Circuit Court for Harford County
Case No. C-12-FM-23-000250

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 811

September Term, 2024

RICHARD BERNARD

v.

NATASHA BERNARD

Graeff,
Leahy,
Tang,

JJ.

Opinion by Tang, J.

Filed: July 18, 2025

*This is an unreported opinion. This 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).

In a divorce judgment, the Circuit Court for Harford County ordered Richard Bernard ("Husband") to pay child support, indefinite alimony, and attorneys' fees to Natasha Bernard ("Wife"). On appeal, Husband presents three questions for our review, which we have consolidated into two and rephrased for clarity:[1]

I. Did the circuit court err when it found that Husband had voluntarily impoverished himself and when it imputed income to him for child support and alimony purposes?

II. Did the circuit court abuse its discretion when it awarded Wife attorneys' fees?

For the following reasons, we shall affirm the judgment of the circuit court.

BACKGROUND

Husband and Wife were married in April 2002 and have three children together. Only one of their children, a fourteen-year-old diagnosed with Prader-Willi syndrome, was the subject of the underlying proceeding.[2] The other two children are adults, one of whom is diagnosed with autism and lives with Wife.

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[1] The questions presented by Husband in his brief are:

I. Did the court err or abuse its discretion in finding that [Husband] voluntarily impoverished himself and in imputing income at the level deemed appropriate in this matter for purposes of awarding child support?

II. Did the court err or abuse its discretion in imputing income to [Husband] in its analysis and award of alimony?

III. Did the court err or abuse its discretion in awarding attorneys['] fees?

[2] Prader-Willi syndrome is a congenital syndrome characterized by polyphagia (excessive hunger or increased appetite), among other symptoms. *See Prader-Willi Syndrome*, Stedman's Medical Dictionary, Westlaw (database updated Nov. 2014). Wife testified at trial that the child had been gaining weight due to his food-seeking behavior, which resulted from his inability to feel full.

Husband served in the Army for twenty-four years. Throughout the marriage, the couple moved multiple times due to his military service, and Husband was deployed three times—twice to Iraq and once to Afghanistan. Eventually, they settled in Maryland, where Husband was stationed at Aberdeen Proving Ground. He rented a townhouse on the military base, which became the family home.

In January 2019, Husband retired from the military. In October of that year, he secured employment as a government contractor with Defense Acquisition Support Services, LLC ("DASS") in Aberdeen, Maryland. Meanwhile, Wife, who had primarily been a stay-at-home mother throughout most of the marriage, re-entered the workforce in 2019 by taking a position as a cashier at a Dollar Tree store.

On January 27, 2023, following more than twenty years of marriage, the couple separated. By the time they separated, Husband had started a relationship with another woman. The following month, Husband filed for divorce. Wife responded with a counter-complaint, seeking sole legal and physical custody of the minor child, child support, and alimony.

Pendente Lite Hearing and Order

On September 26, 2023, a *pendente lite* hearing was held before a magistrate. The parties agreed that Wife would have primary physical custody of the minor child. During the hearing, the parties litigated use and possession of the family home, child support, alimony, and attorneys' fees. Following the hearing, the magistrate issued a report and recommendations.

On October 31, the court adopted the magistrate's recommendations and entered a *pendente lite* order requiring Husband to continue paying rent on the family home. The order also required Husband to pay Wife the following: (1) alimony of $1,500 per month beginning September 1, 2023; (2) child support of $1,688 per month beginning April 1, 2023; (3) child support arrears at the rate of $200 per month; and (4) attorneys' fees totaling $7,742. On November 3, Husband filed exceptions to the magistrate's recommendations.

On November 6, Husband filed a notice of change of address with the court, indicating that he was relocating to Florida. He also filed a notice stating that he was no longer employed. He attached a resignation letter to DASS, dated September 5, 2023, indicating that his resignation would take effect on November 15.

On November 8, Husband filed a petition requesting a decrease in child support and alimony, citing a substantial reduction in his income due to his anticipated unemployment.

On February 26, 2024, the court held a hearing to address Husband's exceptions to the magistrate's report and recommendations. The court granted the exceptions in part, leading to an amendment to the *pendente lite* order. Under the amended *pendente lite* order, entered on May 8, 2024, the monthly child support was reduced to $1,587, while all other provisions of the initial order remained unchanged.

Partial Marital Settlement Agreement

On May 20, 2024, the day before the scheduled merits hearing, the parties reached a partial marital settlement agreement. This agreement addressed custody, the division of Husband's military pension, and other property issues. Specifically, the parties agreed that

Wife would have sole legal and primary physical custody of their minor child, while Husband would be responsible for maintaining the child's health insurance.

The parties further agreed that Wife would receive 35% of Husband's retirement pay, with distributions anticipated to begin after the court issued the pension order at the time of the divorce. The issues of alimony, child support, and Wife's request for attorneys' fees were reserved for the merits hearing.

Merits Hearing

At the merits hearing, the court heard testimony from both parties and admitted several documents, including the parties' financial records, Husband's employment record, the transcript from the *pendente lite* hearing, various court filings, the partial marital settlement agreement, and invoices for Wife's legal fees. Below, we summarize the relevant evidence.

At the time of trial, Wife was forty-seven and had been promoted to store manager at Dollar Tree, where she earned approximately $3,758 per month, totaling around $45,000 annually. Her highest level of education was high school, along with some college courses. Wife had considered going back to school to pursue a degree in social work and estimated that it would take her about six or seven years to complete both a bachelor's and a master's degree. However, she testified that she did not have time to return to school due to the significant attention required for the special needs of the parties' minor child and their adult child, diagnosed with autism.

Husband was forty-eight years old at the time of trial. Before retiring, he served as First Sergeant at Aberdeen Proving Ground, where he assisted in managing the garrison. While in the military, he received training in chemical and biological defense, hazardous materials, technical escort, and anti-terrorism. His highest level of education is an associate's degree in science, specifically in firearms technology, which he obtained in March 2023.

After retiring from the military in 2019, Husband secured employment at DASS. Initially, he was offered a full-time position as a "Subject Matter Expert II" at Aberdeen Proving Ground, where he supported the Army's Communications-Electronics Command. In 2020, DASS offered him a full-time position as a Senior Logistician at Aberdeen Proving Ground. In 2022, he worked full-time and earned $124,625.11. By the time he left DASS in November 2023, he earned $116,890.92.[3]

Husband testified that he left DASS due to the emotional stress caused by the divorce proceedings. He claimed he moved to Florida to care for his ailing father. Although his brother and mother lived with his father, and there were other relatives nearby, Husband explained that they were unreliable and unequipped to provide adequate care for his father.

He claimed that he had attempted to see if DASS would allow him to work remotely from out of state, but his request was denied. Unable to find employment in Florida, he

[3] It was argued that had Husband remained with DASS until the end of the year, his annualized salary for that year would have been approximately $133,000.

decided to start his own business, which submitted bids for government contracts. After submitting several bids, his business obtained one contract worth $5,500.

Around March 2024, Husband relocated to Las Vegas to live with his girlfriend in an RV park. His mother had purchased the RV in which they lived. Husband testified that after moving to Nevada, he searched for employment there but was unsuccessful. When asked whether he tried returning to Maryland to resume work with DASS, he explained that he did not want to return because he could not "mentally and emotionally" handle "be[ing] around" Wife.

In April 2023, a year earlier, Husband was diagnosed with post-traumatic stress disorder (PTSD). The Department of Veterans Affairs (VA) initially assigned him a 30% disability rating, which was later increased to 50% during the divorce proceedings. As a result, he received a VA disability benefit of $2,999.65 per month.

In addition to the disability benefit, Husband was also receiving retirement income from his military pension in the amount of $3,323 per month. Both parties acknowledged that once the court issued the pension order, Wife's income would increase by approximately $1,087 each month, reflecting her 35% share of Husband's retirement pay under the terms of the partial separation agreement. Correspondingly, Husband's income would decrease by that same amount.

The parties maintained a middle-class, military lifestyle during the marriage. Wife admitted two versions of her financial statement into evidence. The first statement reflected her current monthly income and expenses before the divorce. The second statement

included her current monthly income and her share of the retirement income of $1,087, as well as anticipated increased expenses after the divorce.

Wife's ability to live in the family home on the military base was due to her marriage to Husband, a service member. Once the divorce became effective, her privileges to reside on the base would end, requiring her to find a new place to live, which would further increase her anticipated living expenses. In addition, Wife expressed a desire to send the minor child to a camp that could accommodate his special needs. Both financial statements prepared by Wife showed a deficit; however, the post-divorce financial statement showed a larger deficit due to the increased expenses, despite the additional income.

Husband had not been current on his *pendente lite* child support, alimony, and rent. Although a portion of Husband's military income was being garnished to satisfy the child support obligations under the *pendente lite* order, Husband had not paid the remaining amounts due directly to Wife. He explained that he could not afford to do so because he had loans and credit card bills to pay.

Parties' Closing Statements

In closing statements, Wife's counsel argued that Husband voluntarily impoverished himself and requested that the court impute potential income for purposes of determining his child support and alimony obligations. For alimony, Wife requested $3,600 per month indefinitely.

Husband's counsel argued he did not voluntarily impoverish himself. Rather, Husband resigned due to personal conflicts with Wife and to care for his father in Florida.

While Husband's counsel acknowledged that the timing of Husband's resignation "doesn't look great," counsel maintained that, regardless, the court should consider Husband's ability to meet his financial obligations. Counsel argued that Husband could not afford his obligations even while he was employed by DASS.

Regarding child support, Husband's counsel acknowledged the guidelines, stating that "the numbers say what the numbers are." Counsel argued that, in calculating the child support obligation, the court should adjust Husband's actual income downward to reflect the 35% decrease in his retirement income once the pension order goes into effect.

As for alimony, Husband's counsel argued that no alimony should be awarded because Wife was capable of working. If the court were inclined to order alimony, however, Husband opposed it being indefinite. He pointed out that Wife expressed a desire to pursue further education over five to seven years, which would potentially allow her to earn a higher income in the future. Therefore, if the court decided to order alimony, he requested that its duration be limited to that time frame.

Court's Ruling

On June 3, 2024, the circuit court issued its oral ruling as summarized below.

Voluntary Impoverishment & Imputed Income

The court concluded that the case presented "a classic case of voluntary impoverishment." In making this determination, the court considered various factors. Concerning Husband's current physical condition, the court found that he had no physical limitations. It acknowledged that Husband had been placed on military disability at a rate

of 50% and was diagnosed with PTSD. However, the court noted, "there was no testimony here that . . . prevent[ed] [Husband] from being able to work or be employed."

Regarding Husband's level of education, the court found that he obtained an associate's degree in science and had received various types of training during his military service.

Regarding Husband's employment history, the court found that he served in the military for twenty-four years and was honorably discharged. After leaving the military, he became gainfully employed at DASS, where he was earning a "very good living" in a role related to logistics and communication. The court noted that Husband was developing a promising career in the defense contracting sector, which is known for being lucrative. Later, he started his own business, seeking bids on government contracts.

The court considered the timing of any changes in employment or financial circumstances related to the divorce proceedings. It deemed Husband's decision to leave a "lucrative job" at DASS in November 2023 to be "hugely important." The court explained:

> I think the timing of the receipt of the magistrate's report, and the order for [Husband] to not only pay counsel fees, but also alimony, child support, and rental payments, was really the impetus for him to leave DASS. I don't accept his testimony that the primary purpose for him to leave his employment earning six figures, building a great career, or a good career as a military defense contractor, [was] to take care of his father down in Florida[;] while he might have done that for a bit of time, it wasn't the necessary cause for him to leave his employment. It may have been one of the things that he did while he was unemployed, but I don't find that he was compelled through factors that were outside of his control that resulted in him being forced to leave his job and having to go care for a sick parent. . . . I just was not persuaded that that was why [Husband] left his job, and instead, I think he was persuaded by the fact that he's now realizing the financial consequences of this divorce are going to be big, and it is going to have a major impact on

> his lifestyle and [Wife's] lifestyle, and rather than kind of face those issues and address the obligations that are now expected of him, he decided to run away.

The court addressed the relationship between the parties prior to the divorce, noting in another part of its ruling that there were allegations of infidelity by Husband, as well as instances of "mutual domestic violence."

The court also discussed Husband's efforts to find and retain employment. It acknowledged that he had provided "some evidence" that he had sought reemployment. However, the court believed that DASS would rehire him if he chose to return to Maryland:

> I think you could get reemployed lickety-split if you decided to come back to Maryland. I didn't hear that DASS wouldn't take you back. In fact, I heard that that's exactly what they would. [sic] Seemed to me that you were a valued employee there.

In addressing the job market in the area where Husband relocated in Nevada, the court remarked, "I didn't really receive any information or any testimony explaining why [he] decided to go to Las Vegas. . . . [T]here was no grand job there, no great job, no great employment. I just don't know why Las Vegas ended up becoming the place where [he] decided to live."

Regarding whether Husband withheld support, the court stated that "it just hasn't been paid." In another part of its oral ruling, the court addressed Husband's claim that he was unable to pay his bills while working at DASS. The court was not convinced by this claim, noting that Husband had engaged in "lots of traveling" during that time and had not made any real effort to support Wife or the children, aside from paying the rent for the family home.

In reviewing the evidence and evaluating the findings, the court determined that it was "clear and stark" that Husband had voluntarily impoverished himself. It reiterated that Husband

> was living in the [S]tate of Maryland, was gainfully employed, was building a career with a defense contractor, and when he receives his court order from the judge or the magistrate, decides to leave and abandon his employment. . . . I have a clear employment, where [Husband] w[as] making $124,000 and elected to just walk away from it in lieu of complying with a lot of the obligations that [he has] here.

In determining the amount of potential income to impute to Husband, the court considered his employment history, earnings, qualifications, available job opportunities, and other relevant factors. The court believed "that if he were to fly back to Maryland . . . and ask for his job back at DASS they would give it to him right away." As a result, the court imputed an annual income of $124,625.11 based on his 2022 salary from DASS. Along with his full military retirement income and disability pay, the court calculated Husband's imputed income to be $16,708 monthly. The court then adjusted this income downward by $1,087 to account for the entry of the pension order, resulting in an imputed monthly income of $15,621.

Child Support

The court calculated child support using the imputed income based on the child support guidelines. It established two tiers of child support due to the anticipated division of the military pension. The court ordered Husband to pay $1,863 per month, which would decrease to $1,725 once Wife began receiving her portion of his retirement income. Additionally, the court determined that Husband owed $16,456.96 in child support arrears.

Alimony

The court ordered Husband to pay Wife $1,500 per month in indefinite alimony. The court considered the relevant factors enumerated in the Maryland Code, Family Law Article ("FL") § 11-106(b) in determining alimony and made the following findings:

(1) The ability of the party seeking alimony to be wholly or partly self-supporting. Wife did not have the ability to be self-supporting. Based on her financial circumstances, the court found that "she's running a deficit on a monthly basis trying to take care of this family."

(2) The time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment. Wife currently had "suitable employment" at the Dollar Tree. While she could be promoted in the future, the court deemed it too speculative to determine that at this point. While Wife testified that she was interested in returning to school, she indicated that it was not realistic given that two children required significant attention.

(3) The standard of living that the parties established during their marriage. The parties lived a "[s]tandard military lifestyle" during the marriage that enabled them to "get by and make ends meet."

(4) The duration of the marriage. The parties had been married for over twenty years at the time of trial.

(5) The contributions, monetary and nonmonetary, of each party to the well-being of the family. Husband had been the primary financial contributor during the marriage. Wife

was the primary nonmonetary contributor on the "front lines for taking care of the household and taking care of the children."

(6) The circumstances that contributed to the estrangement of the parties. While there was some discussion of Husband's infidelity, it was not a significant aspect of the case. There were also allegations of physical abuse. The court described the estrangement between the parties and suggested that responsibility likely went both ways, but leaned more toward Husband than Wife. However, the court concluded that the evidence supporting this factor "doesn't seem to jump off the page" as being the central issue in the case. Nonetheless, the court was concerned that after the estrangement, Husband did not fulfill his support obligations.

(7) The age of each party. At the time of trial, Husband was forty-eight and Wife was forty-seven.

(8) The physical and mental condition of each party. Neither party had "anything that prevents them from being employed or working."

(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. Due to his voluntary decision to impoverish himself, the court commented that there was "certainly . . . going to be a problem" regarding Husband's ability to pay alimony while also meeting his own needs. However, the court commented on Husband's failure to supplement discovery before the trial and his failure to disclose financial information. Wife's counsel presented sufficient evidence indicating that Wife had a difficult time obtaining necessary discovery, including

both Husband's bank and credit card statements. There was a significant delay in the final production of documents, which forced Wife's counsel to issue subpoenas to obtain them. Additionally, Husband did not disclose certain information, such as a bank account for his new business and his Samsung Pay account. This lack of transparency hindered Wife's ability to assess Husband's complete financial situation and prevented the court from gaining a clear understanding of Husband's overall financial status.

(10) Any agreement between the parties. The parties had entered into a partial marital settlement agreement, leaving other issues for the court to resolve.

(11) The financial needs and financial resources of each party. The court reviewed Husband's financial statement. His reported monthly income was $6,251.65, and after subtracting his reported expenses of $4,414 (which included the rent payment for the family home), he was left with a monthly excess of approximately $1,837. This excess did not account for the potential income imputed by the court or the anticipated elimination of his rental payments of $2,100 for the family home once the parties divorced and Wife vacated the home.

The court compared Husband's monthly excess with the deficit shown on Wife's post-divorce financial statement. Wife's projected post-divorce income was expected to increase by $1,087 per month once the parties began dividing Husband's pension income, bringing her total income to $3,758.84 monthly. The court found that even with the additional income, Wife's post-divorce monthly expenses would exceed her monthly income by over $3,000.

After assessing these alimony factors, the court determined that alimony of $1,500 per month was appropriate. The court also awarded $21,000.00 in alimony arrears.

As for the duration of alimony under FL § 11-106(c), the court awarded Wife indefinite alimony. In reaching that conclusion, the court projected the parties' standards of living based on the evidence presented. The court found that, despite Wife's increased income from the pension of $1,087 per month, she would still face a "pretty significant deficit on a monthly basis." It explained:

> [W]e're going to have a change in, I project to be the very near future, where [Wife]'s income is going to go up by about $1,000 on the military retirement pay division. [Husband]'s income is going to go down by about $1,000 on the division of that military retirement pay, but we also have a drastic increase in [Wife's] monthly expenses as well. She's going to have to pick up her own housing. She's going to have to pick up her own health insurance. She's going to try to refinance the car into her own name. She's taking on a larger grocery bill. She's going to try and see if she can provide for these children to go to camps or maybe even have a modest vacation. So those two considerations are passing at the same time. On one hand, [Husband's] income is going down by about $1,000 a month, [Wife's] income's going up. But then her expenses are going up by far more than that, far more than $1,000 a month.

The court explained that Husband would not suffer a similar shortfall in the future. Once the divorce becomes final, Husband's expenses will decrease because he will no longer be responsible for paying the $2,100 monthly rent for the family home. Ultimately, the court found that even after Wife had made as much progress toward being self-

supporting as was feasible, the respective standards of living of the parties would be unconscionably disparate.[4]

Attorneys' Fees

Wife incurred $34,962.76 in legal fees, which covered the period from February 2, 2023 (before the *pendente lite* hearing) to May 20, 2024 (the day before the merits hearing). The court noted that the *pendente lite* order included a total of $7,742 of these fees for the period up until October 24, 2023, when the magistrate issued its report and recommendations. Therefore, the court focused on evaluating the request for fees accrued between November 1, 2023, and May 20, 2024.

The court reviewed the billing records and evaluated the tasks that Wife's lawyer had to complete in preparation for the merits hearing. The court explained:

> On the eve of trial, we did have a partial marital settlement agreement, but I gotta think a lot of the work that was done was sort of leading up to the creation of that document, and potentially preparing for a property case to be litigated as well. [Husband] didn't make life super easy for [Wife] and her

[4] In one sentence in the argument section of his brief, Husband appears to challenge the duration of indefinite alimony: "When you factor that [Wife] is set to receive approximately 35% of [Husband's] military pension, and that [his] ability to work is limited by the VA disability finding, their respective earning capacities are not unconscionably disparate."

The argument is not properly before us for two reasons. First, Husband did not present the issue of the duration of alimony in the questions presented section of his brief, *see supra* n.1, and thus the argument is waived. *See* Md. Rule 8-504(a)(3); *Grebow v. Client Prot. Fund of the Bar of Md.*, 255 Md. App. 7, 33 (2022) (appellant's argument, presented within his appellate briefing, was waived because it was not raised in his question presented). Second, even if the issue is properly presented, the argument is not adequately briefed. *See* Md. Rule 8-504(a)(6). "A single sentence is insufficient to satisfy [Rule 8-504(a)]'s requirement [that a brief contain an argument in support of the party's position on each issue]." *Silver v. Greater Balt. Med. Ctr., Inc.*, 248 Md. App. 666, 688 n.5 (2020).

> counsel throughout the discovery process in this case, hence the attorney's fees award that was entered previously.
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> There [were] subpoenas that had to go out. There [were] disclosures that were not made. And there was almost a complete and total nonpayment of child support and alimony, which certainly heightens a lawyer's attention to the case, worried that I'm going to have to leave no stone unturned because I have an individual on the other side of this case [who] is resistant to complying with court orders and resistant to actually paying and meeting the obligations that he's court ordered to do.
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> * * *
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> You know, in terms of the income issue, it certainly was an issue that had [Husband] not left his job the way he did and created this voluntary impoverishment issue before the [c]ourt, then the case probably would have settled, may have settled, I don't know. But that certainly was a huge driver in terms of this litigation.

The court also considered the financial circumstances of the parties and did not award Wife all the fees she requested beyond what was already ordered under the *pendente lite* order. The court explained:

> [L]ooking at the total expenses that were incurred beyond the original attorney's fee award [under the *pendente lite* order], it's far in excess of $10,000. In fact, it's a lot more than that, especially when you factor in . . . the preparation for trial.
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> So, considering what I understand to be the parties' respective financial circumstances, certainly it wouldn't be fair for [Wife] to bear the total brunt of the entirety of the legal expense here. I also don't think it would be fair to saddle [Husband] with all of her legal debt. I'm going to try to do the best I can to try and fashion a resolution to reapportion some of the legal expense here given that [Wife] had to do a lot of heavy lifting to bring this case to trial and make sure that the case was tried effectively.
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> * * *
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> And I have considered the parties' financial circumstances, their respective ability to pay these funds, as well as, you know, the other expenses and so forth that they have. You know, the considerations that the [c]ourt should take a look into is the financial resources and financial needs of the parties, and whether there was substantial justification [for] prosecuting or defending this proceeding.

Ultimately, the court ordered Husband to pay an additional $10,000 on top of what was previously awarded under the *pendente lite* order, covering the period from November 1, 2023, to May 20, 2024. Recognizing that this amount was insufficient to cover a significant portion of the fees owed to Wife's lawyer, the court deemed the award reasonable considering the outstanding balance of legal fees that Husband still owed under the *pendente lite* order, as well as the total legal expenses incurred in this case.

On June 5, 2024, the court entered an order for judgment of absolute divorce and the pension order that divided Husband's military pension. Husband noted this timely appeal.

We shall introduce other facts as relevant to the analysis.

DISCUSSION

I.

VOLUNTARY IMPOVERISHMENT & IMPUTED INCOME

Husband contends that, in assessing Wife's request for child support and alimony, the court improperly imputed income to him after finding that he voluntarily impoverished himself.

It is well established in Maryland law that "both parents have a legal as well as a moral obligation to [financially] support and care for their children." *Petrini v. Petrini*, 336 Md. 453, 459 (1994). When determining child support pursuant to the child support guidelines, the court must determine the income of each parent. FL § 12-204. The court

calculates a parent's income based on either "[a]ctual income" or "[p]otential income," depending on the parent's employment circumstances. FL § 12-201(i), (m).

Actual income is defined as income from any source, including salaries, wages, commissions, bonuses, and other forms of compensation. FL § 12-201(b)(1), (3). Alternatively, a court can impute income if it determines that a parent is "voluntarily impoverished," that is, when the parent makes "the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources." *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993). To assess voluntary impoverishment, the court "ask[s] whether [the parent's] current impoverishment is intentional, that is, by his own choice, of his own free will." *Stull v. Stull*, 144 Md. App. 237, 248 (2002). The court may not, however, impute potential income to a parent who is incarcerated, "*unable to work because of a physical or mental disability*," or "caring for a child under the age of 2 years for whom the parents are jointly and severally responsible." FL § 12-204(b)(3) (emphasis added).

In assessing whether a parent is voluntarily impoverished, the court should consider a variety of factors to determine whether the parent has "freely been made poor or deprived of resources." *Goldberger*, 96 Md. App. at 327. These factors include: (1) the parent's current physical condition; (2) the parent's level of education; (3) the timing of any change in employment or financial circumstances relative to the divorce proceedings; (4) the relationship between the parties prior to the divorce; (5) the parent's efforts to find and retain employment; (6) the parent's efforts to secure retraining if necessary; (7) whether

the parent has ever withheld support; (8) the parent's past work history; (9) the status of the job market in the area where the parties live; and (10) any other relevant considerations presented by either party. *Id.* at 327.

If the court finds that a parent is voluntarily impoverished, "child support may be calculated based on a determination of potential income." FL § 12-204(b)(1)(i). In determining the amount of potential income to be imputed due to employment potential, the court shall consider the following factors:

> (1) the parent's employment potential and probable earnings level based on, but not limited to:
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> (i) the parent's:
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> 1. age;
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> 2. physical and behavioral condition;
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> 3. educational attainment;
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> 4. special training or skills;
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> 5. literacy;
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> 6. residence;
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> 7. occupational qualifications and job skills;
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> 8. employment and earnings history;
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> 9. record of efforts to obtain and retain employment; and
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> 10. criminal record and other employment barriers; and
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> (ii) employment opportunities in the community where the parent lives, including:
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> 1. the status of the job market;
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> 2. prevailing earnings levels; and
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> 3. the availability of employers willing to hire the parent;
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> (2) the parent's assets;

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

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

FL § 12-201(m).[5]

Whereas imputation of income for child support purposes requires an initial finding of voluntary impoverishment, there is no such requirement for alimony purposes. *See St. Cyr v. St. Cyr*, 228 Md. App. 163, 179–80 (2016) ("The Family Law Article does not expressly require a trial court to consider a spouse's voluntary impoverishment or potential income for alimony purposes."). "Using more general terms, the alimony statute directs the court to 'consider all the factors necessary for a fair and equitable award[.]'" *Id.* at 179. "Consequently, the court may consider the potential income of a voluntarily impoverished spouse when it considers an alimony request." *Id.* at 180. "Most, if not all, of the voluntary impoverishment factors will be relevant to alimony," "and so a finding of voluntary impoverishment would ordinarily entail a finding, for purposes of alimony, that the impoverished party *could* support him or herself, but *chooses* not to." *Reynolds v. Reynolds*, 216 Md. App. 205, 220 (2014).

A trial court's factual findings on the issue of voluntary impoverishment of a parent are reviewed under a clearly erroneous standard, and the court's ultimate rulings are reviewed for abuse of discretion. *Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015). Where the evidence shows, and the trial court believes, that the party could earn a substantial

[5] These factors are substantially similar to those used prior to the statutory enactment in 2022. *See Goldberger*, 96 Md. App. at 327–28.

living but instead elected to pursue a course resulting in adverse financial consequences to the family, the court may consider his or her potential income and earning capacity for purposes of calculating support obligations. *Id.* "[S]o long as the factual findings are not clearly erroneous, the amount calculated is 'realistic', and the figure is not so unreasonably high or low as to amount to abuse of discretion, the court's ruling may not be disturbed." *Durkee v. Durkee*, 144 Md. App. 161, 187 (2002) (cleaned up and citation omitted). Though a court "need not use formulaic language or articulate every reason for its decision with respect to each factor," it must "clearly indicate that it has considered all the factors." *Doser v. Doser*, 106 Md. App. 329, 356 (1995).

A.

Voluntary Impoverishment

Husband argues that the finding of voluntary impoverishment was erroneous for three reasons. *First*, he points out several factors that undermine the court's finding. Quoting language from the U.S. Supreme Court's decision in *Mansell v. Mansell*, 490 U.S. 581, 583 (1989), he asserts that his VA disability rating reflects "the degree to which the veteran's ability to earn a living has been impaired." In addition, he claims that his relatively limited education, his decision to leave his job at DASS to care for his father, his relocation out of Maryland, and his efforts to find employment support the finding that he did not voluntarily impoverish himself.

Husband is essentially asking us to reweigh the evidence. However, that is not our role. *See White v. State*, 363 Md. 150, 162 (2001) ("[I]t is not the function or duty of the

appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case." (citation omitted)). As this Court has explained, a trial court's finding is not clearly erroneous "merely because [it] *could* have drawn different 'permissible inferences which might have been drawn from the evidence by another trier of the facts.'" *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (citation omitted).

The burden of proving disability lies with the party claiming it. *Hiltz v. Hiltz*, 213 Md. App. 317, 343 (2013). The court acknowledged that Husband was diagnosed with PTSD and recognized his disability rating but noted the absence of evidence showing that his disability rendered him "unable to work." FL § 12-204(b)(3). Indeed, Husband conceded during his testimony that he did not bring any documentation from the VA regarding his disability rating. Without additional evidence, the disability rating alone offered little insight into his specific work-related abilities and limitations. *See, e.g.*, *Hiltz*, 213 Md. App. at 344 (explaining that the Social Security letters admitted into evidence "provided no insight regarding the nature, extent, or severity" of the wife's physical or mental impairment). Neither the quoted language from *Mansell* nor Husband's statement regarding his disability rating fill that evidentiary void regarding his ability to work. *See id.* at 342, 345 (explaining that a Social Security disability award by itself and the proponent's testimony regarding her impairment are not *prima facie* evidence that the proponent is unable to earn any income through work-related activity; the proponent is "required to submit evidence corroborating a complete inability to work, such as substantiating medical records and expert testimony").

There was evidence demonstrating that Husband could work full-time despite his disability. He was diagnosed with PTSD in April 2023, and during the divorce proceedings, his disability rating increased to 50%. Despite this, Husband maintained his position at DASS, earning over $100,000 in 2023. His testimony also suggested that he would have been willing and able to work remotely for DASS if permitted. Furthermore, he sought employment outside Maryland and started his own business during the divorce proceedings.

Regarding his resignation from DASS, the court was not persuaded by Husband's explanation that he resigned to care for his ailing father. Instead, the court found that Husband left DASS because he realized that "the financial consequences of this divorce are going to be big," and "he decided to run away" from those obligations.

In addition, the court was not moved by Husband's explanation that he needed to leave Maryland for his mental health to avoid conflict with Wife. The court stated:

> [T]he question was asked [of Husband during examination], why not come back to Maryland and pick up where you left off at DASS so you take care of some of these obligations you have. And he said something to the effect of, because of [Wife]; I don't want to be around her; I don't like her.
>
> [Husband] can hate [Wife] all [he] want[s], but these kids need [their father], and the kids certainly need [his] financial support. And the fact that [Husband had not] been upholding any of [his] end of the bargain . . . is really disappointing . . . .

In sum, the court was entitled to weigh the evidence and evaluate Husband's credibility. It could choose to accept or reject any part of his testimony, regardless of whether it was contradicted or supported by other evidence. *Omayaka*, 417 Md. at 659. We do not perceive any error in the court's assessments.

Second, Husband contends that the court erred in finding that if he returned to Maryland, he would be able to regain his job at DASS immediately. He asserts that Wife did not present any evidence indicating that DASS would rehire him or that he could find similar employment, and therefore, the finding was not supported by the evidence. We disagree.

In reviewing for clear error, "[t]he appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party[,] and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Ryan v. Thurston*, 276 Md. 390, 392 (1975). "The trial court is not only the judge of a witness'[s] credibility, but is also the judge of the weight to be attached to the evidence." *Id.* Thus, "the appellate court should not substitute its judgment for that of the trial court on its findings of fact but will only determine whether those findings are clearly erroneous in light of the total evidence." *Id.* This means that we construe all of the evidence as well as all reasonable inferences therefrom in the light most favorable to Wife. *See Wright v. Phipps*, 122 Md. App. 480, 485 (1998); *see also State v. Smith*, 374 Md. 527, 534 (2003) (explaining that a judge is entitled to choose among differing inferences that might be made from the evidence and deference is given to the inferences a fact-finder may draw).

The court reasonably inferred from Husband's testimony that DASS would rehire him if he returned to Maryland. His employment records indicated that his military experience and training made him uniquely qualified for a position at DASS. In October

2019, he was hired as a Subject Matter Expert II to serve at Aberdeen Proving Ground, a location with which he was already familiar from his military service. In 2020, DASS extended another offer to Husband, this time as a Senior Logistician, where he earned a lucrative salary. In addition, only a few months had passed since his resignation and relocation to Nevada. Moreover, when asked about the possibility of returning to DASS, Husband's explanation was not that DASS would not rehire him. Instead, he testified that he did not want to be near Wife. Considering all of this, the court's inference that DASS valued Husband's work and would likely rehire him if he returned to Maryland was a reasonable inference based on the evidence presented.

Finally, Husband argues that the court's emphasis on his decision to move to another state essentially restricted his ability to relocate to an area that was more suitable for his mental health. For support, he cites *Moore v. Tseronis*, 106 Md. App. 275 (1995), to argue that the court erred in finding voluntary impoverishment. However, his reliance on *Moore* is unavailing.

In *Moore*, the divorced father, who worked as an auto mechanic, moved from Baltimore City to his second wife's hometown in Garrett County about three years after his divorce from his first wife. *Id.* at 279. His annual income of $37,491 in Baltimore City dropped significantly to just over $16,000 a year in Garrett County due to the differences in the local economy. *Id.* Therefore, he requested that the court reduce the amount of his child support obligation. *Id.* at 278.

The magistrate found that the father had voluntarily impoverished himself, reasoning that he had knowingly and voluntarily chosen a lifestyle that would make it difficult, if not impossible, to meet his support obligations. *Id.* at 278, 280. The magistrate then imputed $37,488 income to the father, and the circuit court affirmed. *Id.* at 278, 280.

This Court reversed, holding that the trial court erred in finding voluntary impoverishment. We explained:

> We have no doubt that [the father's] income would have been greater than it now is if he had not moved from Baltimore to a less affluent area. *We do not believe, however, that a court can restrict a parent's choice of residence in order to insure that he or she remains in or moves to the highest wage earning area. While a parent must take into consideration his or her child support obligation when making job and location choices, such considerations should not be immobilizing.* In the case *sub judice*, [the father's] second wife always intended to return to her original home in Garrett County when she completed her education. *It certainly does not appear that* [*the father*] *was attempting to shirk his child support obligations, only that he was attempting to move to a more rural environment and to abide by his second wife's wishes*. Indeed, the fact that when [the father] first moved to Garrett County he took a job eighty miles from his home, commuting 160 miles each day to work as many hours as possible at the kind of job he was trained to do, hardly indicates an intention to impoverish himself or to choose a lifestyle of ease or indolence.

Id. at 283–84 (emphasis added).

Husband focuses solely on the first highlighted passage and overlooks the second highlighted passage. Unlike the father in *Moore*, who decided to relocate for *legitimate* personal reasons a few years after his divorce, the court here found that Husband resigned from DASS soon after the *pendente lite* order issued and "r[an] away" upon realizing that "the financial consequences of this divorce [were] going to be big."

For the reasons stated, the court did not err in finding that Husband had voluntarily impoverished himself.

B.

Imputed Income

Husband argues that the court erred in calculating the amount of imputed income. He presents three different arguments. First, he argues that since the VA assigned him a 50% disability rating, the maximum income the court could reasonably impute to him is 50% of his 2022 DASS salary, which amounts to approximately $62,000 annually. Second, he suggests that the imputed income should align with his salary while he was serving in the military, rather than his 2022 salary at DASS, which is not representative of his earnings throughout most of the marriage. Finally, he claims that the imputed income did not accurately reflect what he could be expected to earn in Nevada, where he eventually relocated.

None of these arguments are preserved. *See* Md. Rule 8-131(a) (we will ordinarily not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court); *see, e.g.*, *Chimes v. Michael*, 131 Md. App. 271, 288 (2000) ("[Appellant] cannot argue now that the child support guidelines apply, because he did not preserve that issue."). In the closing statements, Husband's counsel argued that when calculating potential income, the court should consider Husband's debts and liabilities, as well as his ability to meet these obligations. Counsel did not argue the points now raised on appeal. Accordingly, we shall not address these arguments.

In any event, as previously stated, "so long as the factual findings are not clearly erroneous, the amount calculated is 'realistic,' and the figure is not so unreasonably high or low as to amount to abuse of discretion, the court's ruling may not be disturbed." *Sieglein*, 224 Md. App. at 249 (cleaned up and citation omitted). The court's calculation of Husband's potential income was realistic, considering his recent employment with DASS and other relevant factors summarized above. Therefore, using Husband's 2022 salary at DASS was not so unreasonably high as to constitute an abuse of discretion.

II.

AWARD OF FEES

Husband argues that the court erred or abused its discretion in awarding attorneys' fees to Wife. Attorneys' fees in an action for alimony and child custody/support are governed by different statutory provisions. For fees in an action for alimony, FL § 11-110 provides, in pertinent part:

> (b) At any point in a proceeding under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.
>
> (c) Before ordering the payment, the court shall consider:
>
> (1) the financial resources and financial needs of both parties; and
>
> (2) whether there was substantial justification for prosecuting or defending the proceeding.

For fees in child custody or support cases, FL § 12-103 provides, in part:

> (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:
>
> (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or

(2) files any form of proceeding:

(i) to recover arrearages of child support;

(ii) to enforce a decree of child support; or

(iii) to enforce a decree of custody or visitation.

Numerous factors must be considered before awarding counsel fees, including: "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b); *see Dunlap v. Fiorenza*, 128 Md. App. 357, 374 (1999).

"Under either provision [FL § 11-110 or FL § 12-103], the [court] must undertake the same investigation before making an award of attorney's fees." *Lemley v. Lemley*, 109 Md. App. 620, 633 (1996). "Failure of the court to consider the statutory criteria constitutes legal error." *Malin v. Mininberg*, 153 Md. App. 358, 435 (2003). "Nevertheless, the trial court 'is vested with wide discretion' in deciding whether to award counsel fees and, if so, in what amount." *Id.* at 435–36 (citation omitted). "Although that discretion is subject to appellate review, we will not disturb an award unless the exercise of discretion was arbitrary or the judgment was clearly wrong." *Id.* at 436.

Husband presents three arguments in support of his contention that the court erred in awarding fees. *First*, Husband contends that he had substantial justification for opposing Wife's evidence supporting her request for child support and alimony. However, in determining whether there was substantial justification for prosecuting and defending the case, the court considered Husband's conduct during discovery, his failure to make full *pendente lite* alimony and child support payments, and the timing of his resignation from

DASS. This resignation created a litigation issue of voluntary impoverishment, which the court concluded was "a huge driver" in the litigation.

Second, Husband argues that the court did not consider the financial status of each party. On the contrary, the court explicitly stated that it considered the parties' financial circumstances, including their respective abilities to pay. Ultimately, the court concluded that Husband was in a better financial position than Wife. In weighing this factor alongside other considerations, the court noted that it would not "saddle" Husband with all of Wife's legal debts. The court adjusted the fee award, considering the parties' financial circumstances and the fact that Wife had to manage more of the legal work due to the difficulties caused by Husband's actions.

Husband highlights that the court's award of child support and alimony arrears, along with attorneys' fees, totals over $55,000. This amount does not include the ongoing monthly payments for child support and alimony. He contends, without citing any legal authority, that the award of fees was erroneous or an abuse of discretion because he lacks the funds to meet these obligations. This argument is similar to the one made above, challenging the court's purported failure to consider the financial circumstances of both parties; we reject it for the same reasons. The record clearly indicates that the court considered the relevant factors, including the financial resources and needs of both parties.

Finally, Husband contends that the parties reached a partial settlement agreement on significant issues, which reduced the number of matters the court had to resolve. However, the court specifically addressed the parties' partial settlement and the narrowing

of issues to be litigated during the merits hearing. Although the parties reached a partial marital settlement agreement, the court explained that this agreement was executed only a day before the merits hearing. As a result, Wife still had to prepare to litigate the property issues for the merits hearing up until the agreement was executed. For the reasons stated, we find no evidence that the court's discretion in awarding Wife attorneys' fees was arbitrary or that the judgment was clearly wrong.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.