Circuit Court for Montgomery County
Case No. 174093FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 740

September Term, 2024

BARRY LYLE MARKOWITZ

v.

SHEILA MARIE MARKOWITZ

Leahy,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 17, 2026

* This is an unreported opinion. The opinion 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).

Appellant Barry Markowitz ("Husband") and appellee Sheila Markowitz ("Wife") had been married for almost 16 years when Wife filed for absolute divorce in the Circuit Court for Montgomery County in March 2021. In 2024, following a contentious discovery process and a four-day trial, the parties reached a custody agreement, and the trial court announced its rulings on child support, alimony, and property distribution. The court subsequently entered a written custody order and a judgment of absolute divorce ("JAD"). Husband appealed.

Husband, *pro se*, does not challenge the trial court's rulings on child custody, child support, or alimony. Husband challenges only the trial court's distribution of property. Husband's informal brief presents six assignments of error for our review, which we slightly rephrase and reorder as follows:

1. The trial court erred by accepting only Wife's Rule 9-207 statement.
2. The trial court erred in its determination that Husband's retirement funds were marital.
3. The trial court "did nothing about [Wife's] theft of $42,000 of non-marital money."
4. The trial court failed to award Husband any portion of Wife's "non-retirement account."
5. The trial court erred in refusing to admit Husband's evidence regarding the value of the marital home in 2005.
6. The trial court incorrectly determined Wife's interest in the marital residence.

Finding no error or abuse of discretion, we affirm.

BACKGROUND

The following account is derived from the evidence adduced at trial, which commenced on March 18 and concluded on March 21, 2024. We summarize only those portions of the record necessary to provide context for the issues presented.

Wife Filed for Absolute Divorce

At the time of trial, Husband was 72 years old, and Wife was 55 years old. The parties married in June 2005 and have two children: M., born August 2008, and L., born November 2010. Husband was a self-employed Certified Public Accountant ("CPA"), and Wife worked for a real estate agent.

The family lived in a house in Gaithersburg that Husband purchased in 1998. After the parties' marriage, Husband refinanced the house and changed the title to reflect that the house was owned by Husband and Wife as tenants by the entirety. Husband's father lived in an "in-law suite" on the back of the marital home until he passed away in 2009.

In 2015, Husband was hospitalized for a perforated colon and attendant complications. Husband continued to suffer from various health issues thereafter, while Wife remained in good health.

On March 9, 2021, without informing Husband, Wife left the marital home and moved to Damascus, Maryland, where she resided throughout the underlying proceedings. On March 9 and March 18, Wife made withdrawals totaling $42,000 from a joint checking account ending in 5131.

On the same day she left the marital home, Wife filed a complaint for an absolute divorce. In her complaint, Wife requested, among other things, child support, alimony, and equitable division of marital assets. Husband filed an answer and a counterclaim, in which he asked the court to determine what property "owned by the parties is marital property, and the value of same." He asked the court to grant him a monetary award, and that the court grant him the "sole and exclusive right to use, occupy[,] and possess" the parties' marital home for three years following the entry of the JAD.

Discovery Dispute and Marital Property Statement

On May 24, 2021, the circuit court issued an order that directed the parties to file a joint martial property statement under Maryland Rule 9-207 ("Rule 9-207 statement") before the trial. The order set a "mandatory settlement/pretrial hearing" for May 20, 2022, and required the parties to meet at least two weeks before the hearing to prepare the Rule 9-207 statement. The statement was to be "signed by all parties or counsel" and "filed in accordance with … Rule 9-207." Despite this order, the record contains no indication that the May 20 settlement hearing occurred, nor that the parties ever met to prepare the joint statement.

Over the next two years, the trial was repeatedly postponed until it finally took place in March 2024. During that time, Wife filed multiple motions to compel Husband to respond to her discovery requests. The first motion, filed in August 2021, alleged that Husband failed to respond to discovery requests for months, despite being served in April and again in June. On September 9, the circuit court granted the motion and ordered Husband to "provide full and complete responses to [Wife's] Discovery Requests within 7 days[.]"

Wife filed the second motion to compel in April 2022. Wife claimed that Husband had provided "woefully deficien[t] discovery responses" and that it was "clear that [Husband] has no intention of providing the necessary documents[.]" Husband filed an opposition in which he claimed that he had "in fact produced multiple documents" and that he had "supplemented his documents and [would] continue to do so." He further stated that he had been "inundated with work" and yet was "cooperating and acting in good faith" to provide supplemental discovery responses. On April 26, 2022, the circuit court issued another order, which granted Wife's second motion to compel in part, and directed Husband to "provide full and complete answers to interrogatories and documents within five (5) days" of the order. Wife filed a third and fourth motion to compel, but the court denied them.

In September 2023, the circuit court scheduled trial for March 18, 2024, and extended the discovery deadline to February 2, 2024. Later that month, on September 15, 2023, Wife's counsel sent Husband's counsel a letter listing a variety of deficiencies in Husband's discovery materials. Wife's counsel followed up on December 21, 2023, but Husband's counsel subsequently withdrew from the case, leaving Husband to proceed *pro se*.

On January 10, 2024, Wife filed her fifth motion to compel, claiming that, although the parties' counsel had "continued to discuss the remaining discovery deficiencies" since September 2023, "no further supplemental materials were provided" and that Husband's "continued, persistent discovery failures have … materially prejudiced [Wife's] ability to prepare her case[.]" Husband, *pro se*, did not file any opposition, and the circuit court granted Wife's motion on February 21, 2024, ordering Husband to "provide full and complete responses to [Wife's] discovery requests, curing all asserted deficiencies as set forth in [Wife's] counsel's letter to [Husband's] counsel dated September 15, 2023, no later than [ten] days from the entry of this Order[.]"

On March 6, 2024, with the trial less than two weeks away, Wife moved for sanctions, claiming that Husband "completely ignored" the court's February 21 order. Citing Rules 2-432 and 2-433,[1] Wife highlighted the court's authority to impose sanctions for discovery failures, including "the assessment of costs and fees, as well as an order refusing to allow evidence in support of the failing party's claims[.]" Thus, Wife requested, among other things, an order prohibiting Husband from introducing any "facts, information,

[1] Rule 2-432(b) authorizes a party to move for an order compelling discovery when the other party fails to comply with the discovery requests. In turn, Rule 2-433(a) provides that a trial court may impose sanctions for a failure to comply with the order compelling discovery, including:

> (1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;
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> (2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or
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> (3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party.

and/or documents" related to financial issues that should have been disclosed in "full and complete responses" to her discovery requests.

On March 13, 2024, Wife filed "Plaintiff's Marital and Non-Marital Property Statement." According to this statement, the fair market value of the marital home was $950,000, and it was encumbered by $213,288 in liens and debts. In addition, the statement identified the following jointly titled accounts as marital property: Ally Bank money market account ending in 9331; Truist savings account ending in 4617; Truist checking account ending in 2703; and a Suntrust/Truist account ending in 7349. The statement also listed as martial property several accounts titled solely in Husband name, including: Pershing IRA account, ending in 1751; Pershing SEP IRA account, ending in 1363; Pershing Simple IRA account, ending in 3948; two personal M&T bank accounts, ending in 2593 and 4011; and two Truist business accounts, ending in 4101 and 4030. Accounts shown on the statement as marital property that were in Wife's name included: Truist checking account, ending in 2882; two Capital One savings accounts, ending in 9151 and 3316; and three Capital One checking accounts, ending in 7873, 8967, and 3268. Finally, the statement listed several accounts as Wife's non-marital assets, including a jointly-titled Altria investment account ending in 8460, three Schwab retirement accounts, and a Jackson National Life Individual account.

Merits Hearing

Wife Moved for Sanctions Against Husband

At trial, Wife appeared with counsel, and Husband appeared *pro se*. The court-appointed Best Interest Attorney ("BIA") also appeared for the parties' minor children. As a preliminary matter, the court addressed Wife's pending motion for sanctions. Wife's counsel emphasized that Husband, a self-employed CPA, "provided no business records [from] 2023, no Schedule C," and left Wife with only "bank statements and … partial discovery from 2022 to try to piece together his income." Husband countered that he responded by email to counsel's request for supplemental discovery, but he acknowledged that the email stated only that all information had already been provided and that he did not re-send the materials.

Wife also moved for sanctions on the ground that Husband had failed to participate in creating the Rule 9-207 statement with Wife. Wife's counsel noted that he had emailed a draft statement to Husband's prior counsel in September 2023 and then directly to Husband before the trial but received no response. Counsel thus requested that the court "order that all property shall be classified as marital or non-marital in accordance with the statement filed by [Wife]," and preclude Husband from opposing Wife's Rule 9-207 statement.

Husband acknowledged that Wife's counsel "might have" asked him to fill out the Rule 9-207 statement. Nonetheless, Husband maintained that he was "unaware" that the statement needed to be returned to her. He had instead brought his own Rule 9-207 statement to the trial, expecting to discuss multiple accounts allegedly missing from Wife's statement. Husband maintained that he was "not trying to do this case by surprise" but rather to "get the things that are actually the truth" before the court. When the court reminded him that the purpose of Rule 9-207 is to give the opposing party a "notice that you're contending that assets have disappeared[,]" and "these things are supposed to be done in advance," Husband admitted, "[T]hat was my mistake… . I didn't realize and I apologize for it."

After considering both parties' arguments, the trial court granted Wife's motion for sanctions, prohibiting Husband "from introducing into evidence any documents which were not provided in discovery." Next, regarding Husband's failure to file Rule 9-207 statement, the court accepted Wife's statement and classified the parties' properties as marital or non-marital in accordance with the statement but allowed Husband "to oppose anything that she … put on her statement." The court further clarified that it would accept Wife's characterization of properties as marital or non-marital, but not their values.

Parties' Testimony

Over the course of the four-day trial, both parties presented testimony and exhibits regarding what they each deemed to be their marital and non-marital property. Wife explained that she left the marital home without informing Husband because he "controlled all the finances" and she wanted to have access to money before moving out. She admitted to withdrawing $42,000 from the 5131 joint checking account and depositing the funds into her own 3316 savings account. Wife claimed that that the funds were necessary for rent and living expenses for herself and the children. Statements from Wife's 3316 account showed purchases made at various retailers, including T.J. Maxx, Safeway, CVS, Lowe's, and Royal Farms. Wife denied that these expenditures were made for anything "beyond … regular family expenses." Wife claimed that the funds in the 5131 joint checking account were marital property. Husband countered that the 5131 joint account was originally opened in 2014 as his personal account to receive debt repayment from Steven Salinger, an individual who had owed money to Husband's father, but Wife denied knowing this.

Wife's 1099 tax form for 2023, admitted into evidence, showed that her annual income was $50,636.99. Wife planned to look for another job because she was not earning enough income to support her family. Statements from Wife's credit card accounts showed her credit card debt totaled over $47,000, and she testified that her monthly minimum payment on these cards was $1,300. Wife claimed that she accumulated the debt from "just different things over the course of three years that was charged for kids[.]" She also borrowed money from various family members, including over $86,500 from her mother for legal fees, and $8,500 from her brother and sister-in-law for a neuro-psychological exam to get M.'s Individualized Education Program ("IEP").

Wife maintained that her Schwab IRA accounts—ending in 5814, 2911, and 1649, respectively—were non-marital, explaining that they originated from her previous career and that the parties had primarily invested into Husband's account during the marriage. Wife further claimed that after she filed for the divorce, Husband withdrew $4,849.78 from a joint Truist account ending in 7349, $3,988.86 from another Truist account ending in

2703, and $1,102.36 from yet another Truist account ending in 4617, and then closed all three accounts.[2]

Wife also introduced evidence regarding Husband's assets. Statements from his three Pershing IRA accounts—ending in 1751, 1363, and 3948, respectively—showed a combined value of $645,325.[3] Husband admitted to withdrawing $55,000 from the 1363 account to make court-ordered payments for the BIA and Dr. Camile Jones, the children's psychologist, as well as to cover associated tax withholding. Statements for several other accounts in Husband's name were also admitted into evidence, including: M&T account ending in 4011, with a balance of $2,414; Truist account ending in 4101, with $6,053; and Truist account ending in 4030, with $4,139.

On cross-examination, Wife acknowledged that before leaving Husband, she had been involved in several business endeavors, including a personality training platform and a direct sales company, and that she invested $20,000 in cryptocurrency, which she stated was "mismanaged." Wife also acknowledged having put money into her Pershing Simple IRA account during the marriage but stated that she had liquidated that account, valued at $29,000, in January 2023 to help pay her attorneys' fees.

[2] At trial, Husband maintained that the 2703 and 4617 accounts were not joint accounts, although the statements entered into evidence showed that both parties names were on the accounts.

[3] Specifically, the evidence showed $70,904 in the 1751 account, $92,706 in the 1363 account, and $481,679 in the 3948 account.

The value of the marital home was another point of contention throughout the trial. Wife introduced an appraisal dated August 9, 2023, showing the value of the home at $950,000. The appraisal showed the house was "last sold in 1998 for $360,244" and that "[t]he property ha[d] not been listed for sale since that time." Husband objected, claiming that he had not known about the appraisal, but the court overruled the objection after Wife's counsel countered that the appraisal had been provided to Husband during discovery. Husband introduced the bank documents for the refinancing of the home in 2010, showing the value of the marital home as $771,000 at the time. Husband attempted to introduce an appraisal dated June 26, 2005, but Wife's counsel raised a hearsay objection, which the circuit court sustained. Husband also attempted to introduce an appraisal dated February 23, 2023, but the court sustained Wife's counsel's objection on the ground that the document wasn't produced in Husband's supplemental discovery productions.

Husband called Robert Herr, who had built an addition and a portico on the marital home for—and paid for by— Husband's father. Herr estimated the cost of the addition at "$110,000 minimum" and the portico between $15,000 and $20,000. Herr recalled that the addition and portico were done around 2007, although he admitted that he had not reviewed any records and was testifying just based on his recollection. Finally, although Herr acknowledged he was not an appraiser, he stated it would be "common sense" that these improvements added value to the marital home.

The Trial Court's Oral Ruling

On May 10, 2024, the trial court announced its ruling on the record. The court first granted Wife an absolute divorce from Husband, finding that the parties had lived separate and apart since March 2021, and that there was no hope of reconciliation. Because the parties had reached a consent agreement on the custody issues, the court next addressed property distribution. Following the three-step process outlined in sections 8-203, 8-204, and 8-205 of the Family Law Article ("FL") of the Maryland Code (1984, 2019 Repl. Vol.), the court identified marital and non-marital properties, assessed the value of each item, and considered whether to make a monetary award.[4] The court observed that, "[w]hile there is

[4] Maryland law requires that a trial court conduct a three-step analysis in its division of marital property in divorce proceedings. *See Ware v. Ware*, 131 Md. App. 207, 213 (2000) (citing *Strauss v. Strauss*, 101 Md. App. 490, 501 (1994)). First, for each disputed item of property, the court must determine whether it is marital or non-marital. *See* FL § 8-203. *Second*, the court must "determine the value of all marital property." FL § 8-204. Third, the court must decide whether the division of marital property according to title will be unfair, and, if so, the court may make a monetary award to rectify any inequity "created by the way in which property acquired during marriage happened to be titled." *Doser v. Doser*, 106 Md. App. 329, 349 (1995); *see* FL § 8-205(a).

As part of the third step, the trial court must consider the following statutory factors:

> (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
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> (2) the value of all property interests of each party;
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> (3) the economic circumstances of each party at the time the award is to be made;
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> (4) the circumstances that contributed to the estrangement of the parties;
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> (5) the duration of the marriage;
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> (6) the age of each party;

(Continued . . .)

minimal dispute [between Husband and Wife] as to what constitute[s] marital property, there is considerable dispute as to how the Court should apportion and/or distribute the marital property."

After completing the analysis required under FL § 8-205(b), the court determined that the parties had been married for almost 19 years at the time and, during the majority of their marriage, "Husband was the primary earner and provider for the family" and "[W]ife was the primary caretaker for the children." The court also found that both parties were economically stable, even though the lawsuit "ha[d] taken a financial toll" on them. Acknowledging that the circumstances leading to the parties' estrangement seemed "unclear[,]" the court found that Wife left the marital home "in a calculated manner with a

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> (7) the physical and mental condition of each party;
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> (8) how and when specific marital property or interest [in a pension, retirement, profit sharing, or deferred compensation plan] was acquired, including the effort expended by each party in accumulating the marital property or the interest in [the pension, retirement, profit sharing, or deferred compensation plan], or both;
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> (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
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> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
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> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest [in the pension, retirement, profit sharing, or deferred compensation plan], or both.

FL § 8-205(b). In the instant appeal, the record establishes that the trial court followed the three-step procedure and considered all statutory factors, and Husband does not claim otherwise.

plan and no discussion with the spouse of 16 years, and looting a bank account of $42,000, which clearly blindsided [H]usband." The court further noted that Husband is "of retirement age at 72, with health issues" whereas Wife "is not yet of retirement age" and has successfully "shielded her non-marital assets."

The trial court found that Wife's Altria investment account, ending in 8460, was titled jointly but not marital. The court found all other joint non-retirement accounts to be marital properties, although most of them were either closed or held minimal funds, except $256 in the Ally account. As for individually-held accounts, the court found that Wife held several bank accounts with Truist and Capital One in her name totaling $7,641, while Husband's bank accounts, including those in the name of Markowitz LLC and the parties' minor children, totaled $27,910. Accordingly, the court valued the non-retirement marital assets as $35,807 and ordered Husband to make an equalizing payment of $10,262 to Wife within 45 days.

In assessing the parties' retirement assets, the court found that Husband contributed to Wife's Pershing Simple IRA account valued at $29,000; however, because Wife liquidated that account to pay legal fees, the asset no longer existed for distribution. Husband's three Pershing IRAs, together valued at $645,325, were deemed entirely marital because "[t]here was no evidence provided as to the origination date of these accounts that would or could remove them from designation as marital property." After considering the parties' ages and Husband's "declining health[,]" the court found it not equitable to distribute the retirement accounts 50-50, as Wife requested, but instead decided to award Wife $175,000 from Husband's IRAs.

Turning to the marital home, the trial court classified the total equity on the property as marital. The court specifically observed that even though Husband purchased the home for $360,244 in 1998, there was no evidence regarding its value at the time of the parties' marriage to establish his pre-marital interest, as "Husband's appraisal of the home from 2005 was not admitted into evidence[.]" The court also noted that there was no evidence or testimony regarding Husband's down payment for the marital home. Additionally, although the court credited testimony of Herr and Husband to find that the $110,000 addition paid for by Husband's father was a non-marital gift to Husband, the court determined "there was no evidence presented as to the amount attributable of increase [in the value of the marital home] to that gift." Thus, relying on Wife's 2023 appraisal and the mortgage balance, the court determined that the equity in the marital home was approximately $736,712. The court granted Husband a 50% credit of $50,616 for mortgage payments he made during the 38-month separation, the court arrived at a divisible equity of $686,096. The court then split it evenly, leaving Wife with a $343,048 interest (47%) and Husband with $393,664 (53%), which includes his $50,616 credit. The court also granted Husband 45 days to buy out Wife's interest.

On the issue of dissipation, the court observed that both parties made allegations of dissipation of assets but concluded that neither party satisfied the burden of proof. Wife claimed that Husband dissipated marital asserts by withdrawing funds from multiple joint accounts, including Truist accounts ending in 7349, 2703, and 4617, the court credited Husband's testimony that he used the funds to pay the family's bills, including mortgage and the children's medical insurances, and observed that a "review of his expenditure certainly showed no spending on items other than family and living expenses." Similarly, the court found no dissipation regarding Wife's withdrawal of $42,000 from the joint 5131 account. The court found that, although Wife's name was on the 5131 account, all funds were "directly traceable to a non-martial source[,]" as they were payments made to Husband to satisfy a debt owed to his father and were, therefore, "essentially his inheritance." The court reasoned that because the funds in the 5131 account were not marital property, "[Wife's] removal of the funds d[id] not constitute dissipation." Furthermore, the court found that Wife's testimony established the withdrawn funds were used for "the benefit of the children and getting her new household in order."

Finally, the trial court denied Wife's request for alimony, finding that she had the "ability to be self-supporting." In relevant part, the court observed that Wife had greater assets than Husband, who is of retirement age, considering "the monetary award, combined with her non-marital assets[.]"

The Entry of JAD and the Notice of Appeal

The court entered the JAD on May 22, 2024, reflecting its oral rulings. Specifically, regarding the distribution of property, the JAD provided:

> **ORDERED**, that [Husband] shall have Forty-Five (45) days to purchase [Wife's] equitable interest in the marital home ... for Three Hundred and Forty-Three Thousand Forty-Eight Dollars ($343,048.00), and it is further

> **ORDERED**, that upon payment to [Wife], she shall execute any and all documentation if needed to effectuate transfer of sole title and ownership of [the marital home] to [Husband]; and it is further
>
> **ORDERED**, that in the event [Husband] is unable to purchase [Wife]'s interest, the home shall be sold immediately and the proceeds, after satisfaction of the outstanding mortgage and payment of any commissions, shall be distributed 47% to [Wife] and 53% to [Husband]; and it is further
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> **ORDERED**, that each party shall retain all property and non-retirement financial accounts titled in his/her individual name; and it is further
>
> **ORDERED**, that the jointly titled account Ally Bank Money Market Account with balance of Two Hundred and Fifty-Six Dollars and 00/100 Cents ($256.00), shall be split evenly by the parties and the account closed within 45 days; and it is further
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> **ORDERED**, that a Monetary award in the amount of Ten Thousand Two Hundred and Sixty-Two Dollars and 00/100 ($10,262.00) is granted to [Wife] against [Husband] as an equalizing payment for distribution of non-retirement marital assets, to be paid within 45 days; and it is further
>
> **ORDERED**, that the Pershing IRA retirement accounts titled in [Husband's] name are deemed to be marital property; and it is further
>
> **ORDERED**, that a Monetary Award in the amount of One Hundred Seventy-Five Thousand Dollars ($175,000.00) is granted to [Wife] against [Husband] as an equitable payment for distribution of marital retirement assets, to be paid within 45 days [.]

Husband subsequently noted this appeal. We supplement these facts in our discussion of the issues below.

DISCUSSION

I.

OVERVIEW OF APPLICABLE LAW

Our review of a circuit court's findings and judgment after a case is tried to the court is governed by Maryland Rule 8-131(c), which provides:

> [w]hen an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. **It 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) (emphasis added); *Cherry v. Mayor & City Council of Balt. City*, 475 Md. 565, 593-94 (2021).

In a divorce action, if parties dispute whether property is marital or non-marital, then the trial court must make that determination when granting an absolute divorce. FL § 8-203(a). Marital property is defined as "the property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). Marital property does not include property that is: "(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources." FL § 8-201(e)(3). As previously mentioned, (see note 4), Maryland law requires that a trial court conduct a three-step analysis in its division of marital property in divorce proceedings. *See Ware v. Ware*, 131 Md. App. 207, 213 (2000) (citing *Strauss v. Strauss*, 101 Md. App. 490, 501 (1994)). The court must: 1) for each disputed item of property, determine whether it is marital or non-marital, FL § 8-203; 2) determine the value of all marital property, FL § 8-204; and 3) decide whether it is necessary to make a monetary award to rectify any inequities; FL § 8-205(a).

Under Maryland law, "the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property." *Murray v. Murray*, 190 Md. App. 553, 570 (2010) (citation omitted). On the other hand, "[t]he party seeking to demonstrate that particular property acquired during the marriage is non[-]marital must trace the property to a non[-]marital source." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000) (quotation omitted). As we have observed, an "inability to trace property acquired during the marriage directly to a non-marital source … means that all property so acquired was marital property." *Melrod v. Melrod*, 83 Md. App. 180, 187 (1990).

Ordinarily, the trial court's determination of whether property is marital or non-marital is a question of fact, which we "review under the clearly erroneous standard embodied by … Rule 8-131(c)[.]" *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (quoting *Collins v. Collins*, 144 Md. App. 395, 408-09 (2002)). Likewise, "[t]he value of each item of marital property is also a question of fact" subject to the same standard of review. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). Under this standard, "if there is any competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *St. Cyr v. St. Cyr*, 228 Md.

App. 163, 180 (2016) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)) (cleaned up).

The trial court's ultimate decision to grant a monetary award and the amount of such award is reviewed for abuse of discretion. *Wasyluszko*, 250 Md. App. at 269. But "even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards." *Alston v. Alston*, 331 Md. 496, 504 (1993). Any determination of a question of law made by the trial court is reviewed under a *de novo* standard of review. *Flanagan*, 181 Md. App. at 521. Furthermore, "[w]hile a 'trial court is vested with broad discretion in deciding whether to grant a monetary award, … the exercise of that discretion should be informed and based upon reason.'" *Murray*, 190 Md. App. at 572 (quoting *Freese v. Freese*, 89 Md. App. 144, 153 (1991)). 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. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

Velasquez v. Fuentes, 262 Md. App. 215, 228 (2024) (quotation marks omitted).

The decision to allow or preclude the admission of evidence also generally falls within the sound discretion of the trial court. *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 406 (2012). Even so, the trial court "has no discretion to admit hearsay in the absence of a provision providing for its admissibility." *Bernadyn v. State*, 390 Md. 1, 8 (2005); *see* Md. Rule 5-801 (defining "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). Rulings on hearsay objections are therefore reviewed *de novo*. *Bernadyn*, 390 Md. at 8.

For the sake of clarity, we group Husband's six assignments of error into four categories, each challenging a different aspect of the trial court's ruling: (I) the exclusion of Husband's Rule 9-207 statement; (II) the characterization of his retirement funds as marital properties; (III) the findings regarding the parties' non-retirement accounts; and (IV) equitable distribution of the parties' interests in the marital home. We address each in turn.

II.

EXCLUSION OF RULE 9-207 STATEMENT

As an initial matter, Husband contends that the trial court was "clearly erroneous and abuse[d] [its] discretion" in accepting only Wife's Rule 9-207 statement and excluding his. We disagree. We have explained that Rule 9-207 serves to facilitate the trial court's decision-making by narrowing areas of dispute and clarifying parties' agreements before trial. *Brown v. Brown*, 195 Md. App. 72, 107 n.18 (2010). Accordingly, courts have consistently held that "facts stated on the Rule 9-207 form are 'admissions by the parties in a judicial proceeding[,]'" *Huntley v. Huntley*, 229 Md. App. 484, 494 (2016) (quoting *Beck v. Beck*, 112 Md. App. 197, 205 (1996)), and that Rule 9-207 statements, "when filed in a case as required, may be considered as evidence by trial courts without the necessity of a formal introduction of such statements at trial." *Beck*, 112 Md. App. at 208 (construing S74, the predecessor to Rule 9-207); *see also* Linda J. Ravdin & Eric P. Bacaj, *Maryland Divorce and Separation Law*, Ch. 4 Property Disposition in Divorce and Annulment § III.E.2 (10th ed. 2019) ("The trial judge may consider as evidence of value a party's statement of value in a joint statement of marital and non[-]marital property filed with the court in accordance with [Rule] 9-207.").

Relevant here, Rule 9-207(a) and (c) requires that the parties "file a joint statement listing all property owned by one or both of them" and that the joint statement be filed "at least ten days before the scheduled trial date or by any earlier date fixed by the court." If a party fails to comply, Rule 9-207(d) provides:

> [T]he court, on motion or on its own initiative, may enter any orders in regard to the noncompliance that are just, including:
>
> (1) an order that property shall be classified as marital or non-marital in accordance with the statement filed by the complying party;
>
> (2) an order refusing to allow the noncomplying party to oppose designated assertions on the complying party's statement filed pursuant to this Rule, or prohibiting the noncomplying party from introducing designated matters in evidence.

We find no abuse of discretion in the trial court's sanction for Husband's wholesale failure to comply with Rule 9-207. Rule 9-207(d) authorizes the court to adopt a complying party's statement *and* bar a noncomplying party from opposing that statement. Here, the trial court opted for a less severe approach, accepting Wife's Rule 9-207 statement for classification purposes only, allowing Husband to contest valuation. In our view, this sanction fell squarely within the scope of the court's authorized discretion.

Husband does not dispute his failure to comply with Rule 9-207. Nor does he deny that Wife's counsel reached out to him in preparing Rule 9-207 statement, or that Husband failed to respond. Although Husband now claims that the trial court's sanction was unwarranted because Wife also failed to strictly comply with Rule 9-207—by sending him her draft statement only 11 days before the trial—we find this argument unpersuasive. At trial, Husband never asserted that the timing of Wife's draft statement prevented him from submitting his own statement or coordinating a joint statement; rather, he informed the court that he had been "unaware" of Rule 9-207's requirement and admitted his lack of communication was a "mistake[.]" Because the record establishes that Husband's noncompliance with Rule 9-207 was a result of his own oversight rather than any delay by Wife, we conclude that the court's measured sanction against him was reasonable.

III.

RETIREMENT ACCOUNTS

Husband next challenges the trial court's finding that his retirement funds were marital. In support, Husband claims that he "was not allowed to present evidence or testimony about the fact that a lot of [his] retirement money was non-marital" because the trial court accepted Wife's Rule 9-207 statement "as completely accurate[.]" In response, Wife argues that "the court did not prevent Husband from introducing evidence related to his assets" and that Husband simply "made no effort at trial to offer testimony or introduce documents of any pre-marital retirement asset."

To begin, the record does not support Husband's claim that he was precluded from challenging Wife's Rule 9-207 statement or from presenting contrary evidence. As noted, when sanctioning Husband for his failure to comply with the Rule 9-207 requirements, the trial court made clear that it was "not going to preclude him [from] being able to oppose anything that [Wife] ha[d] put on her statement." Then, when asked if that means Wife's characterizations of the marital (and non-marital) property is accepted, but not the values, the court again answered affirmatively, "Yes." Thus, the court allowed Husband to challenge the valuation of each marital property identified in Wife's Rule 9-207 statement.

Despite having this opportunity, as the trial court observed, Husband did not present any "evidence … as to the origination date of these accounts that would or could remove them from designation as marital property." Because there was no evidence that could render the funds in Husband's retirement accounts "directly traceable" to a non-marital source, we find the trial court was not clearly erroneous in treating them as marital. FL § 8-201(e)(3); *see Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000).

IV.

NON-RETIREMENT ACCOUNTS

Husband raises two challenges to the trial court's division of the parties' non-retirement accounts and the resulting monetary award. *First*, he contends that the court was clearly erroneous in classifying Wife's non-retirement investment account—Altria investment account ending in 8460—as non-marital. *Second*, Husband argues that the court abused its discretion by failing to consider Wife's withdrawal of $42,000 from the 5131 joint account. Husband claims that this "non-marital money was stolen" by Wife, and the court "should have considered it when determined the equitable distribution of property and the awarding of a monetary judgment."

A. Wife's Non-Retirement Account

Husband next asserts that, had the court allowed him to challenge Wife's Rule 9-207 statement, he would have established that the Altria investment account was "marital property by agreement" because the parties had allegedly "agreed to put each other on [their] accounts" during their marriage. Wife's trial testimony did not substantiate Husband's claim:

> [HUSBAND]: Okay. All right. Is it true that you and I went to see an attorney many years ago regarding our will?
>
> [WIFE]: Yes.
>
> [HUSBAND]: Okay. And did that attorney suggest that we both put our names on all our bank accounts and investment accounts for ease of transition if something happens to one of us?
>
> [WIFE]: I don't remember like, specific conversations that whatever was transacted, whatever we decided in the final will would be executed.

Then, after Wife's counsel presented his closing argument, Husband specifically challenged Wife's classification of the account as non-marital.

> [HUSBAND]: The Altria Group Investment account is marital property. I am on that account as well as [Wife] because she did include me. She did put my name on that one. Okay. So [Wife's counsel] made an error on that one.

> THE COURT: So do we see, is there anything in any of the documents that show that?
>
> [HUSBAND]: If you look at that, I think, on her statement actually, on her whatever that number 8-029 or whatever.
>
> **THE COURT: 9-207?**
>
> **[HUSBAND]: Yes. I think it says on there, joint.**

(Emphasis added). As the above exchanges suggest, Husband was allowed to (and did) challenge Wife's classification of marital and non-marital properties on her Rule 9-207 statement. But Husband failed to present any evidence in support of his classification. The account is not marital property just because both names are on the account—as in the case of the non-marital 5131 joint checking account. FL § 8-201(e)(1) ("the property, however titled"). In its oral ruling, the trial court expressly addresses this:

> The parties are the joint owners of an Altria Investment account. This is a joint account apparently owned by both, but not listed as marital property. Husband testified that he believed the investment account was joint, which it is; however, there was no evidence or testimony presented that it was marital property which would … subject it to equitable distribution by this Court.

Husband had the burden to prove that this property was marital. *Murray v. Murray*, 190 Md. App. 553, 570 (2010) (citation omitted). Because Husband failed to bear this burden and Wife's 9-207 statement was not refuted, the trial court's finding that the Altria investment account was non-marital was not clearly erroneous, so we affirm.

B. Wife's Withdrawal of $42,000

Husband claims that the trial court abused its discretion in doing "nothing" about the $42,000 withdrawn by Wife from the joint 5131 account, arguing that the court "should have considered it when determining the equitable distribution of property[.]" Generally, property disposed of before trial cannot be deemed marital and is not subject to equitable distribution. *Abdullah v. Zanini*, 241 Md. App. 372, 414 (2019). However, there is an exception: "[w]hen dissipation is found, the court may include, as extant marital property, marital property that was transferred, spent, or disposed of in some fashion by one of the spouses." *Id.* at 415 (quotation omitted). As this Court recently explained, "[t]he 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." *Goicochea v. Goicochea*, 256 Md. App. 329, 350-51 (2022) (quotation marks omitted).

As a general matter, "[d]issipation occurs when one party '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 (2022) (quoting *Omayaka v. Omayaka*, 417 Md. 643, 653 (2011)) (emphasis added). The party alleging dissipation bears the ultimate burden of persuasion and the initial burden of production. *Sims v. Sims*, 266 Md. App. 337, 369 (2025) (citation omitted). Typically, "[p]roof that a spouse made sizeable withdrawals from bank accounts under his or her control is sufficient to support the finding that the spouse had dissipated the withdrawn funds." *Omayaka*, 417 Md. at 657. Then, once the claiming party "establishes a prima facie case that monies have been dissipated, i.e. expended for the principal purpose of reducing the funds available for equitable distribution, the burden shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate." *Id.* at 656-57 (citation omitted). Finally, "[a]fter the alleged dissipator provides evidence that the expenditure was appropriate, it is up to the circuit court to determine whether the dissipation claimant has proven that the alleged dissipator did indeed dissipate marital assets." *Sims*, 266 Md. App. at 369.

We conclude that the trial court was not clearly erroneous in finding no dissipation of marital assets by Wife. The court specifically found, and Husband does not dispute, that the funds in the joint 5131 account were "essentially his inheritance" from his father. *See* FL § 8-201(e)(3) (explaining that "'marital property' does not include property … acquired by inheritance or gift from a third party"). Because the record establishes that the $42,000 at issue were traceable to a non-marital source and were expended for appropriate living expenses, we cannot say that the trial court erred in declining to include these funds as marital property subject to equitable distribution. *See Melrod v. Melrod*, 83 Md. App. 180, 194-95 (1990) (observing that, without evidence that husband dissipated his share of real estate proceeds, "there was no basis for considering the proceeds as marital property").

Of course, our analysis does not end there. Even though the trial court was not clearly erroneous in finding no dissipation, the court's ultimate disposition regarding the distribution of marital property "must be an equitable one." *Spessard v. Spessard*, 64 Md. App. 83, 90 (1985). Contrary to Husband's contention, the record shows that the court did consider Wife's withdrawal of the $42,000 in its distribution of the marital property. Wife testified that that the $42,000 withdrawn from the account was used to pay for rent and living expenses for herself and the children, and the trial court credited her testimony and found that the expenditures were for "the benefit of the children and getting her new household in order." Still, when making its requisite findings under FL § 8-205(b), the court noted that Wife "looted the account to which Mr. Salinger's monthly payments were deposited" by withdrawing $42,000 "without a second thought[,]"and Wife's action "clearly blindsided [H]usband." When distributing the parties' marital retirement assets, the court weighed, among other things, these circumstances against Wife. The court stated that Wife "has considerable non-marital assets[,]" and awarded her $175,000—only 27% of Husband's retirement accounts. The court also refused to grant Wife's request for alimony, again noting that Wife left her marriage "in a calculated manner … and [took] $42,000 from [the joint] bank account." In our view, the record sufficiently establishes that despite finding no dissipation, the trial court tied its findings regarding Wife's conduct to its determination of an equitable distribution.

V.

THE MARITAL HOME

Finally, Husband argues the trial court erred by excluding his 2005 appraisal and then erred again in its calculation of his marital interest in the property.

A. Husband's Appraisal

First, Husband argues that the trial court erroneously excluded the 2005 appraisal for the marital home "because [Wife's] attorney said that [Husband] never provided him with the appraisal," even though Husband in fact gave counsel "all [his] documents[.]"

Wife counters that the court "properly sustained two objections to the [appraisal], one on the basis of hearsay" and the other as part of the court's sanction for Husband's discovery violation.

To begin, we clarify that Wife's counsel objected to the admission of the 2005 appraisal solely on hearsay grounds, and the objection was sustained by the trial court. On the second day of trial, Husband attempted to cross-examine Wife about the 2005 appraisal, leading to the following exchange:

> [HUSBAND]: And if you go to the third page, what is the appraised amount?
>
> [WIFE'S COUNSEL]: Objection, Your Honor.
>
> THE COURT: What's the objection?
>
> [WIFE'S COUNSEL]: It's a hearsay document. If he wants to have the opinion of value of the house, I think he needs to have the person here to testify about it.
>
> [HUSBAND]: I propose that this is a business document, and that you're the one that's going to put the weight on this. It's an equitable court. You will be the one that places the weight on this document.

The court rejected Husband's characterization of the 2005 appraisal as a business record and held that Wife could not be cross-examined as to its contents because the document lacked "a specific legal business document certification that can and should have been provided." Since Wife objected to the admission of the 2005 appraisal specifically on the hearsay ground, we limit our analysis to that ground and consider all other grounds as waived. *See Anderson v. Litzenberg*, 115 Md. App. 549, 569 (1997).

Furthermore, we observe that Husband failed to move the 2005 appraisal into evidence and, as a result, the appraisal was not made part of the record before us. The trial transcript indicates that while Husband presented Wife with a copy of the appraisal during cross-examination, he did not properly mark it for identification or offer it for admission. Because the appraisal is absent from the record, we find that Husband has failed to bear the appellant's burden of producing the record to rebut the presumption that a trial court's actions are correct. *Fields v. State*, 172 Md. App. 496, 513 (2007); *see also Langrall, Muir & Noppinger v. Gladding*, 282 Md. 397, 400 (1978) ("The burden of producing the record of any proceeding is upon him who would attack its sufficiency.").

In any case, we conclude the trial court did not err in determining that the 2005 appraisal was inadmissible hearsay. The appraisal satisfied the definition of hearsay, as it was "written evidence of a statement made out of court that is offered in court by [Husband] to prove the truth of the matter asserted therein"—the value of the marital home in 2005. *Ruden v. Citizens Bank & Tr. Co. of Md.*, 99 Md. App. 605, 640 (1994) (finding an appraisal report of a boat is inadmissible hearsay evidence without the testimony from the appraiser); *see also* Rule 5-801(c) (defining hearsay). Further, we note that appraisals generally do not fall within the business record exception to the hearsay rule, which is codified in section 10-101 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code (1973, 2020 Repl. Vol.) and Rule 5-803(a)(2). In relevant part, section 10-101(b) permits the admission of a business record or writing "made in the regular course of business as a memorandum or record of an act, transaction, occurrence, or event … to prove the act, transaction, occurrence, or event." It must also be "[t]he practice of the business … to make such written records of its acts at the time they are done[.]" CJP § 10-101(c). Put differently, "before a document is admissible into evidence to prove an act, transaction or event under the business record exception to the hearsay rule, … there must be a showing that when the record was made, it was made in the regular course of business as a memorandum or record of that act, transaction or occurrence." *Watkins v. State*, 42 Md. App. 349, 355 (1979).

In *CAE-Link Corporation v. Washington Suburban Sanitary Commission*, 90 Md. App. 604, 621-22 (1992), *aff'd*, 330 Md. 115 (1993), this Court further explained the business record exception as follows:

> According to 5 Wigmore on Evidence § 1522 (1974), the typical record entry made in the regular course of business has a circumstantial guarantee of trustworthiness because:
>
> (1) the needs of the entrant and the business require a habit of accuracy and the influence of this habit may be relied upon to prevent mistakes and counteract the possible temptation to make misstatements purposely;
>
> (2) the regular dependence of the business upon the entries will almost certainly detect any errors or misstatements and thus misstatements can be made safely only by a systematic and comprehensive plan of falsification accomplishable only by the most daring and unscrupulous; or
>
> (3) in addition to the first two reasons, the entrant made the record under a duty to an employer or supervisor and thus is under the additional risks of censure and disgrace for any inaccuracies.

(quoting *Owens-Illinois v. Armstrong*, 87 Md. App. 699, 710 (1991)).

Applying the foregoing principles, we hold the trial court correctly ruled that the 2005 appraisal document, which was not certified as a business record, constituted inadmissible hearsay when Husband attempted to introduce the document into evidence upon his direct examination of Wife.

B. Interests in the Marital Home

In support of his contention that the court was clearly erroneous in determining the parties' interests in the marital home, Husband presents three arguments. His first argument is that the court's classification of the house as marital property was clearly erroneous because the home was "in fact purchased by [him] … prior to the marriage." However, "[p]roperty that is initially non-marital can be become marital[.]" *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000). Moreover, FL § 8-201(e)(2) provides: "'[m]arital property' includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement." *See also Gordon v. Gordon*, 174 Md. App. 583, 633 (2007) ("Effective October 1, 1994, all real property owned by tenants by entireties 'is' marital property.") (quoting John F. Fader, II & Richard J. Gilbert, *Maryland Family Law* § 15-7(f), at 15-34 (4th ed. 2006)). In the instant case, there was no assertion by either party that any such agreement existed, and both parties acknowledged that they lived together in the marital home before Wife left in March 2021. Because Husband failed to refute Wife's claim that the parties owned the home as tenants by the entirety, the court was not clearly erroneous in classifying it as marital property.

Husband's second argument is that the court failed to consider his down payment and pre-marriage mortgage payment in calculating his interest in the marital home, but we find no evidence of such payments from the record. Indeed, at the oral ruling, the trial court similarly observed that there was no evidence of Husband's down payment, and Husband did not challenge that statement or point to any portion of the record.

> [HUSBAND]: -- why I didn't get any kind of credit for the down payment that I initially put on the house.
>
> THE COURT: There was no evidence of it.
>
> [HUSBAND]: Okay. So –
>
> THE COURT: There was not a word of testimony about the down payment.
>
> [HUSBAND]: Okay. So when they showed how much I paid for it –
>
> THE COURT: The house cost $360,000, right.

To be clear, as the trial court expressly noted, Wife's appraisal provided that the marital home was purchased in 1998 for $360,244. However, the purchase price does not, by itself, establish Husband's pre-marital contribution or down payment amount. Seeing no evidence regarding Husband's alleged down payment or pre-marital mortgage payment, we find no error or abuse of discretion in declining to consider such payments.

Husband's third argument is that the court "failed to give any credit" to the $110,000 spent by his father in putting an addition on the marital house, but that argument is similarly unavailing. To be sure, at the oral ruling, the trial court agreed with Husband that his father spent $110,000 on the addition as a gift to Husband and that the addition increased the marital home's value.

> Mr. Herr testified that he was involved in building an addition on the family home prior to the children being born which must have been prior to 2008. He testified that the addition to the home increased the value of the home. The addition to the home cost approximately $110,000 and was paid for by … [H]usband's father. Husband contends that 110,000 paid by his father was a gift solely to him and not to wife. **The Court credits this testimony and finds that the $110,000 paid by [Husband's father] was a gift to [Husband] and, as such, was not marital property although it increased the value of a marital asset.**

(Emphasis added). However, the court's analysis did not end there. Despite finding the $110,000 addition to have been a non-marital contribution, the court noted lack of specific proof regarding the change in the marital home's value attributable to that addition. Specifically, the court explained: "[a]ccepting that a renovation or addition to a home more than likely increases the value of the asset, there was no evidence presented as to the *amount attributable of increase* to that gift." (Emphasis added). This evidentiary gap was highlighted once again by the court at the end of the oral ruling.

> [Husband]: And I didn't get any credit for the addition that was put on.
>
> THE COURT: Don't know the value of what –
>
> [Husband]: Well, it was 110,000 paid.
>
> **THE COURT: Right, but that doesn't mean that the value was increase by 110,000.**
>
> **[HUSBAND]: No. It probably would have been 200,000.**
>
> **THE COURT: Well, I would need to know that.**

(Emphasis added). Despite his assertion that the marital home's value "probably" increased by $200,000 due to the addition, Husband did not cite—nor can we find—any evidentiary support for that claim. Likewise, even though Herr testified at trial that the additions likely increased the marital home's value, the record is devoid of any testimony or evidence regarding the actual increase in the property value following the improvements. Accordingly, we conclude that the trial court's determination of the parties' interests in the marital home was not clearly erroneous.

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