. Amusa's dissipation of assets in its extensive property valuation discussion as well as in its discussion of the acquisition of retirement accounts, both statutory factors. *See* FL § 8-205(b)(2)&(8). Finally, the court's findings regarding Mr. Amusa's lack of candor and cooperation throughout the proceedings properly fell under the last catch-all provision of FL § 8-205(b)(11), which allows the court to consider any other factors relevant to a fair and equitable monetary award. Based on the court's thorough analysis of the marital award factors, we perceive no abuse of discretion in its decision to award Ms. Amusa 60 percent of the dissipated assets.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
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/0714s22cn.pdf>