UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0853 & 2019

September Term, 2014

KATHERINE F. PISANO

v.

CHRISTOPHER W. PISANO

Meredith,
Nazarian,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 29, 2015

This consolidated appeal is the latest chapter in a protracted divorce between Katherine F. Pisano ("Wife") and Christopher W. Pisano ("Husband"). The primary question at this juncture is whether the Circuit Court for Baltimore County interpreted and applied correctly our opinion from the last time this case was here. In that opinion, we largely affirmed the circuit court's initial decision, so we understand and appreciate Wife's frustration that after remand, Husband has much longer to pay the marital award and her monthly alimony is much smaller. But we hold nevertheless that the circuit court followed our directions and acted within its discretion in applying our earlier opinion as it did, and we affirm.

I. BACKGROUND

Two different timelines are in play here: the substantive timeline of the marriage and its downfall, and the procedural timeline tracking the path the divorce has travelled from the circuit court to this Court, and back around.

A. The Marriage And Its End.

The history is not in dispute, so we borrow from the initial opinion of the circuit court (as we did the first time) to set the factual stage:

> The parties were married in Chicago, Illinois on October 7, 1989. Two children were born to the marriage, Christopher William Pisano, Jr., born December 11, 1992 and George Nicholas Pisano, born November 10, 1995. The older child is over 18 years of age and graduated from high school in June, 2011.
>
> The parties met while both were attending Kenyon College, where they graduated in the mid-eighties. Husband had always worked for Citrus and Allied Essences, a family

company, since his mid-teens, and went to work for that company full time after college. Wife became certified as a paralegal and worked briefly after the marriage, but stopped when the parties decided it was time to have a child. The parties agreed that the wife would not work outside the home but would stay home and raise the family, take care of the home, children and property. They agreed that the husband would provide the financial support to the family.

Husband worked energetically and was required to travel a great deal. His income continued to increase exponentially from a starting salary of about $16,000 annually.

In 1987, Citrus and Allied decided that the company had outgrown its physical facilities, and the company purchased nine acres of property in Belcamp in Harford County, Maryland. Husband was Vice President of the company at that time, and was relocated to the Baltimore area. The family moved to Baltimore County in 1993, first settling on Gent Road and then relocating to a large house on four acres on Garrison Forrest Road. The location was chosen because the two sons were attending the Garrison Forrest School at the time, and the family had joined the Greenspring Country Club and St. Timothy's Church. The home is a large four-bedroom home with 50 windows and an in-ground pool and substantial improvements described by husband as costing "hundreds of thousands of dollars." The parties were living there when they separated.

Husband continued working hard and traveling frequently, and wife continued to care for the family. The two children attended private schools, the family owned a boat purchased for $175,000 for which the marina fees were $500.00 per month and gasoline and maintenance for an additional $500.00 per month. In addition to the Greenspring Country Club, the family belonged to a beach club in New York and the Maryland Golf and Country Club, health and fitness clubs, and they owned at least four vehicles. Wife had jewelry valued at over $130,000.00. They enjoyed the services of a housekeeper. The children spent summers away at camp. The family dined out frequently. The tax returns for the years 2004-2010 declared income in the following amounts:

2004: $754,274.00
2005: $857,912.00
2006: $972,189.00
2007: $969,885.00
2008: $572,996.00
2009: >$1,000,000.00
2010: >$1,400,000.00

Husband was also receiving large amounts of stock held in the Citrus and Allied companies, which began undergoing a number of corporate reorganizations.

Both parties testified that the marriage suffered from a lack of communication, especially about finances, as early as 1993. However, the parties also agree that Husband's infidelity was the cause of the dissolution of the marriage.

This infidelity became known to Wife in August, 2007. She had taken her younger son to New England to pick up her older son, who had been in camp for eight weeks, and had to return to Baltimore to begin high school at the Friends School. When Wife and the two sons pulled into the driveway of the family home at 11:30 p.m., they found Husband at the house with his secretary of many years . . . Some days later, Husband confessed to Wife that he had been having an illicit sexual relationship with [his secretary] for several years. In a subsequent conversation, Husband told Wife that he had also had a long-term illicit sexual relationship of 7 years duration with [another woman], beginning two years after the birth of the younger son, and a brief affair with [yet a third woman] in 2005 . . . with whom he had attended high school. These additional relationships were revealed to Wife over lunch in 2008.

Nevertheless, Wife attempted to work on saving the marriage by requesting that Husband attend counseling with a mental health professional, a minister at her church, and his medical doctor. These efforts fell short of effecting a reconciliation.

DIVORCE

> The parties have voluntarily lived separate and apart for more than a year prior to the filing of the complaint for absolute divorce. The separation has been continuous and uninterrupted, and without resumption of marital relations. There is no expectation of reconciliation.

B. The Divorce.

1. The First Hearing and The First Order.

Wife filed a Petition for Absolute Divorce on February 28, 2008, and the circuit court held a four-day trial beginning on June 13, 2011, with Judge Anne Brobst presiding. Two months later, the court issued an amended judgment of absolute divorce (we'll refer to it the "First Order"), which began by laying out certain agreed facts and decisions:

- Wife had the potential to earn $40,000 per year.
- Husband would pay tuition for the minor child's high school and for the children's college education.
- Wife would have primary physical custody of the children and the parties would share joint legal custody.
- The parties were to divide evenly Husband's two retirement accounts, resulting in a transfer to Wife of $521,302.50.

The court then divided the parties' property. Applying Md. Code, § 8-204 and § 8-205 of the Family Law Article ("FL") (1984, 2006 Repl. Vol.), the court determined (contrary to Husband's assertions) that certain stock interests Husband held in his family business constituted marital property, even though Husband might have acquired part of them as a family gift or prior to the marriage. The court explained that Husband had failed to meet the burden of establishing that particular shares of stock were directly traceable as

either. The court also held, though, that certain severance payments and consulting payments Husband had received were not marital property, but rather future earnings, and the court valued the marital property (excluding retirement accounts about which the parties had already agreed) at $4,581,035.

From there, the court analyzed the factors listed in FL § 8-205(b) to determine the monetary award. The court found that both parties had contributed equally to the marriage—Husband was "an energetic, hard-working and successful businessman with an enormous amount of experience in his field" whose success would not have been possible if Wife had not done "everything else, including maintaining [Husband's] relationship with his own family." It also found, though, that "Husband's infidelity was the sole cause of the estrangement of the parties and the breakup of the marriage." The court recognized that Wife had title to certain property—the house, her jewelry, and her checking account—worth $1,626,332, and deducted half that amount from the "total pool of marital assets," leaving $3,687,869 to divide. The court determined that Wife was entitled to one-third of the total, in light of the statutory factors and the fact that the award was "intertwined" with the alimony award, and in consideration of the "tax consequences" (on which the court did not elaborate). This left Wife with a monetary award of $1,290,754.10.

The court next considered alimony, and again walked through the statutory factors. After recognizing Husband's agreement to pay three years of high school tuition for the younger son, and to pay four years of private college tuition for each child, the court awarded Wife $15,000 per month in alimony for twenty-seven months (when Husband's

consulting and severance payments would end), and "$12,000 per month for 141 months until Wife turns 62, at which time alimony payments will end unless she remarries before that time." The First Order included a specific finding that this alimony award would "prevent an 'unconscionable disparity of living standard.' *See* [FL] § 11-106(c)."

Both parties appealed, and Judge Brobst died in December 2012, while the appeal was pending. In the meantime, the parties filed a number of interim motions in the circuit court. Among them, Husband filed a Petition to Modify Alimony, claiming that several changes in circumstances—"garnishments reduc[ing] his income sources, 2011 tax liabilities to the State and Federal governments in excess of $100,000, reductions in the expenses of the parties, reductions in the ability of [Husband] to pay support, changes in the assets and resources of each party, and other changes…"— justified a reduction in the alimony award. Wife also filed numerous petitions for writs of garnishment after Husband failed to pay the marital award and full monthly alimony. As we discuss next, the case returned to the circuit court after we decided the (first) appeal, and Husband's Petition to Modify Alimony was denied as moot as part of the court's decisions on remand.

2. *Pisano I.*

Husband presented seven issues on appeal, claiming "multiple errors of law" in connection with the amount and timing of the monetary award, the alimony award, the court's findings regarding property in Husband's name, the parties' agreements, and the trial court's later finding that Husband was in contempt for failing to pay an installment of the monetary award. Wife appealed the trial court's conclusion that severance payments to

Husband did not constitute marital property, along with its failure to account for an $80,000 lien on the family home in the calculation the marital award. On August 2, 2013, we issued an unreported opinion ("*Pisano I*") that largely affirmed the circuit court's decision, but identified questions underlying the marital and alimony awards that required further proceedings. We affirmed *most* of the circuit court's determinations about the assets comprising their marital property:

> We affirmed the court's findings that Husband's stock in the family companies constituted marital property;
>
> We affirmed the court's findings that Husband's severance package constituted future earnings and not marital property; and
>
> We *vacated* the court's valuation of the family home, and directed the circuit court to subtract the $80,000 lien from the home's value so it decreased from $1,350,000 to $1,269,515.

We also vacated the alimony award, for two reasons. *First*, we found "an irreconcilable discrepancy between the [circuit] court's marital award and its alimony analysis"—the circuit court explained that it was giving Wife a $1,290,754.10 monetary award, which was one-third of the value of the total marital property ($3,687,869) but did not account for the $1,626,332 already titled in Wife's name.[1] *Second*, we vacated and

[1] Differently put:

(1) Before the initial monetary award, Wife held title to approximately 38.8% of the marital assets per the circuit court.

(2) After the initial monetary award, Wife would hold title to approximately 62% of the marital award. (continued…)

remanded the alimony award because the circuit court terminated Wife's alimony at age 62 without articulating a reason for selecting that cut-off date. We directed the court to determine whether Wife should receive alimony, and the amount and duration, as set forth in FL § 11-106. We expressly gave the court the option of granting either definite or indefinite alimony on remand, so long as the court explained the basis of its decision. We vacated the monetary and child support awards, "to provide the court with remedial flexibility on remand." And we directed that the alimony and child support awards "remain in effect *pendent lite* but subject to further order of the circuit court."

3. Hearings before Judge Martin and Subsequent Orders.

On remand, Judge Timothy J. Martin inherited the case. The court issued an order on October 1, 2013 (the "October 1, 2013 Order"), that set forth its interpretation of our opinion and defined the issues for a hearing to follow. The court explained that it did not necessarily require a new hearing on the monetary award, "as the existence and value of the marital property has been clearly established as of the time of the divorce." But the court decided that it *did* need to reconsider "the appropriate effect of the valuation adjustment in the determination of the monetary award," and also to "take testimony and receive evidence on [Husband's] ability to pay any monetary award which might result

(…continued)

(3) Although the trial court noted that Husband was "receiving 65% of the marital property," that phrase contradicted the circuit court's ultimate conclusion that Husband's "post-award share of the marital property was 38%," a discrepancy we found impossible to reconcile.

from the new hearing." The court decided that it would consider the alimony award and the parties' current economic circumstances, that the "remedial flexibility" mentioned in our opinion required it to reconsider the judgment and garnishments, and "not only the evidence which was before Judge Brobst *but also evidence from Judge Brobst's decision to the present*[—*i.e.*,] income, expenses, assets and liabilities, etc."[2] (Emphasis added.) The court also recognized its practical challenge, that "[r]egrettably Judge Brobst is deceased and can offer no explanation nor can this Court determine what effect if any Judge Brobst's

[2] The court again clarified the scope of the remand in open court on January 17, 2014, the week before the hearing:

> I don't need their relative contributions during the marriage. I don't need any agreements that they may have reached vis-à-vis this case. I don't need stuff on custody. I don't need stuff on visitation. I don't need stuff on child support. I don't need anything on nonmarital issues or the values of the property at the time that the first case took place.
>
> * * *
>
> Here's what I think I need: Again [treading on] foreign territory here as we are doing it, *I need the current economic circumstances of each as we speak; to wit: The current income of each. The current liquidity or not of [Husband] vis-à-vis his assets.*
>
> * * *
>
> *Any arguments you want to make about the inter-relationship between the monetary award and the alimony which, as we know, is to be considered for remedial flexibility.*

(Emphasis added.)

misstatement about [Husband's] percentage of the marital property had in her decision regarding alimony. In any event, a new hearing is necessary."

The court then held a three-day evidentiary hearing and issued an order on February 28, 2014 (not filed until March 11, 2014) (the "March 11 Order"), that laid out the procedural history of the case, explained the court's interpretation of our prior opinion (and the First Order as well), and reiterated not only its desire to give "full deference" to Judge Brobst's findings of fact "as of June 2011," but also its understanding that "the remand of the Court of Special Appeals was clearly limited in its scope." The March 11 Order recognized that there were "no issues as to the valuation of the marital property" beyond the $80,000 discrepancy on the value of the home, but acknowledged that it still should consider the monetary award in the context of that oversight, with the "remedial flexibility" granted the trial court by us, and "with the financial circumstances of the parties *presently* in mind." (Emphasis added.) And the court found that Husband's inability to pay the monetary award could not be ignored:

> [T]his Court is attempting to fashion a monetary award which at least, under the circumstances, and at least to a reasonable degree, can be accomplished and performed by the Husband. Concurrently, this Court is mindful of the alimony issue and its interdependence with the monetary award.

The court *increased* the monetary award by $200,000, to account for interest that had, to that point, gone unpaid by Husband. The court also decided to allow Husband to pay the marital award in monthly installments of about $11,500, for just over ten years, rather than requiring a lump sum payment, as the First Order had.

With regard to alimony, the court read our opinion as directing it to "determine whether or not [Wife] should receive alimony and, if so, in what amount and duration." (Emphasis omitted.) As such, the court found it necessary to look to the current financial circumstances of the parties, not just as of the time of the First Order. And although the court effectively endorsed Judge Brobst's decisions based on the facts the parties presented in 2011, the court had no choice but to hear new evidence, given the passage of time and the change in the parties' economic circumstances.

The court then analyzed the parties' monthly expenses, accounting also for Husband's current financial circumstances (including the fact that Husband did not receive the $30,000 a month in severance pay that he was receiving at the time of First Order, and a reduction in income for paying off a tax liability). The court stressed that the alimony award and the monetary award were "interdependent and must be viewed together," and concluded that Wife was entitled to indefinite alimony of $2,000 per month—"modifiable in both *duration and amount*" (emphasis in original) on motion of the parties.

Both parties filed motions to alter or amend the judgment, and the court denied both. Although the court agreed that it had made an error in the range of $500,000 when calculating the marital award, it found that the award nevertheless fell within its discretion:

> Even conceding [certain mathematical] errors, . . . is this Court persuaded to again change or modify the monetary award under all the financial circumstances in which the parties find themselves? The answer is no. Even given the errors, assuming the Court has the discretion it is often told by the appellate courts that it has, in the exercise of that discretion, this Court declines to do so.

4. Attorney's fees.

In the wake of these decisions, Wife filed on July 3, 2014 a Motion for Award of Counsel Fees, and sought to recover over $285,000 in fees and expenses she incurred since the First Order. The court held a hearing on October 2, 2014, and decided the motion shortly thereafter by written order. The court described the case in its introduction as "agony writ large." It recognized that the fees Wife sought did not relate entirely to the underlying divorce, but included post-divorce collection efforts. The court pointed to its "substantial discretion" in the area of attorney's fees, cited *Petrini v. Petrini*, 336 Md. 453, 468 (1994), and concluded that Husband should not bear the entire burden of Wife's fees. But the court decided that Husband should bear "certainly a portion thereof," and ordered him to pay $100,000.

Wife filed a timely appeal from the circuit court's June 9 Order denying each party's motion to alter or amend,[3] and Husband cross-appealed as to alimony and appealed the attorney's fee award. The two appeals were then consolidated.

[3] Wife's Motion to Alter or Amend actually was filed the day before the circuit court docketed the March 11 Order (she wasn't clairvoyant—the court had issued the decision on February 28), but by operation of Md. Rule 2-534, was deemed filed the same day and after the March 11 Order itself. As such, the motion tolled her time to appeal from the March 11 Order until the court decided it, *id*., and her timely notice of appeal from *that* order brings both decisions before us. Md. Rule 8-202(c).

II. DISCUSSION

We start, as the circuit court did, by framing our task. Because this case has been here before, the "law of the case" doctrine[4] controls issues we already decided, and our prior opinion binds us just as it bound the trial court. *See Chaffin v. Taylor*, 116 U.S. 567, 572 (1886) (holding that a question of law previously presented and decided on appeal cannot be reconsidered on subsequent appeal, as "one writ of error cannot be re-examined on a subsequent writ."); *Energy Mgmt. Corp. v. City of Shreveport*, 467 F.3d 471, 476 (5th Cir. 2006) ("On a second appeal following remand, the only issue for consideration is whether the court below reached its decree in due pursuance of [this court's] previous opinion and mandate . . . We can consider a prior opinion to determine what was actually intended, but we will not reconsider issues already decided by the earlier panel." (citation omitted)); *see also U.S. v. Husband*, 312 F.3d 247, 251 (2d Cir. 2002) ("[A]ny issue conclusively decided by this court on the first appeal is not remanded."). In Wife's appeal, then, we aren't writing on a clean slate, but rather reviewing the circuit court's application of our previous ruling to the first-round factual findings underlying the marital award and

[4] The "law of the case" doctrine is defined as:

> 1. The doctrine holding that a decision rendered in a former appeal of a case is binding in a later appeal.
>
> 2. An earlier decision giving rise to the application of this doctrine.

Black's Law Dictionary 1020 (10th ed. 2014).

alimony decisions, and answering Wife's questions about what new, second-round facts and considerations properly bore on the circuit court's decisions on remand. This is not, as Wife suggests, as simple as reviewing merely "the ambiguity in the trial court's findings"—when we recognized the court's "remedial flexibility" in our first decision, we recognized that complicated divorces like this involve many integrated moving parts that have to be re-integrated on remand. *See Freese v. Freese*, 89 Md. App. 144, 155 (1991) (finding that an alimony award must be vacated even though the Court affirmed the award because the monetary award was reversed, and directing the trial court to recalculate alimony "as it deemed appropriate in the exercise of its sound discretion"). We then address Husband's challenge to the award of alimony at all, and his altogether new challenge to the attorney's fee award.

A. Wife's Appeal.

Wife raises eight different questions on appeal[5] that collapse naturally into three much simpler areas of inquiry—the monetary award, the alimony award, and other

[5] In her brief, Wife phrased the questions as follows:

> 1. Did the trial court err by failing to follow the Court of Special Appeals' opinion and mandate by considering issues beyond the ambiguity in the trial court's findings regarding the percentage of marital assets held by the parties?
>
> 2. Did the trial court err by considering the marital award before revising the alimony award in violation of the Court of Special Appeals' opinion and mandate[?]

(continued…)

considerations. Her arguments flow from the understandably disappointed vantage point of a party who prevailed in the first trial, largely prevailed on appeal, then lost considerable ground on remand notwithstanding the law of the case. And at some level, Wife's unhappiness is justified. Different judges can reach a wide range of different decisions

(…continued)

> 3. Did the trial court abuse its discretion when, despite concluding that it would have rendered the same decision as the original trial court based upon the facts adduced at trial, it reduced alimony from $12,000 to $2,000?
>
> 4. Did the trial court err in concluding that [Husband's] income was substantially reduced when it failed to consider income from the promissory note, income from the family businesses and the appreciation of the value of the family businesses?
>
> 5. Did the trial court abuse its discretion when it failed to exercise remedial flexibility by reducing the value of the monetary award in light of the 83% reduction of alimony?
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> 6. Did the trial court err by considering the liquidity of [Husband's] assets even though the Court of Special Appeals specifically ruled that he failed to raise the issue in any respect at the original trial and had not preserved the argument for appellate review?
>
> 7. Did the trial court abuse its discretion in refusing to modify its judgment even though it conceded making a mathematical error of over $500,000 in the calculations underlying that judgment?
>
> 8. Did the trial court err in failing to follow the Court of Special Appeals' direction when it failed to adjust the marital award despite instructions to decrease [Wife's] net worth by $80,000 to correct a previous error in valuation?

from the same facts and testimony while staying well within their discretion. Here, because of Judge Brobst's untimely death, two different judges exercised their discretion with respect to common facts within the life of this same case. We have no way of knowing, of course, whether or how Judge Brobst might have decided things differently on remand, and it's not our role (nor a particularly useful exercise) to speculate about what she would or wouldn't have done and measure the decisions before us against that prediction. Instead, we look now at whether the court abused its broad discretion in applying our earlier decision and revising the monetary award and alimony awards.

1. The monetary award.

Wife argues *first* that the trial court should not have considered the marital award before reviewing the alimony award, and that it erred when it declined to adjust the marital award even though it ultimately decreased her net worth by $80,000. She doesn't cite any authority for the proposition that the alimony award had to be considered first, but argues that the trial court substituted a slightly increased marital award for a significantly decreased monthly alimony payment, citing our decision in *Turner v. Turner*, 147 Md. App. 350 (2002). We disagree with the premise, *i.e.*, that the trial court in fact adjusted the monetary award "and then used those adjustments to drastically lower alimony." To the contrary, the court's opinion explained its independent grounds for making the marital award: "the monetary award should have been paid long ago and pursuant to Judge Brobst's order, this Court believes the award must be increased to some extent. This is to afford Wife the value, more or less, of Judge Brobst's award."

Wife's contention that this case and *Turner* are "virtually identical" misses the mark. *Turner* involved a couple who had pooled "their enterprising spirit with creativity and determination" to build a family business. *Id.* at 361. During the divorce, the wife, "a minority shareholder of [the company], sought equal ownership and control." *Id.* She "complain[ed] of the inequity in being forced out of [the company], a business that she worked hard to develop, and of having to 'start all over,' with the attendant difficulty of finding suitable employment, while [the husband was] allowed to 'reap the rewards' of their joint effort." *Id.* at 386. We found it significant that, as co-owners, the husband would be earning the excess wages generated by the company that were once paid to the wife, minus the amount paid to a salaried employee performing what used to be the wife's duties. *Id.* at 392. The couple's joint contributions supported our conclusion that the circuit court's findings were not supported by the evidence, and that the court had abused its discretion in reducing the alimony award. Nothing about *Turner*, though, suggests that the circuit court was required to consider alimony before deciding how to divide the marital property. Moreover, the implication of this argument—that the court would have been compelled to leave the alimony award alone had it decided that question first—finds no support in the case law or the court's analysis.

Second, Wife claims that the trial court should have reduced Husband's portion of the marital property because it had substantially reduced the alimony award. But again, our opinion in *Pisano I* vested the trial judge with broad discretion; we did not direct the trial court to balance any decision to reduce alimony with a concomitant increase in the

monetary award, nor did we suggest that the trial court was required to consider only the evidence at the time of Judge Brobst's award. We used the term "remedial flexibility" open-endedly, to recognize the trial court's ability and authority to avoid harsh and unfair results under complicated circumstances. The concept of "remedial flexibility" has been commonly applied to principles of equity, and when a court "sits as a court of equity, [it] possess[es] the remedial flexibility of a chancellor in shaping [its] decree so as to do complete equity between the parties." *Bricks Unlimited, Inc., v. Agee*, 672 F.2d 1255, 1261 (5th Cir. 1982). *See also Humble Oil & Refining Co. v. Copeland*, 398 F.2d 364, 368 (4th Cir. 1968). This flexibility can cut in either direction, and we see no abuse of discretion in the trial court's decision to modify the marital award after considering the evidence (some post-First Order, some already considered by Judge Brobst) presented in the two sets of evidentiary hearings.

Third, Wife misunderstands the effect of our directive regarding the $80,000 lien on the home. We did not direct the circuit court to alter the *marital award* because of this oversight, but simply to "adjust the value of the marital home from $1,350,000 to $1,269,515." The court specifically accounted for this change in the March 11 Order when it reduced the marital property "titled to Wife at the time of divorce . . . from $1,626,332 to $1,545,847." The court went on to explain, though, that the reduction was not a substantial one "given the value of the property interests in this case," and that the court "[did] not believe that any adjustment or change in the monetary award [was] appropriate

or warranted" based solely on that reduction. In that way, the court considered the issue in a manner consistent with our direction.

2. The alimony award.

Wife argues *first* that the trial court abused its discretion when it reduced monthly alimony from $12,000 to $2,000 after stating that it would have decided the case the same way that the circuit court did the first time around. She argues *second* that the trial court abused its discretion and failed "to exercise remedial flexibility by reducing the . . . monetary award in light of the 83% reduction in alimony."[6]

We agree with Wife that the case was *not* remanded for the trial court to conduct a new trial on all issues. But it was impossible both legally and practically for the court to render the identical decision as before, given the changes in circumstances to Husband's

[6] Wife also argues that the court erred by "failing to make findings of fact with respect to [Husband's] alleged decline in income." We disagree. The circuit court reviewed the changes in Husband's income due to tax liability and the elimination of his severance package. The circuit court also heard evidence on Husband's income since leaving the family businesses to start his own. And notably, the trial court ultimately agreed that it was off by a substantial amount when determining the value of payments due to Husband on promissory notes; but as we discuss below in Part II.A.3., the court ultimately was within its discretion both when it made findings about Husband's income and when it chose not to alter its disposition based on that error.

Again, it is not our role to question these well-reasoned conclusions, which the trial court supported with citations to both the evidence and expert testimony. We will not reverse "a ruling reviewed under an abuse of discretion standard … simply because the appellate court would not have made the same ruling." *North v. North*, 102 Md. App. 1, 14 (1994). We reverse only if the decision was "violative of fact and logic and against the logic and effect of facts and inferences before the court," *id.* (internal quotations omitted), and these decisions do not meet this difficult standard.

income, and his (in)ability to pay, that drove the change in the monetary award and in part justified the reduction in alimony. And the court said as much. In reality, the alimony award changed both because of an irreconcilable discrepancy (Judge Brobst's inconsistently stating that Husband was getting 65% of the marital property at one point, when in fact he was getting 38% of the marital property)[7], and because of what we and Judge Martin saw as an arbitrary end point to alimony when Wife reached sixty-two years of age.[8] So whatever Judge Martin believed about the legal correctness of Judge Brobst's opinion at the time she rendered it, he acted well within his discretion to take evidence about changes in financial circumstances, and he never suggested that Judge Brobst's decisions would have been correct at the time he rendered *his* opinion:

> Having said the above, . . . this Court and the parties do not and cannot operate in a vacuum. The evidence before Judge Brobst was several years ago and this Court is asked on remand to determine present and future alimony. That is why this Court

[7] After considering the eleven factors in FL § 8-205(b), Judge Brobst concluded that Wife was entitled to 35% of the marital property and Husband was entitled to 65%. The relevant factors included the parties' ages (both were 48 years old at the time of the original trial), that Wife was an equal contributor to the marriage although Husband provided the sole financial support, Wife's limited income potential, Husband's sole responsibility for the dissolution of the marriage, and the length of the marriage (22 years). Although there was some controversy over Judge Brobst's math, Judge Martin kept her 65/35 split, noting that "[g]iven the opinion of the Court of Special Appeals, there is no suggestion that Judge Brobst inappropriately considered and/or analyzed [the] Family Law § 8-205(b) factors."

[8] Interestingly, although we didn't point it out in *Pisano I* and Judge Martin didn't on remand either, there may have been a simple reason for Judge Brobst to end alimony at this point: it marked the time at which the funds from Husband's retirement accounts would be available to Wife, thereby replacing any alimony with other income. But we cannot, and need not, engraft that reasoning onto Judge Brobst's opinion or our prior one now.

> required evidence of the parties' current income, expenses, assets and liabilities while also acutely aware of this Court's analysis of the monetary award factors and the grant thereof."

The Court appropriately considered the fact that Wife's expenses hovered in the range of $9,500 a month (expenses that, he found, would "support the Wife in a still high fashion"), and concluded that Husband was not required to cover the shortfall left when considering her income (roughly $2,150 per month) in light of his then-current financial circumstances. But it also lessened the effect of reducing the amount of alimony to $2,000 a month by changing its nature from definite, which Judge Brobst had seemingly arbitrarily ended at age sixty-two, to indefinite.[9] In our first go-round, we remarked that the trial judge could properly consider on remand whether Wife was entitled to indefinite alimony. We find no abuse of the court's broad discretion in the court's decision, in light of our prior decision and the facts before it, to trade a lower amount of indefinite alimony for the higher monthly figure that terminated.

[9] Judge Martin considered the monetary award and alimony as interrelated, and decided the alimony award after concluding his analysis on the monetary award—as he noted, "this Court is mindful of the alimony issue and its interdependence with the monetary award." He found that the "shortfall" of Wife's monthly expenses (the amount she would be unable to cover after reducing for her income) was $7,400/month, but questioned whether Husband should pay all of that shortfall. Given the amount Husband would be paying to Wife through the monetary award, Judge Martin found it appropriate to award Wife $2,000 in indefinite alimony that would address those monthly expenses. We are not convinced that Judge Martin erred by either (1) considering the monetary award prior to alimony, or (2) considering the monthly payouts of $11,555.30 on a $1,490,000 monetary award when totaling the overall shortfall of Wife's monthly expenses. Furthermore, she cited no cases to support that contention: "[i]t is not our function to seek out the law in support of a party's appellate contentions." *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (citing *von Lusch v. State*, 31 Md. App. 271, 282 (1976)).

In his cross-appeal, Husband argues that the trial court, although correct in the way it fashioned alimony, actually erred in awarding any alimony at all. He contends that the court effectively reserved the right for Wife to receive alimony—a conditional right that is not appropriate based on "some vague future expectation" that circumstances might change and reveal a need for alimony. *Turisi v. Sanzaro*, 308 Md. 515, 528-29 (1987). We disagree that the court awarded $2,000 a month as a reservation; rather, it declined to award *more* than $2,000 a month because a higher figure that anticipated a growth in Husband's earnings and lifestyle would not have been consistent with the real-time facts. The court ordered alimony that, it found, the circumstances supported and allowed for the possibility a change in Husband's circumstances might permit Wife to seek a *higher* amount: "[s]hould Wife's fears of Husband's return to the bosom of his family and concurrent substantial increase in his income take place, this can obviously be brought back before the Court upon a request for modification." The flip side was also true: "[i]f Husband suffers substantial reduction in his financial circumstances in the future, he, too, can seek relief."

The cases to which Husband points involve entirely different circumstances that afford us no basis on which to view this alimony award as a reservation. So in *Turisi*, the Court of Appeals reaffirmed the principle that the trial court could reserve jurisdiction to award alimony at a later time where facts potentially demonstrated that "the claimant, in the reasonably foreseeable future, will be in circumstances that would justify an award of rehabilitative or indefinite alimony, [in which case] it would not be an abuse of discretion to reserve." *Id*. at 530. There, the Court remanded for the trial court to determine whether

it could reserve alimony where the wife had expressly waived alimony. And in *Richards v. Richards*, 166 Md. App. 263, 283 (2005), we permitted reservation of alimony where the sixty-year-old potential recipient was physically disabled, unemployable, and suffered from a history of emotional illness—facts that demonstrated more than "some vague future circumstance" and justified reservation of alimony. *Id.* at 283; *see also Collins v. Collins*, 144 Md. App. 395, 431-32 (2002) (affirming reservation of alimony where recipient was awaiting ruling on an application for disability pay that would obviously affect his income).

We also disagree with Husband that *Durkee v. Durkee*, 144 Md. App. 161 (2002), resembles this case. There, the trial court did not award alimony to the wife because the husband had no meaningful income while he tried to build his own business, and the court deemed his efforts to make money "hardly serious." *Id.* at 178. The court reserved on alimony in case husband returned to a private sector job, and the Court of Appeals reversed, finding no justification for reservation and instead requiring that the trial court consider a potential present award of alimony. *Id.* at 180. That is exactly what the trial court did here—it awarded alimony, but recognized the possibility that a change in circumstances on either side might justify a modification at some later date.

3. Other considerations.

a. Husband's income.

The calculation of Husband's income is a factual question that we review for clear error. "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Solomon v. Solomon*, 383 Md. 176, 202

(2004) (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)). We find nothing in the transcripts or the record to suggest that the court failed to base its conclusions on competent evidence.

In the course of considering the alimony award, Judge Martin heard evidence related to Husband's income and estimated monthly expenses. Although Judge Brobst issued her order when Husband earned much larger gross annual incomes, and "[t]he standard of living was by any measure very, very high," Judge Martin concluded that Husband was earning less per year at the time of the hearing in January 2014. This obviously factored into his decision to reduce Wife's alimony award.

Judge Martin based his conclusion on competent evidence. When Husband's income was considered in the First Order and in *Pisano I*, his annual income ranged from $573,000 to more than $1.4 million in 2010. His income fell sharply between 2010, the last year considered by Judge Brobst, and 2011 and 2012, years considered by Judge Martin on remand: he made $501,707 in 2011 and $407,204 in 2012.[10] And the analysis had to stop

[10] Judge Martin only mentioned that based on "the testimony of Mr. Duca[, Husband's witness,] and noting Husband's actual adjusted gross income at slightly over $500,000 for 2011, … it is clear to this Court, Husband's income is down significantly from 2011." Although he did not cite a specific piece of evidence in the written opinion for the finding that Husband would continue to earn less annual income each year, Plaintiff's Exhibits 6 and 9 provide a basis for these conclusions. Plaintiff Exhibit 6 is Husband's 2011 tax return, which evidences that his adjusted gross income for the year was $501,707. Plaintiff's Exhibit 9, Husband's 2012 tax return, lists Husband's adjusted gross income at $407,204. Given that 2011 already was nearly less than $900,000 below 2010's adjusted gross income, the record supported Judge Martin's conclusions that (1) Husband's annual income likely will continue to drop and (2) it is unlikely Husband's annual income will recover to its 2010 levels.

somewhere, and it would not be reasonable to require the court to watch indefinitely to see if Husband's salary will reach its former glory or continue to decline. If Husband's circumstances change drastically, the court added the appropriate caveat that this case "can obviously be brought back before the Court upon a request for modification."

b. Liquidity of assets.

As "the method of payment of a monetary award is committed to the sound discretion of the trial court," it is appropriate for the trial judge to consider all evidence necessary to reach a fair and equitable result. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 242 (2000) (citations omitted). "[T]he 'terms of the payment must be fair and equitable,' and the court should consider the method of payment in light of the payor's ability to pay." *Id.* at 243 (quoting *Caccamise v. Caccamise*, 130 Md. App. 505, 523 (2000)). And in order to consider fully the party's ability to pay, it is "[i]n the trial judge's discretion, upon remand, [to] allow additional evidence to be introduced concerning [the party's] ability to pay whatever monetary award." *Lee v. Andochick*, 182 Md. App. 268, 291 (2008).

Wife argues correctly, and cites numerous cases, that the "law of the case" doctrine forbade Judge Martin from considering the illiquidity of Husband's assets on remand. Her argument presupposes, however, that we "resolved the issue of the liquidity of [Husband's] assets" in the first place. We didn't. Judge Brobst did enter judgment on the original marital award, but the liquidity of Husband's assets and his ability to pay the marital award in a lump sum was not litigated or decided in the initial trial, nor addressed in *Pisano I*.

We cannot say that the circuit court abused its discretion by taking evidence after remand regarding Husband's ability to pay the marital award that the court was revisiting in any event, nor in deciding from the record before it that Husband could pay the marital award over time.

c. Mathematical error.

Judge Martin made an arithmetic mistake that, Wife contends, undervalued Husband's unpaid promissory note payments by $541,157.43. In his June 8, 2014 Order, Judge Martin noted and admitted to the error, but specifically (and intentionally) declined to alter the outcome. We see no abuse of discretion that justifies overturning Judge Martin's decision not to change or modify the monetary award in light of that error.

Judge Martin noted correctly that trial courts have, and we have recognized, broad discretion to reach "fair and equitable" result in divorce cases. And "equitable" does not necessarily mean "equal." *See Alston*, 331 Md. at 508 (Maryland "statute requires 'equitable' division of marital property, not 'equal' division," and the Legislature has "specifically rejected the nation that marital property should presumptively be divided equally."). Moreover, "'a trial judge's failure to state each and every consideration or factor' does not, without demonstration of some improper consideration, 'constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.'" *Flanagan v. Flanagan*, 181 Md. App. 492, 533 (2008) (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003)). The trial judge is in a better position than we are, sitting as appellate

judges, to gauge the merits of an individual case and determine what is "equitable" in that circumstance. Accordingly, we "will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." *Tracey v. Tracey*, 328 Md. 380, 385 (1992).

The court was aware of the math error, considered it in context with the altered monetary award and alimony, and cited the "financial circumstances in which the parties find themselves" as the reason for denying the request. In the overall context of this complicated divorce case, the court's explanation demonstrates that it fully considered the consequence of the error (along with any resulting disparities), and applied judgment to deny modification. The court specifically noted the 15.5% increase in Wife's monetary award, totaling an extra $200,000, as well as the "awful situation": the "agony," the "legal fees incurred, the time which elapsed, and the anxiety," that left him disinclined to change the award. Whether or not we, or some other judge, might have decided the issue differently, we decline to isolate this decision from the broader and intricate context of the case.

B. Husband's Appeal.

We review an award of attorney's fees for an abuse of discretion, "determined by evaluating the judge's application of statutory criteria as well as consideration of the facts of the particular case." *Petrini*, 336 Md. at 468; *Doser v. Doser*, 106 Md. App. 329, 359 (1995). The decision to award fees lies entirely within the discretion of the trial judge, and we evaluate only whether the trial judge appropriately applied the statutory criteria to the facts of a specific case. *Petrini*, 336 Md. at 468. The burden is on the movant to prove that an award of attorney's fees is necessary and reasonable: "[a] party seeking reimbursement of fees bears the burden to present evidence concerning their reasonableness." *Sczudlo v. Berry*, 129 Md. App. 529, 550 (1998) (citing *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 703 (1997)); *see also Brown v. Brown*, 195 Md. App. 72, 123 (2010) (citing *Sczudlo* and finding that the movant must present evidence to show that attorney's fees were fair and reasonable).

Under FL § 11-110(a)(3), "reasonable and necessary expense" can include both counsel fees and costs. The court must consider "the financial resources and financial needs of both parties" as well as "whether there was a substantial justification for prosecuting or defending the proceeding." FL § 11-110(c). And the court must find that "there was an absence of substantial justification" for one of the parties, "absent a finding … of good cause to the contrary," before awarding fees to the other party in the amount of "the reasonable and necessary expense of prosecuting or defending the proceeding." FL § 11-110(d).

Again, we find that the circuit court considered fully the necessity and the reasonableness of the attorney's fee award, and we see no abuse of discretion in the decisions to award fees at all and to award less than Wife requested. In applying not only FL § 11-110, but also FL § 8-214 and FL § 12-103,[11] the court appropriately considered the parties' "financial status, needs, and resources," and "whether there was substantial justification for prosecuting or defending the proceeding," before rendering his decision. Based on the evidence submitted and the expert testimony proffered, the court determined that Wife's counsel fees were reasonable, the "work was reasonably necessary," and her counsel was substantially justified in pursuing recovery for unpaid educational expenses, alimony, and child support. Weighed against Husband's success on remand and the justification of his counsel's efforts, and the parties' respective financial status, he concluded that some fees were reasonable and necessary, but that Husband should not be required to bear the burden of the entirety of Wife's counsel costs.[12]

Judge Martin relied partially on his own experiences to formulate his opinion, and we have held that trial judges are "qualified to opine as to the reasonableness of attorney's

[11] Although we previously mentioned only FL § 11-110, any of these three statutes could be said to control the award of attorney's fees in this case, considering the variety of issues at hand. FL § 11-110 specifically applies to alimony cases, whereas FL § 8-214 governs monetary award cases, FL § 12-103 relates to child support cases, and FL § 7-107 (not mentioned by Judge Martin, but applicable nonetheless) applies to divorce cases. The provisions are sufficiently similar and require the same general considerations, so we need not decide whether a particular one controls.

[12] Judge Martin found it appropriate to award Wife $100,000 out of the $287,000 she sought, slightly less than 35% of the amount she requested.

fees based on [their] familiarity with the time and effort of counsel." *Sczudlo*, 129 Md. App. at 552 n.3 (1999); *see also Broseus v. Broseus*, 82 Md. App. 183 (1990). He cited his "some 30 years" of experience as a trial lawyer as well as his experience as a trial judge, "nearly 9 years," to conclude that the hourly fees charged by Wife's counsel were reasonable in light of counsel's expertise and experience, and the amount of hours billed was necessary in light of the substantial effort Wife's counsel expended pursuing Husband for unpaid alimony and other sums. And he considered all three mandatory statutory factors. He noted (1) the substantial justification of the parties' efforts, (2) the sum of assets held by the parties, and (3) the current financial circumstances and income of the parties. We find no abuse of discretion in the court's decision to award Wife a portion of the fees she requested.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IN CASE NO. 853, SEPTEMBER TERM 2014, AFFIRMED. COSTS TO BE PAID BY APPELLANT KATHERINE F. PISANO.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IN CASE NO. 2019, SEPTEMBER TERM 2014, AFFIRMED. COSTS TO BE PAID BY APPELLANT CHRISTOPHER W. PISANO.