Circuit Court for Frederick County
Case No. C-10-FM-20-000110

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 773

September Term, 2024

ROBERT J. McCUTCHEON, III

v.

SUSAN T. McCUTCHEON

Wells, C.J.,
Leahy,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 1, 2025

Robert J. McCutcheon, III ("Husband"), and Susan T. McCutcheon ("Wife"), married in 1983. In 2021, they divorced. The parties entered into a separation agreement that was incorporated, but not merged, into the judgment of absolute divorce. The separation agreement included an arbitration clause governing potential disagreements about whether Husband would continue paying alimony to Wife upon his retirement.

Husband announced his intent to retire in 2022 and sought to eliminate his alimony payments, which led to an arbitration hearing pursuant to the separation agreement. The arbitrator ruled that Husband's alimony payments to Wife would reduce and then cease in late 2025. Wife filed a motion in the Circuit Court for Frederick County seeking to vacate the arbitral ruling. Following a hearing, the court granted Wife's motion and set the matter for a trial. Husband now appeals, presenting two questions for our review, which we have slightly rephrased:

> 1. Did the circuit court err when it vacated the Arbitration Award?
>
> 2. If the circuit court did not err in vacating the Arbitration Award, should the matter be remanded for another arbitration pursuant to the parties' Agreement?

We hold that the circuit court erred in vacating the arbitration award. Therefore, we reverse the circuit court's order and remand the case with instructions to reinstate the arbitrator's ruling. It is unnecessary for us to address question two.

BACKGROUND[1]

The Parties' Divorce and the Points of Agreement

Husband and Wife married on June 18, 1983. Husband spent his career working for McCutcheon Apple Products, Inc., a family-owned business, and became its president in 1984. Husband and Wife have three children, "all of whom are emancipated." Wife was a homemaker and, at the time of the arbitration hearing, resided in the former family home in Frederick County. The parties separated in June 2017, and Husband subsequently filed for an absolute divorce.

In 2021, the parties signed a separation agreement entitled, "Points of Agreement." According to the Points of Agreement, Wife was to retain, among other things, the marital home in Gambrill as her sole and separate property; a condominium located in the State of Colorado after adjusting the equities in the marital property distribution by $125,000 in favor of Husband; a $500,000 Term Life Insurance policy on Husband's life; "one half of the value of [Husband's] interest in the McCutcheon Retirement Plan as of June 30, 2021 [approximately $4,039,050.49], less one half of the outstanding balance of [loan] ($9,576.62), less $125,000 (credit for his interest in the Colorado condo)"; and "[a]ll other bank and retirement accounts in [Wife's] sole name." The Points of Agreement included paragraph 11, which states:

> Alimony: Commencing and accounting from August 1, 2021, and due and payable on the first day of each month thereafter until the retirement funds are transferred from [Husband] to [Wife] pursuant to this Agreement, [Husband] shall pay to [Wife] as and for indefinite, modifiable alimony the

[1] We recite background facts from the arbitrator's decision.

> sum of $7,500 per month. Thereafter, commencing and accounting on the first day of the month after the retirement assets have been transferred from [Husband] to [Wife], and due and payable on the first day of each month thereafter, [Husband] shall pay to [Wife] as and for indefinite, modifiable alimony the sum of $5,000 per month. **[Husband] represents that he anticipates retiring from employment at the end of 2022, and that at that time intends to seek modification or termination of alimony. [Wife] does not work. In the event [Husband] retires from all employment and has no income from any employment, within 90 days of such retirement, the parties shall attend mediation after exchanging financial information to determine if a modification or termination of alimony is warranted. In the event the parties are unable to resolve the issue in mediation, the parties shall attend binding arbitration on the issue with a mutually agreeable arbitrator.** The parties shall use, in the following order, the following arbitrators as available: Judge William Nicklas; Judge Diane Leasure; Judge Ann Harrington; or another mutually agreed upon arbitrator. The parties shall divide the costs of mediation and arbitration proportionate to their respective incomes at the time of mediation/arbitration. Each party reserves the ability to make a claim for attorney's fees relating to this issue at arbitration.

(Emphasis added). On September 13, 2021, the circuit court entered the judgment of absolute divorce ("JAD"), which incorporated, but did not merge, the parties' Points of Agreement.

The Arbitration

In October 2022, Husband retired and then filed a petition to terminate, or in the alternative, modify alimony. After the parties failed to reach an agreement through mediation, the dispute went to arbitration, pursuant to paragraph 11 of the Points of Agreement.

A two-day hearing was held before the arbitrator.[2] Husband testified that he had a heart attack in May 2022, underwent a multiple bypass surgery, and stopped working for McCutcheon Apple Products on October 31, 2022. Although Husband acknowledged having helped his new wife establish a new company, he denied that he had received any income from that business and testified that he did not anticipate doing any work for the business "[o]ther than casual consulting." On cross-examination, Husband testified that he had initially planned for a cider production company and purchased various equipment, but that plan did not materialize. Meghan Custer, the new president of McCutcheon Apple Products, testified that the company did not pay Husband any compensation or wage after he left, except for the monthly installments of his bonus from the previous year.

Wife testified that Husband had expressed his intent to retire on several occasions, but she did not believe that he was going to retire. Wife stated that although she received the marital home and a condominium as part of the divorce settlement, the marital home was "in need of a lot of repairs." She also stated that she could not sell her properties because she was "very traumatized" by the divorce. Catherine Milstead, Wife's therapist, testified as an expert in social work. She explained that Wife was diagnosed with post-traumatic stress disorder, exhibiting symptoms such as "having panic attacks[,]" "having inability to think and speak when she becomes anxious[,]" and "a lot of difficulty sleeping[.]"

[2] Judge William Nicklas, who was first on the parties' agreed-upon list of three potential arbitrators, presided over the arbitration.

Wife also called Jason Topper, who, without objection, was accepted as an expert in financial advising, financial planning, and investment planning. Topper explained that he was given "details" of the parties' financial situations, such as their financial statements, and "used those numbers to run projections as to the likelihood of success" in the parties' abilities to maintain their respective lifestyles. Topper estimated that Husband's investments would yield an average annual return of 6.5%, or about 5.6% after a hypothetical "advisory fee" of 0.85% that he acknowledged "may or may not be a real fee[.]" Then, applying the "Monte Carlo analysis,"[3] Topper concluded that Husband had a 93% "chance of success to be able to afford [his] lifestyle" with his investment assets while continuing to pay Wife $5,000 per month in alimony.

[3] The United States District Court for the Eastern District of Louisiana described the Monte Carlo analysis as follows:

> A Monte Carlo simulation is a risk assessment model that accounts for variability and uncertainty in risk factors . . . . The simulation creates a large number of model estimates by selecting alternative values for the model's assumptions. The assumption values are selected from distributions of likely values which are specified by the analyst. The assumption values take the form of a range using all possibilities between a minimum and a maximum value for whatever variables are uncertain. The completed simulation produces a range of results based on the random input values, each with a corresponding likelihood. For example, if the model generated a particular result during only 30% of the simulations, there is only a 30% chance that that result will occur in an individual trial. The model is particularly useful when reaching an exact numerical result is impossible or infeasible and the data provide a known range—a minimum and maximum, for example—but leave the exact answer uncertain.

Burst v. Shell Oil Co., 104 F. Supp. 3d 773, 782-83 (2015) (cleaned up). At the arbitration, Topper explained that he used Monte Carlo analysis to account for "the volatility of good and bad markets" in real-life investments.

Topper stated that Wife received "just shy of $2 [million]" in investable assets from the divorce. He estimated Wife's annual investment return from her remaining assets as 5.2% and testified that,[4] even with alimony, she only had a 57% "probability of success that she can reach age 90 and not run out of the money." Topper explained that Wife's likelihood of success was lower than Husband's due to the cost of her lifestyle and the amount of assets she was drawing. When the arbitrator asked if this meant Wife could not afford her lifestyle even with alimony, Topper agreed, stating, "This says that it is not great with alimony, correct." Topper testified that without alimony, Wife could run out of money by 2035.

The Arbitrator's Ruling

Following the hearing, the arbitrator issued a written decision, granting Husband's petition in substantial part, lowering his monthly alimony payments from $5,000 to $2,500 beginning June 1, 2024, and terminating them completely with the final payment on December 1, 2025. At the outset of his decision, the arbitrator outlined the relevant "standard of review" as follows:

1. A material change in circumstance between the parties occurring since their Judgement of Absolute Divorce must exist as a prerequisite for any action by the trier of fact.

2. Family Law [Article of the Maryland Code (1984, 2020 Repl. Vol.) ("FL") §] 11-105 is the statutory authority to terminate alimony. This can occur in

[4] On cross examination, Topper was asked why Wife's investible assets decreased from approximately $2 million to $1,459,000, and Topper replied that the "[t]wo probably biggest reasons would be, in 2022, it was a very bad year as far as the markets[,]" and Wife was pulling $6,000 per month.

the event of: a) death of either party; b) marriage of the recipient; or c) a finding that termination is necessary to avoid a harsh and inequitable result.

3. [FL] 11-107 governs the modification of the term and amount of alimony. [FL] 8-103 governs the modification of an agreement providing for alimony.

4. [FL] 11-110 allows the award of attorney's fees in alimony cases. If attorney's fees are to be awarded, the financial circumstances of each party, and the justification, vel non, of the prosecution and defense of the action must be considered.

Then, after observing that the "pertinent underlying facts" were "hotly contested by the parties[,]" the arbitrator made the following findings of fact:

1) At the time of the signing of the Points of Agreement, and for all times thereafter, [Wife] was not employed, and was legitimately not seeking employment. [Husband] has made no contention that [Wife] should be employed either in a full or part time capacity.

2) The Points of Agreement signed by the parties in July, 2021 represented that [Husband] contemplated his retirement by stating that he "anticipates retiring from employment at the end of 2022.["]

3) [Husband] suffered a heart attack in May, 2022 and underwent multiple bypass surgery at that time.

4) [Husband] retired from his employment at McCutcheon Apple Products, Inc. as of October 31, 2022.

5) [Husband] has not been employed by McCutcheon Apple Products, Inc. since October 31, 2022.

6) [Husband] has received no compensation from McCutcheon for any work performed since October 31, 2022, despite his having been consulted on several occasions by the company's new president.

7) Payments to [Husband] by McCutcheon Apple Products, Inc. since October 31, 2022 were the amortization of [Husband's] bonus declared during his employment in 2022 but was not received in a lump sum. These amortized payments ended in October, 2023.

> 8) [Husband's] income outside of his pre-tax investment vehicles consists of his Social Security and a de minimus amount of interest from his after tax accounts.

Based upon those findings, the arbitrator found a material change in circumstances, which, as he recognized, was a prerequisite "for any action by the trier of fact." The arbitrator then reviewed the evidence that had been presented during the hearing. He made the following findings about the testimony given by Wife's therapist:

> The therapist began seeing [Wife] on August 16, 2023, and did not see her again until late September. She testified that most of the sessions were to prepare [Wife] for the arbitration hearing. Her CV lists one year as a clinical social worker and three years as a "mental health therapist". The primary red flag to her testimony was that despite her knowledge of [Wife's] history of prior treatment, including inpatient care, she made no attempt to obtain [Wife's] records of these prior treatments. Nor did she make any effort to determine any prior diagnosis, treatment or prognosis. Despite this lack of knowledge and only a handful of sessions with [Wife], this witness opined on a number of conditions as her diagnoses for which she would be treating [Wife]. It was not disputed that [Wife] suffers from anxiety and has symptoms that cause her great difficulty. However, the dearth of information upon which [Wife's] therapist extrapolated her conclusions has rendered it most unhelpful to any decision to be made in this case.

The arbitrator then addressed Topper's testimony:

> [Topper's] testimony was based upon a financial projection he generated by applying the financial information of each party to his financial planning program to determine [Wife's] future needs and [Husband's] future ability to pay alimony to meet those needs. His analysis concluded that without alimony [Wife] will deplete all her funds by her mid-seventies. Even with the payment of alimony for the next twenty-four years, she only has a slightly better than fifty per cent chance of reaching ninety without a depletion of her funds. He further concluded that [Husband] can not only continue to pay alimony at the present rate for that period of time, but he will actually increase his net worth while doing so. He opines that [Husband] has over a ninety per cent chance of attaining age ninety with his present funds being increased.

> The Arbiter has had experience with similar programs which project finances over a long period of time. As with any expert the basis of a conclusion must first be analyzed. For this type of financial projection, a number of assumptions need to be made to draw conclusions of this type. Long term financial projections are not inherently reliable because the assumptions cannot and do not account for the multitude of variables that life interjects the farther in time the projection extends. Although the program has a variable built in, it assumes that the investments will remain the same, that the rate of return of return on investments remains reasonably constant, that the market remains reasonably constant, and the health of the parties remains reasonably constant so that medical and related expenses not covered by Medicare, or any secondary insurer also not deplete the assets. Assumptions can be a good tool for planning purposes but must be regularly reevaluated to take into consideration the realities that life imposes on everyone.
>
> Mr. Topper's projection calls for the depletion of [Husband's] after-tax accounts within the next few years. He then projects regular substantial withdrawals from [Husband's] pre-tax accounts to meet his alimony obligation. He cannot consider what other obligations [Husband] will have over that time because the information is not now available and will only become available at some future date. The report assumes that [Husband] will reallocate his pre-tax investments to minimize his taxable consequences, but that is still an assumption. The inherent problem with long term projections are simply the life variables that intervene as time passes and render the long-term analysis speculative at best.

The arbitrator then addressed the other evidence he had considered in making his decision on alimony:

> The Arbiter has spent considerable time reviewing the numerous documents presented during the hearing and reviewing and considering the notes taken of the testimony. [Wife's] testimony is at the same time compelling and deeply troubling. The parties were married for thirty-five years. She was primarily responsible for raising their children and still enjoys a close relationship with them despite the distance between their residences. Because of her faith, she still considers herself married, which she says keeps her from forming any other relationship. She had colon cancer in 2000 but is doing relatively well now. She testified that her principal problem is anxiety which has a number of manifestations including nightly panic attacks and trouble with concentration. Not only did [Husband]

concede that [Wife] is not able to be employed, but he also further conceded that the alimony provision in the Points of Agreement was proper based on the circumstances at that time.

The concern with [Wife's] situation is that, even with the payment of alimony, [Wife] has used approximately one third of the funds transferred to her in the divorce. A review of her financial documents reveals that [Wife] has not only failed to alter her lifestyle to adjust to her declining financial status, but she has actually increased her expenditures in some significant ways. She has numerous large repair projects for both of her residences. She bought a dog and assumed all the concomitant costs, i.e., training, boarding, and veterinary bills. She has added numerous personal services to her list of expenses. She also testified to the need for more major expenditures. Her home needs a new roof. It needs a new air conditioning unit, as well as a great deal of dry wall repairs and painting. She testified that many home repair projects done by [Husband] over the years now need repair. The overall cost for all these projects is prohibitive. She also had a large expenditure to repair the stairs at her Colorado condo.

A review of [Wife's] Financial Statement reveals a rise in her living expenses. Her mortgage increased by almost $1200 per month. She listed costs for electricity, a TV dish, Comcast, pest control, a housekeeper, and a security system, none of which appeared on her prior Financial Statement. She also duplicates many of these costs for her Colorado condo. Perhaps the financial alarm bells have not yet begun to ring because she still has a large sum in her pre-tax investment account. However, it is clear that she cannot sustain her lifestyle regardless of whether alimony is paid.

The arbitrator continued:

[Husband] first presented Meghan Custer who succeeded him as president of McCutcheon Apple Products, Inc. Ms. Custer's testimony was primarily threefold. First, she verified that [Husband] retired as of October 31, 2022, despite [Wife's] contention to the contrary. Second, she verified that no compensation has been paid to [Husband] since his retirement for any services rendered by him to the company. Lastly, she explained the amortization payments of the previous year's bonus, both as to the payments themselves and the reason for their implementation. The conclusion that is drawn from this testimony is that [Husband's] sole income currently is derived from Social Security. [Wife] contends that because [Husband] purchased equipment to produce hard cider and filed a corporate registration, that he is going to start a new business. Additionally, [Wife] asks me to

> assume that this business yet to be started will be successful and earn [Husband] a good income. However, a decision must be made based on current facts. To do otherwise is not inference, but speculation.
>
> Perhaps the key question to this matter is whether [Husband] is required to draw from his pre-tax accounts, thereby incurring the tax liability thereon, to satisfy his alimony obligation. To date he has withdrawn relatively little from these accounts. Further, the evidence shows that despite remarrying he has altered his lifestyle thereby reducing the need to draw from those accounts at this time. [Husband] argues that there is no requirement for him to begin liquidating those accounts now, and not for years to come under current tax regulations of such assets. He argues that based upon his current tax bracket, he would have to withdraw $7,100 to pay his alimony obligation and the tax due on the withdrawal. He argues that this results in a harsh and inequitable result. The Arbiter finds that both having to fully deplete his after-tax accounts then draw on his pre-tax accounts early, and at a greater amount than is needed to simply pay the alimony, results in a harsh and inequitable result.
>
> However, the analysis cannot end at this point. As previously stated, [Wife] has depleted approximately one third of her principal account despite the payment the receipt of alimony. This has occurred due to [Wife's] failure to modify her lifestyle to accommodate her fixed income. Without alimony, and without a modification of her lifestyle, [Wife's] funds will be totally depleted within a few years. Therefore, despite having found a harsh and inequitable result to [Husband] from the current alimony order, a similar result would occur to terminate alimony payments immediately.

The arbitrator concluded his ruling as follows:

> Based upon the aforegoing, it is the decision of the Arbiter that [Husband's] alimony shall terminate with his last payment being due December 1, 2025. This decision to terminate alimony extinguishes the indefinite alimony payments and requires him to continue alimony for a time to allow [Wife] to undertake the financial changes to accommodate her reduction in income. Further, pursuant to the testimony, she will begin receiving Social Security benefits during this time which will provide her with some support. Therefore, in addition to the decision to terminate [Husband's] alimony, it is the decision of the Arbiter to modify alimony. [Husband] shall continue his current payment of $5[,]000 per month through May, 2024. Pursuant to [Wife's] testimony, she will begin to receive her Social Security benefits by that time. Beginning June 1, 2024, and

> continuing until alimony is terminated pursuant to this decision, [Husband] shall pay unto [Wife], as alimony, the sum of $2,500 per month.

The arbitrator also considered the parties' relative abilities to pay attorneys' fees and determined that Husband should pay Wife $5,000 toward her fees. The arbitrator determined that "fundamental fairness dictates that a division of the [arbitration] costs can only be made on the relative net worth of each party." On that basis, the arbitrator apportioned the costs of his services sixty per cent to Husband and forty per cent to Wife.[5]

The Circuit Court Vacates Arbitration Award

One month later, Wife filed in the Circuit Court for Frederick County a motion to modify or, in the alternative, vacate arbitration award. In the motion, Wife claimed that the arbitrator's decision was "completely irrational" and the arbitrator "exceeded his authority." Specifically, she argued that the arbitrator "exceeded his authority by interjecting his own personal opinion" even though such opinion was "completely contrary to the actual testimony of the financial expert witness, Jason Topper." Husband filed an opposition, countering that "[a]n arbitrator . . . has discretion to reject a witness'[s] testimony that he does not find persuasive." On May 15, 2024, the circuit court held a hearing on Wife's motion.

[5] The arbitrator used the following values:

> For [Husband], the value of his home is [$]295,000 and the value of his accounts is $2,991,434 for a total of $3,286,434. [Wife's] Maryland home is valued at $550,000 minus $220,000 for the mortgage, plus $270,000 for her Colorado condo, and $1,480,429 is the value of her account. [Wife's] total is $2,300,429.

At the end of the hearing, the court granted Wife's motion to vacate the arbitration award, announcing:

> So I've reviewed the statutes. I've reviewed the case law submitted by counsel. I've reviewed the memos submitted by counsel. And I have reviewed Judge Nicklas' decision. Again, judicial review of such a decision -- of the arbitrator's decision is extremely limited, and, again, the party -- this would be Ms. McCutcheon -- seeking to set it aside has a heavy burden, and it's a very narrow, narrow area.
>
> I, as the person who's reviewing Judge Nicklas' decision, have to give great deference to the decision of an arbitrator. And I am not permitted to speculate about his reasons for making an award and am required to assume that he acted appropriately.
>
> And I am, in this situation, giving Judge Nicklas great deference. He's practiced for many years in Frederick County. He's [an] experienced judge, and a very popular mediator, and he had the opportunity to hear these proceedings for two days last December. So I have given his decision, his opportunity to review the evidence, and his opinion very significant consideration.
>
> **The arbitration section of the Courts and Judicial Proceedings states that the Court shall vacate the arbitration award if the arbitrator exceeds their powers.** In this matter, Judge Nicklas stated in his position, on page 4:
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> The arbiter has had experience with similar programs which project finances over a long period of time. As with any expert, the basis of a conclusion must first be analyzed. For this type of financial projection, a number of assessed -- of assumptions need to be made to draw conclusions of this type.
>
> He then goes on to say:
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> Long-term financial projections are not inherently reliable, because the assumptions cannot and do not account for the multitude of variables that life interjects. The farther in time, the projection extends.
>
> And I want to emphasize that sentence. **This is the point at which I believe Judge Nicklas exceeded his authority and substituted his**

personal opinion for that of the expert. The expert opined as to a particular thing or particular numbers at this mediation, and Judge Nicklas substituted his judgment by saying, first, that he has experience with similar programs; and then determining that they're not inherently reliable.

And I do not believe that that -- he substituted his personal opinion for the opinion of the expert. There's no evidence in the record of the arbitration to support that. His statement is a correct statement.

So while I believe that Judge Nicklas did accurately and correctly determine that a material change of circumstances had occurred, he also reviewed pertinent alimony statutes -- excuse me -- I'm misspeaking. I think that he substituted his own opinion for the expert's opinion.

And harkening to [Wife's counsel's] argument that he failed to consider the alimony factors in [FL §] 11-106,[6] he did consider different

[6] Section 11-106 of the Family Law Article outlines the following statutory factors that courts must consider before determining "a fair and equitable award" of alimony:

(1) the ability of the party seeking alimony to be wholly or partly self-supporting;
(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
(3) the standard of living that the parties established during their marriage;
(4) the duration of the marriage;
(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
(6) the circumstances that contributed to the estrangement of the parties;
(7) the age of each party;
(8) the physical and mental condition of each party;
(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
(10) any agreement between the parties;
(11) the financial need and financial resources of each party, including:

(i) all income and assets, including property that does not produce income;
(ii) any award made under § § 8–205 and 8–208 of this article;
(iii) the nature and amount of the financial obligations of each party; and
(iv) the right of each party to receive retirement benefits; and

(continued)

> alimony factors, but he did not consider all the -- he considered different sections of CJP -- excuse me -- the Family Law Article. He considered -- he called it 11-105, but I believe it's a typo and it would be 11-108, considered 11-107. He considered the modification statutes, and he considered the attorney's fees, but I'm not addressing that here.
>
> He did not consider, frankly, the specific alimony factors in 11-106, vis-à-vis either party, and I don't think he considered all the other factors that he mentioned, vis-à-vis either party.
>
> **And again, I am giving him great deference. He has far more experience in Family Law than I do, but I do believe that he did exceed his authority. Therefore, I am going to vacate his arbitration award.**
>
> And I would ask counsel, do you want me to just set this in for a trial, or make a referral to send you back to arbitration, or do you want to think about it?
>
> * * *
>
> So I'm just going to set it in for trial. I think I'm going to send it -- how long do you think you need? Because I believe they've complied with their agreement because they did go to the arbitration, I determined to vacate the arbitration award. I think that is satisfied.

(Emphasis added). Shortly thereafter, the circuit court entered a written order, vacating the arbitral award.

Four days after the order was entered, Husband filed a motion for reconsideration, but the circuit court denied the motion. Husband then noted this timely appeal.

DISCUSSION

> (12) whether the award would cause a spouse who is a resident of a related institution as defined in [Section] 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

FL § 11-106(b)(1)-(12). We discuss these statutory factors in further detail below.

Parties' Contentions

Before this Court, Husband contends that the circuit court erred in vacating the arbitral award. In support of that contention, Husband asserts that the arbitrator did not exceed his powers because the parties had "agreed to arbitrate the issue of modification or termination of alimony in the event they reached an impasse" over his obligation to pay alimony after retirement. He also argues that the arbitration award neither "manifestly disregard[ed] the law" nor was "completely irrational" because the arbitrator applied the appropriate statutory factors under FL § 11-106, soundly exercised his discretion in weighing witnesses' testimony, and "carefully considered evidence" to avoid a "harsh and inequitable result" as required by FL § 11-108. In the alternative, Father argues that even if the circuit court properly vacated the arbitration award, the court erred in setting the matter in for trial because the parties' agreement plainly contemplated that this dispute be referred to arbitration.

In response, Wife reiterates that the arbitrator exceeded his authority by "substituting his own personal opinion for that of [her] expert witness," namely Topper, "when he stated . . . that he has personal experience with similar financial programs and the programs are not inherently reliable[.]" Wife emphasizes that, whereas Topper's Monte Carlo analysis took "into account thousands of different variables and scenarios with life and the market[,]" Husband "never provided any contrary evidence or testimony." Wife also argues that the arbitrator exceeded his authority by "failing to consider the required factors set forth in [FL] § 11-106 and § 11-108[,]" and such failure demonstrates

the arbitrator's "manifest disregard for the law because the factors are a basic, fundamental step in the determination of any alimony case[.]" Wife further claims that the arbitrator exceeded his authority by relying on his "own personal opinion . . . when he examined [her] expenses" and "mistakenly calculat[ing] her expenses at the time of the parties' divorce versus at the time of the [a]rbitration." Finally, Wife argues that the circuit court had discretion to set the matter for a trial, rather than remanding the matter for further arbitration, as the Points of Agreement did not require otherwise.

Legal Framework

Section 3-224(b) of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code (1973, 2020 Repl. Vol.) provides that the circuit court "shall vacate" an arbitration award if:

> (1) An award was procured by corruption, fraud, or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
>
> **(3) The arbitrators exceeded their powers;**
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement as described in § 3-206 of this subtitle, the issue was not adversely determined in proceedings under § 3-208 of this subtitle, and the party did not participate in the arbitration hearing without raising the objection.

CJP § 3-224(b)(1)-(5) (emphasis added). Section 3-224(c), however, cautions that "[t]he court shall not vacate the award or refuse to confirm the award on the ground that a court of law or equity could not or would not grant the same relief."

More specifically, for a court to vacate an arbitration award on the ground that the arbitrator exceeded his or her powers, it must "objectively" appear in the record that the arbitrator did, in fact, overstep "that authority in some respect." *Gordon v. Lewis*, 215 Md. App. 298, 312 (2013) (quoting *Birkey Design Group, Inc. v. Egle Nursing Home, Inc.*, 113 Md. App. 261, 266-67 (2011)). In other words, the record must show that the arbitrator went beyond "the scope of the issues actually submitted to arbitration" in rendering a decision. *Amalgamated Transit Union v. Maryland Transit Admin.*, 244 Md. App. 1, 15 (2019); *see Birkey Design Group, Inc.*, 113 Md. App. at 266 (noting that an arbitrator would exceed his power if the arbitration award included attorneys' fees where the underlying contract did not provide for such fees). When reviewing whether an arbitrator exceeded his or her powers, the focus of our inquiry is "whether the arbitrator acted within the scope of the arbitrator's authority[,]" *Prince George's Cnty. Police Civilian Emps. Ass'n v. Prince George's Cnty.*, 447 Md. 180, 208 (2016), which comes "from the arbitration agreement itself," *MCR of America, Inc. v. Greene*, 148 Md. App. 91, 111-12 (2002).

In addition to the statutory grounds outlined in CJP § 3-224(b), Maryland common law allows courts to vacate an arbitration award if there is a "manifest disregard of the law" or "palpable mistake of law or fact . . . apparent on the face of the award." *Amalgamated*

Transit Union, 244 Md. App. at 15 (internal citations omitted). To be sure, "mere errors of law or fact would not ordinarily furnish grounds for a court to vacate or to refuse enforcement of an arbitration award." *Bd. of Educ. of Prince George's Cnty. v. Prince George's Educ. Ass'n*, 309 Md. 85, 99 (1987). The Supreme Court of Maryland explained the meaning of "manifest disregard of the law" and "palpable mistake of law or fact" as follows:

> "Manifest" means "[c]lear; obvious; [or] unquestionable." *Black's Law Dictionary* 1106 (10th ed. 2014). . . . "Palpable" means "[c]apable of being handled, touched, or felt; tangible[,]" or "[e]asily perceived; obvious." *The American Heritage Dictionary of the English Language* 1267 (4th ed. 2006). Discussing the standard as applied in federal courts, Thomas Oehmke, in his treatise on arbitration, states that, to succeed in a claim that the arbitrator acted in manifest disregard of the law, the party challenging the award must show that the award is "based on reasoning so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling . . . ." 4 Thomas H. Oehmke & Joan M. Brovins, *Oehmke Commercial Arbitration* § 149:2, at 149-[4]4 (3d ed. 2017).

WSC/2005 LLC v. Trio Ventures Assocs., 460 Md. 244, 262-63 (2018). Put differently, for a court to set aside an arbitration award, the arbitrator's errors of law or fact must be "so gross as to work manifest injustice," *Bd. of Educ. of Prince George's Cnty.*, 309 Md. at 103, and be "obvious," "clear[,] or unquestionable," *WSC/2005 LLC*, 460 Md. at 263. The inquiry into whether the arbitrator's award was legally or factually correct is entirely distinct from whether the arbitrator exceeded his or her authority. *See Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 208; *see also Downey v. Sharp*, 428 Md. 249, 263 (2012) (observing that, for example, "an issue or matter resolved by an award

may be rational and legally correct but the arbitrator, under the arbitration agreement, may have had no power or authority to resolve the particular issue").

We review the circuit court's decision in this case without deference because the court's "decision to grant or deny a petition to vacate . . . an arbitration award is a conclusion of law[.]" *WSC/2005 LLC*, 460 Md. at 253. However, when assessing the propriety of the arbitration award itself, we recognize that "[j]udicial review of an arbitrator's decision is extremely limited, and a party seeking to set it aside has a heavy burden." *Letke Sec. Contractors., Inc. v. United States Sur. Co.*, 191 Md. App. 462, 472 (2010). Indeed, "the standard of review of arbitral awards 'is among the narrowest known to the law.'" *Id.* (quoting *Litvak Packing Co. v. United Food & Com. Workers, Local Union No. 7*, 886 F.2d 275, 276 (10th Cir.1989)).

Analysis

Applying the foregoing principles to the instant appeal, we conclude that the circuit court erred in vacating the arbitrator's award on the ground that the arbitrator exceeded his powers. As noted, paragraph 11 of the Points of Agreement plainly contemplated that the issue of modification or termination of alimony would be subject to arbitration:

> In the event [Husband] retires from all employment and has no income from any employment, within 90 days of such retirement, the parties shall attend mediation after exchanging financial information to determine if a modification or termination of alimony is warranted. In the event the parties are unable to resolve the issue in mediation, the parties shall attend binding arbitration on the issue with a mutually agreeable arbitrator.

That, in our view, is precisely the issue the arbitrator decided in this case, and Wife does not claim otherwise. Because neither party disputes that the Points of Agreement are valid

and legally binding, and because the arbitrator exercised the powers conferred by paragraph 11 of that agreement, we find that the arbitrator did not exceed his powers.

Wife argues that the arbitrator exceeded the scope of his authority by "substitut[ing] his judgment" for Topper's expert testimony, but we disagree. Such argument goes to the correctness of the arbitration award, not to the scope of the arbitrator's authority. *See MCR of America, Inc.*, 148 Md. App. at 111-12 ("[W]e note that . . . an 'arbitrator [ ] derives his or her power from the arbitration agreement itself.'"). As the Supreme Court of Maryland recognized, our decisional law clearly "establishes a distinction between review of an arbitration award for correctness—as opposed to review of . . . whether the arbitrator exceed[s] the arbitrator's authority." *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 208. Just as an "arbitrator . . . may have had no power or authority" to issue an arbitration award regardless of whether the basis for that award was factually and legally correct, the arbitrator may have properly exercised his authority even if the award was based on an error. *Downey*, 428 Md. at 263.

We also discern no "manifest disregard of the law" or "palpable mistake of . . . fact" warranting vacatur of the arbitration award here. *Amalgamated Transit Union*, 244 Md. App. at 15. Notably, when vacating the arbitrator's decision, the circuit court judge made no mention of "manifest disregard of the law" or "palpable mistake," only stating that she "believe[d] [the arbitrator] exceeded his authority and substituted his personal opinion for that of [Topper]." In any event, it is well-established that a "fact-finder has the discretion to decide which evidence to credit and which to reject." *Qun Lin v. Cruz*, 247 Md. App.

606, 629 (2020) (quoting *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000)); *see also MCR of America, Inc.*, 148 Md. App. at 120 (noting that "an arbitrator's fact finding and contract interpretation [are] accorded great deference") (citations omitted). Similarly, as the trier of fact, the arbitrator was "free to disregard expert testimony and weigh the evidence in coming to a conclusion." *Yaffe v. Scarlett Place Residential Condo. Inc.*, 205 Md. App. 429, 452 (2012); *see also Edsall v. Huffaker*, 159 Md. App. 337, 342 ("A jury is not required to accept the testimony of an expert witness."). Considering the extremely wide deference afforded to the arbitrator's decision under our decisional law, the circuit court erred in setting aside the arbitration award on the ground that the arbitrator discredited Topper's expert witness testimony.

Furthermore, contrary to the circuit court's finding, there was evidence in the record supporting the arbitrator's view that the Monte Carlo analysis was not "inherently reliable." During the arbitration, Topper acknowledged running his Monte Carlo analysis based on certain assumptions. For example, he stated that he did not "know all the aspects of [Husband's] accounts" and yet added 0.85% of an "advisory fee" in estimating Husband's investment return rate, while noting "that may or may not be a real fee[.]" In addition, although Husband testified that he took a mandatory minimum withdrawal from the IRA inherited from his father, Topper testified that his Monte Carlo analysis did not fully reflect this withdrawal:

> [ARBITRATOR]: Do you account for the fact that [Husband] is taking some withdrawals now because he has to because they are inherited from his father?

> [TOPPER]: Correct. So that would be a bit of an acceleration of the withdrawals. That's not perfectly shown in here.
>
> [ARBITRATOR]: Okay.
>
> [TOPPER]: So there would be a bit of an acceleration for those. So that – it's not a perfect reflection of that.
>
> [ARBITRATOR]: I got it.

As the United States Court of Appeals for the Fifth Circuit instructed, "Monte Carlo simulation is not inherently untestable: courts routinely admit statistical evidence, and we can gauge reliability by examining input values and requiring transparency from testifying experts." *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294 (2010) (footnote omitted). Here, the record shows that the arbitrator gauged the reliability of Topper's testimony and Monte Carlo analysis, and we see no error that was "obvious," "clear or unquestionable," *WSC/2005 LLC*, 460 Md. at 263, or "so gross as to work manifest injustice," *Bd. of Educ. of Prince George's Cnty.*, 309 Md. at 103.

Likewise, we remain unpersuaded by Mother's argument that the arbitrator "exceeded his authority by failing to consider all of the required factors set forth in [FL] § 11-106" or "by failing to make a factual analysis as required by [FL] § 11-108[.]" In support of her argument, Mother emphasizes that the arbitrator's decision did not reference either provision, and that there was "no analysis of the evidence presented at the [a]rbitration with respect to each factor and how it relates to each party." As we explained above, the question of whether an arbitration award was legally and factually correct is entirely distinct from that of whether the arbitrator exceed his or her authority, and

Mother's argument thus misses the mark. *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 208. Further, when considering the statutory factors under FL § 11-106, the arbitrator "need not use formulaic language or articulate every reason for its decision with respect to each factor." *Doser v. Doser*, 106 Md. App. 329, 356 (1995). It is sufficient that the arbitrator "clearly indicate[d] that [he] . . . considered all the factors[,]" and, even if the arbitrator's "review of the factors is not clear, this Court may look to the record as a whole to determine whether [the arbitrator's] findings were based on a review of the factors." *Id.*

The record establishes that the arbitrator considered all the statutory factors outlined in FL § 11-106 and assessed whether termination of alimony would be "necessary to avoid a harsh and inequitable result" under FL § 11-108. The arbitrator found that Wife could not "sustain her lifestyle regardless of whether alimony is paid." *See* FL § 11-106(b)(1). He also noted Wife's mental health issue and Husband's admission that she "is not able to be employed[.]" *See* FL § 11-106(b)(2). The arbitrator compared her standard of living before and after the divorce, finding that "[Wife] has not only failed to alter her lifestyle to adjust to her declining financial status, but she has actually increased her expenditures in some significant ways." *See* FL §§ 11-106(b)(3), (11). The arbitrator expressly mentioned that the parties were married for 35 years, *see* FL § 11-106(b)(4), and that Wife "was primarily responsible for raising [the parties'] children[.]" *See* FL § 11-106(b)(5). He also noted that Wife would start receiving her Social Security benefits around May 2024, whereas Husband had retired following a heart attack in May 2022. *See* FL §§ 11-

106(b)(7)-(8). The record is also clear that the arbitrator heard Topper's testimony regarding Husband's ability to meet his own needs while paying alimony to Wife, *see* FL § 11-106(b)(9), as well as regarding Wife's ability to maintain her lifestyle with and without the alimony. *See* FL § 11-106(b)(11). The arbitrator also expressly considered the Points of Agreement and noted Husband's concession that "the alimony provision in the Points of Agreement was proper based on the circumstances at that time." *See* FL § 11-106(b)(10). The arbitrator then ordered that Husband's alimony be terminated after December 1, 2025—almost two years after the arbitrator's decision—reasoning that the immediate termination of alimony or the continuation of the existing alimony obligation would each result in "a harsh and inequitable result." *See* FL § 11-108(3). Since the record shows that the arbitrator considered "all of the required factors set forth in [FL] § 11-106" and expressly addressed "a harsh and inequitable result" as required by FL § 11-108, we conclude that the circuit court erred in vacating the arbitration award.

Finally, Wife's argument that the arbitrator "mistakenly calculated her expenses at the time of the parties' divorce versus at the time of the [a]rbitration" lacks merit. Specifically, Wife challenges the arbitrator's findings that she "actually increased her expenditures in some significant ways" and "[a] review of her financial statements reveal[ed] a rise in her living expenses." According to Wife, "the actual evidence showed that at the time of the [a]rbitration, her total monthly expenses were slightly less than at the time of the divorce[,]" as they decreased from $10,937 to $10,864. As the arbitrator noted, however, the record shows that Wife's expenditures still increased in "some" respects,

especially in terms of her house-related expenses. For example, her pre-divorce financial statement, dated July 9, 2020, shows a portion of her monthly expenses, titled "primary residence," in the amount of $2,444, whereas her post-divorce financial statement, dated March 19, 2024, shows that amount ballooned to $4,156.71, Wife's mortgage payment, housekeeping expenses, and repair costs for her secondary house also increased during the same period. As such, we do not find that the arbitrator was mistaken in finding Wife's expenditures "increased . . . in some significant ways."

Under CJP § 3-224(c), a court "shall not" vacate an arbitral award "on the ground that a court of law or equity could not or would not grant the same relief." We are left with an abiding impression that the circuit court did precisely that in this case. Accordingly, we must reverse the court's decision and remand the case with instructions to reinstate the arbitration award.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED. CASE REMANDED WITH INSTRUCTIONS TO REINSTATE ARBITRATION AWARD. COSTS TO BE PAID BY APPELLEE.