

Circuit Court for Anne Arundel County
Case No.: C-02-FM-20-000284

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 932

September Term, 2022

MARGARET MESSINA

v.

JAMES MESSINA

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 17, 2024

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

The Circuit Court for Anne Arundel County entered a judgment granting James Messina (“Husband”) and Margaret Messina (“Wife”) an absolute divorce after 23 years of marriage. In the judgment, the court granted to Wife, among other things, a monetary award, a monthly alimony award for three years, and attorney’s fees. Both parties appeal the judgment. Wife raises the following questions,¹ which we have rephrased for clarity:

1. Did the circuit court err in its monetary award because it failed to: A) determine whether certain items were marital or non-marital property, the value of those items, and the method of payment of the award, and/or B) include Husband’s unvested and/or unexercised, restricted stock grants and deferred compensation awards?
2. Did the circuit court err in its alimony award because it failed to: A) include Husband’s deferred compensation and unvested, restricted

¹ In her appellate brief, Wife phrases her questions as follows:

- I. Did the trial court err by not following the three-step process required in granting a monetary award, by failing to determine which property was marital or nonmarital property, failing to value all marital property, and failing to determine the method of payment of the monetary award?
- II. Did the trial court abuse its discretion by failing to transfer to Wife an ownership interest in Husband’s unexercised restricted stock options and unvested deferred compensation accounts on an if, as and when basis, and/or by failing to consider the value of those assets in its determination of the monetary award, given that Maryland law is clear that such assets are part of the marital estate?
- III. Did the trial court err and/or abuse its discretion by failing to include Husband’s deferred compensation and unvested stock grants from both its monetary award and alimony determinations?
- IV. Did the trial court abuse its discretion in determining the period for its alimony award and in denying Wife indefinite alimony?
- V. Did the trial court abuse its discretion in its attorney’s fees award to Wife?

stock grants as income to Husband and/or B) grant Wife indefinite alimony?

3. Did the circuit court err in awarding Wife \$7,500 in attorney’s fees?

Husband raises one question on appeal,² which we have rephrased for clarity: Did the circuit court abuse its discretion when it included the equity of the parties’ marital home in calculating the monetary award when it orally stated it would not?

For the following reasons, we shall affirm the circuit court’s judgment of divorce but otherwise vacate the court’s judgment regarding its monetary, alimony, and attorney’s fees awards and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Wife and Husband were married on April 5, 1997. The parties’ only child was born to them on July 12, 2004.

During the parties’ marriage but prior to the birth of their child, Wife worked full-time in the fields of graphic design and marketing and earned an annual salary of around \$50,000. When Wife became pregnant, the parties agreed that Wife would stop working, stay at home with their child, and be primarily responsible for raising their daughter, which Wife did. Wife did not begin working again until the Fall of 2018, when the parties’ daughter started high school, and Wife began working as a librarian assistant at Bates Middle School.

² In his appellate brief, Husband phrases his one question as follows: “Did the trial court err or abuse its discretion when it included the marital home value in the calculation of the monetary award after stating that it would be excluded from the monetary award?”

Husband was the primary breadwinner for the family. He started a fishing supply business shortly after the parties married that he continued until 2010. About two years after they were married, he began working full-time for Exponent, Inc., a publicly traded engineering and scientific consulting company, in Washington D.C. He rose through the ranks to become the Principal Scientist Center Director for the company. Although the parties lived “modestly” at the beginning of their marriage, as Husband’s income increased, their standard of living increased. Around 2012, the couple bought a five-bedroom, 3,500 square foot house in Annapolis.

In 2003, about six years after they were married, Husband was gifted a 1/4 interest in a less than an acre lot in Wilcox, Pennsylvania. The parties drew a home equity line of credit in the amount of \$84,300, on their marital home, to purchase a mobile home for the property. Around 2016, the parties bought a 9.3-acre unimproved lot next to the property for \$20,000 (together with the inherited lot, the “Pennsylvania Property”).

On November 10, 2018, after 21 years of marriage, the parties separated. The parties had engaged the services of a marriage counselor a year earlier to no avail. Shortly after moving out of the marital home, Husband bought a house in Annapolis. On January 24, 2020, Husband filed a complaint for absolute divorce in the Circuit Court for Anne Arundel County, and Wife subsequently filed an answer and a counter complaint for absolute divorce.³

³ During the proceedings, the court appointed a children’s attorney, which was expanded into the role of best interest attorney.

Following a pendente lite hearing in September of 2020, Wife was granted use and possession of the marital home, and Husband was ordered to pay the mortgage, utilities, and other bills associated with the upkeep of the home. Husband was also ordered to pay Wife \$30,000 in attorney’s fees and \$1,000 a month in undifferentiated alimony and child support.

A three-day trial was held in June of 2021 on the issues of child support, a determination and distribution of the parties’ property, an alimony award, and attorney’s fees.⁴ At the time of trial, Husband was 52 years old, and Wife was 50 years old. Nine witnesses testified at trial, including, among others: Husband, Wife, and the parties’ experts on assessing Husband’s income and Wife’s post-divorce earning capacity.

In addition to significant disagreements about the parties’ incomes and future incomes, the parties disagreed about the status of their property, whether it was marital or non-marital, and the value of their property. The parties admitted into evidence their Joint Statement of Marital Property pursuant to Md. Rule 9-207 (the “9-207 Statement”). Of the 53 items listed, the parties agreed that 31 items were marital property and disagreed as to 19 items, and they disagreed as to the value of many of the items listed. At the conclusion of trial, the parties submitted memoranda of proposed findings of fact and conclusions of

⁴ Prior to trial, the parties entered into a consent order regarding custody and visitation of their child, who at the time of trial was 17 years old and a rising Senior in high school. Pursuant to the consent order, the parties agreed to joint legal and shared physical custody of child and a visitation schedule. The order also provided that Wife shall have use and possession of the marital home through August 2022, when child leaves for college. The parties reserved for trial the issues of payment of the mortgage and the sale and value of the marital home.

law. Husband proposed that Wife receive \$1,738 a month in child support; \$2,500 a month in alimony for three years; a monetary award of \$1,250,931; and no attorney’s fees. Wife proposed that she receive \$5,155 per month in child support; \$7,000 a month in indefinite alimony; a monetary award of \$488,980, plus a portion of Husband’s unvested stock grants and deferred compensation awards on an “if, as, and when” basis; and \$19,651 in attorney’s fees.

On August 10, 2021, the circuit court issued its oral opinion from the bench, stating several times that this was “not a complicated case.” The court granted the parties an absolute divorce based on a one-year separation. The court directed that the marital home be sold after the use and possession period, with the net proceeds to be divided equally between the parties. After briefly considering the parties’ Pennsylvania property and stating that it would not consider Husband’s “unvested property,” the court awarded to Wife: 1) \$2,500 a month in child support; 2) \$1,458,676 as a monetary award; 3) \$4,000 a month for three years in rehabilitative alimony; and 4) \$7,500 in attorney’s fees. The court added that Husband could decide how to pay the monetary award, which was due within 90 days of the court’s order.

On March 25, 2022, the circuit court signed a Judgment of Absolute Divorce largely reflecting its oral ruling from the bench.⁵ The parties filed post-divorce motions, which

⁵ The main difference was that the court in its oral ruling ordered *Husband* to pay Wife \$2,500 a month in child support, but in its written order the court ordered *Wife* to pay Husband this amount until the child reaches 19 years of age. The court denied Wife’s post-judgment motion to correct what she considered was a typographical error. Wife does not raise or contest on appeal the circuit court’s child support award.

the court denied following a hearing. Both Wife and Husband timely noted their appeals. We shall provide additional facts below to address the questions raised.

DISCUSSION

Standard of Review

When reviewing a circuit court’s determination regarding a monetary award or alimony, we review on appeal the circuit court’s factual findings for clear error and the ultimate award for an abuse of discretion. *See Richards v. Richards*, 166 Md. App. 263, 271-72 (2005) (standard of review for monetary awards); *Malin v. Mininberg*, 153 Md. App. 358, 414-15 (2003) (standard of review for alimony awards). We review legal questions without deference. *Elderkin v. Carroll*, 403 Md. 343, 353 (2008). These standards of review also apply to an award for attorney’s fees. *Henriquez v. Henriquez*, 185 Md. App. 465, 475-76 (2009), *aff’d*, 413 Md. 287 (2010).

In reviewing factual findings, we “give due regard to the opportunity of the [circuit] court to judge the credibility of the witnesses.” Md. Rule 8-131(c). We decide whether the circuit court’s factual findings are supported by substantial evidence in the record. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). “When the [circuit] court’s findings are supported by substantial evidence, the findings are not clearly erroneous.” *Id.* A circuit court abuses its discretion when a “ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.” *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted). *See also North v. North*, 102 Md. App. 1, 14 (1994) (stating that a decision is an abuse of

discretion when it is “well removed from any center mark imagined by the reviewing court”). What constitutes the proper use of discretion necessarily turns “on the particular facts of the case [and] the context in which the discretion [i]s exercised.” *King v. State*, 407 Md. 682, 696 (2009) (quotation marks and citation omitted).

I. Monetary award

Wife argues on appeal that the circuit court erred in its monetary award for two reasons. First, the court failed to follow the three-step process for monetary awards, specifically: determining what was marital and non-marital property, the value of the property, and the method of payment of the monetary award. Second, Wife argues that the circuit court erred when it failed to include in the monetary award an ownership interest in Husband’s unvested and/or unexercised, restricted stock grants and deferred compensation awards. Husband responds that, contrary to Wife’s argument, the circuit court properly determined what property was marital and non-marital, valued all the property, and properly allowed him to use any method to pay Wife, so long as he did so within 90 days of the order. Husband further responds that, at Wife’s request, the court considered his stock awards as income, not as marital property.⁶

A. Law on monetary awards

Maryland’s Marital Property Act authorizes a circuit court to enter a monetary award, which is a payment from one spouse to another. *See* Md. Code Ann., Family Law

⁶ Husband noticeably does not differentiate between the vested and unvested portions of his stock grants, nor does he address Wife’s argument as to his unvested deferred compensation accounts.

Article (“FL”) §§ 8-201–214. In granting a monetary award, the court is permitted “to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage,” if strictly divided according to the statute. *Abdullahi v. Zanini*, 241 Md. App. 372, 406-07 (2019) (quotation marks and citations omitted). This reflects the legislation’s purpose “to achieve equity between the [parties] where one spouse has a significantly higher percentage of the marital assets titled [in] his name.” *Hart v. Hart*, 169 Md. App. 151, 160 (2006) (quotation marks and citation omitted). The party asserting a marital property interest in specific property is required to produce evidence regarding that property and the value of that property. *Murray v. Murray*, 190 Md. App. 553, 570-71 (2010) (citations omitted).

When determining whether to grant a monetary award, our statute requires a circuit court to engage in a three-step process. *See* FL §§ 8-202–205. First, the court “shall” determine whether property is marital or non-marital. FL § 8-203(a). Second, the court “shall” determine the value of all marital property, except the court “need not determine the value of a pension, retirement, profit sharing, or deferred compensation plan” but may determine those benefits on an “if, as, and when’ basis[.]” FL § 8-204. These first two steps are “mandatory” and cannot be skipped. *Campolattaro v. Campolattaro*, 66 Md. App. 68, 78 (1986). *See also Randolph v. Randolph*, 67 Md. App. 577, 585 (1986) (noting that the characterization of property as marital or non-marital “must appear in the record”). Third, the court “shall” determine the amount and method of payment of a monetary award, specifically determining whether to transfer ownership of an interest in certain property from one party to the other, grant a monetary award, or both. FL § 8-205(a)–(b). In

determining a fair and equitable award and the method of payment or the terms of a transfer of ownership of an interest, the court circuit “shall” consider the 11 statutory factors set forth in FL § 8-205(b). *See Otley v. Otley*, 147 Md. App. 540, 547 (2002) (stating that in the third step, the court may transfer ownership interests, grant a monetary award, or both, and in determining the amount and method of payment of an award, the court shall consider the factors in FL § 8-205(b)).

B. Trial facts on monetary award

In the parties’ joint 9-207 Statement, the parties set forth their understanding as to the marital or non-marital nature of their property and assigned values to the property. As stated above, of the 53 items listed, the parties agreed that 31 items were marital property, and disagreed as to 19 items, and they disagreed on the value of many of the items listed.

At trial, the parties elicited evidence on every one of the items listed in their 9-207 Statement. Specifically, as reflected in their joint 9-207 Statement, Husband argued at trial that the vested portion of his restricted stock awards was marital property and the unvested portion was non-marital property, while Wife argued that both were marital because they were acquired during their marriage. Likewise, as reflected in their 9-207 Statement, Husband argued at trial that the vested portion of his deferred compensation accounts was marital property and the unvested portion was non-marital, while Wife argued that both were marital property. Additionally, the parties introduced competing evidence and appraisals on the Pennsylvania Property, with Husband’s appraisal valuing the inherited lot at \$105,000, and the unimproved lot at \$20,000 and Wife’s appraisal valuing the

Pennsylvania Property at \$150,000, and the unimproved lot at \$24,000. The parties had drawn a \$84,300 home equity line of credit to purchase a mobile home for the property.

At the conclusion of the evidentiary portion of trial, the court began its monetary award analysis, stating many times that “this is not a complicated case.” The court stated:

Trial judges don’t really appreciate 902 -- 9-207 statements. It’s got to be listed; buckets of coins, shotguns and weapons less than Two or Three Hundred Dollars. . . I mean, it’s just time-consuming and wasteful. And I’m sure the attorneys probably had to delve into all of that, working this case up, getting it ready for trial. But as I look at the 9-207, Paragraphs 1 through 31, there’s really no dispute among the parties on basically any of it.

The court then spoke briefly on only three items of property. As to the marital home, the court ordered the proceeds of its sale to be divided equally between the parties, “so I’m factoring that out of that list.” As to the Pennsylvania Property, the court stated that because Wife had not provided “any value” for the Pennsylvania Property, the court was obligated to accept Husband’s value of \$20,000, which it would divide equally between the parties, with Husband paying the home equity loan from his 1/2 of the proceeds from the marital home. As to Husband’s deferred compensation accounts, the court rejected Wife’s request to include Husband’s unvested portions in its award but awarded half of the vested portion of one of Husband’s deferred compensation plans to Wife.

Then, without any further reference to the parties’ property and while advising the parties not to “rely on my mathematics as being totally accurate,” the circuit court made the following determinations:

- 1) Husband’s marital property in his name only totaled \$2,743,398, and his property totaled \$21,659;

- 2) Wife’s marital property in her name only totaled \$247,494, and her property totaled \$2,752; and
- 3) Joint marital property in both names, excluding marital home, totaled \$393,421.

The court added together the parties’ individual marital property values (\$2,743,398 and \$247,494) for a total marital property value of \$2,962,920.⁷ The court added to that number the parties’ joint marital property (\$393,421), for a grand total marital property value of \$3,356,341.

Without any further explanation, the court then determined the following awards to Wife: 1) child support of \$2,500 a month; 2) a monetary award of \$1,458,676 (half of the total marital property less Wife’s sole property); 3) rehabilitative alimony of \$4,000 a month for three years; and 4) attorney’s fees of \$7,500. As to how Husband would pay for the monetary award, the court stated: “I don’t care how he pays it. I don’t think I have to specify that. All I know is the total amount goes to her within 90 days[.]” The court then addressed each of the 11 factors in FL § 8-205(b). The court made the following findings: 1) as to the monetary and non-monetary contributions of each party to the well-being of the family, the court found that Husband contributed more financially and Wife made more non-monetary contributions; 2) as to the value of the parties’ property interests the court stated, “I think I just analyzed [the value of all the parties’ property interests] the best I could”; 3) as to the parties’ economic circumstances, the court stated, “Husband has many more assets in his name than the Wife prior to the marital award”; 4) as for the reasons for

⁷ Husband correctly notes that the circuit court’s calculations are in error. The grand total marital property value should be \$3,384,313, a difference of \$27,972.

the dissolution of the marriage, the court found that the parties simply grew apart; 5) the court noted that the parties lived together and were married for 21 years before separating and 23 1/2 years before divorcing; 6) the court noted that Husband was 52 years old and Wife was 50 years old; 7) the court noted that the parties had no mental or physical issues; 8) as to how and when the parties acquired their marital property, the court found that most of the parties' property was acquired with marital funds; 9) as to the marital home, the court stated that it will be sold at the conclusion of Wife's use and possession period; 10) as to consideration of any other award ordered, the court said it would consider Wife's alimony award; and 11) as to any other factor, the court stated there were no additional factors to consider in determining the monetary award.

The circuit court entered a written order several months later, largely reflecting its oral ruling from the bench. After addressing a few additional items of property,⁸ the court restated the award amounts⁹ and ordered Husband to pay Wife's monetary award within 90 days "in any fashion or manner he chooses (i.e. QDROs, transfers from brokerage accounts, cash, etc.)[".]"

⁸ Specifically, the court ordered Husband to retain his 2021 Chevy Silverado, his 1996 Seapro boat, and the personal property in Annapolis. Wife was to retain her 2019 Mini Cooper and the personal property in the marital home.

⁹ As stated above, the circuit court awards were the same as those it had ordered in its oral ruling from the bench, except the court ordered *Husband* to pay Wife \$2,500 a month in child support, but in its written order the court ordered *Wife* to pay Husband this amount.

C. Wife’s first argument: the circuit court erred in failing to follow the statutory three-step process in determining monetary awards

Wife argues that the circuit court was required to but failed to resolve whether the following items were marital or non-marital property: 1) Husband’s fishing equipment; 2) Husband’s Mossberg 12-gauge shotgun; 3) Husband’s Franchi 12-gauge gun; 4) Husband’s restricted stock awards; and 5) Husband’s deferred compensation accounts.¹⁰ Additionally, Wife argues that the circuit court was required to but failed to resolve the parties’ differing values as to the following items: 1) several items of personal property, including the personal property in the marital home and Husband’s house, Wife’s vase collection, and Husband’s fishing equipment; 2) Husband’s firearms, including his Mossberg and Charles Daly shotguns, Franchi gun, Smith & Wesson 40 caliber handgun, and additional unspecified firearms; 3) Husband’s house; 4) Husband’s restricted stock awards; and 5) Husband’s deferred compensation accounts. She also argues that the court incorrectly valued the Pennsylvania Property. Lastly, Wife argues that the circuit court failed to state how the monetary award was to be paid and wrongly allowed Husband to make that determination.

We agree with Wife that the circuit court’s failure to provide clarity in its monetary award constitutes reversible error. *See Paradiso v. Paradiso*, 88 Md. App. 343, 352 (1991) (vacating monetary award because the trial court failed to classify and value the parties’

¹⁰ Although Wife claims that the circuit court failed to resolve whether her TIAA IRA account was marital or non-marital property, both parties listed that item as Wife’s property in the agreed section of their 9-207 Statement and neither party argued to the contrary during trial.

“home furnishings”); *Holston v. Holston*, 58 Md. App. 308, 318-19 (1984) (concluding that the failure to include and value certain property as marital property constitutes error). Here, the circuit court failed to determine the marital or non-marital status of certain property and their values. By assigning “total values” to the parties’ marital and non-marital property, we also have no way of knowing which items comprised those totals and the value of those items. For example, although the parties agreed that the vested portions of Husband’s restricted stock grants *and* deferred compensation awards were marital property, we cannot tell whether the court included those in its monetary award. Moreover, contrary to the court’s finding, the parties entered competing values for the Pennsylvania Property in their 9-207 Statement and on their competing appraisals, which were introduced at trial.

Lastly, the court’s failure to determine how the award was to be paid and allowing Husband to make that decision constituted error. *See Scott v. Scott*, 103 Md. App. 500, 517 (1995) (vacating a monetary award, in part, because the circuit court was silent as to how the award was to be paid, and although a circuit court has discretion to determine the method of payment, the court must determine the method). That a court is presumed to know the law and apply it correctly, *see Bangs v. Bangs*, 59 Md. App. 350, 370 (1984) (stating that a judge “is not required to articulate every step in his thought processes[and] is presumed to know the law and to properly apply it”), does not excuse the court’s failure to engage in the required three-step process. Accordingly, we shall reverse the circuit court’s monetary award and remand for further proceedings consistent with this opinion.

D. Wife’s second argument: the circuit court erred in its monetary award when it refused to include Husband’s unvested, restricted stock grants and deferred compensation accounts

Wife argues that the circuit court abused its discretion by failing to consider Husband’s unvested, restricted stock grants and deferred compensation accounts in determining its monetary award, and in failing to transfer an ownership interest in those assets to her on an “if, as, and when basis.” Husband responds that, at Wife’s request, the circuit court considered the stock grants as income, not property.¹¹

Deferred compensation “generally refers to money which, by prior arrangement, is paid to the employee in tax years subsequent to that in which it is earned.” *Klingenberg v. Klingenberg*, 342 Md. 315, 328 (1996) (quoting Michael J. Canan, *Qualified Retirement and Other Employee Benefit Plans* § 1.6 (West 1994)). “[R]estricted stock option plans . . . are a form of employee compensation, providing to the employee the right to accept within a prescribed time period and under certain conditions the corporate employer’s irrevocable offer to sell its stock at the price quoted.” *Otley v. Otley*, 147 Md. App. 540, 549 (2002) (quoting *Green v. Green*, 64 Md. App. 122, 136 (1985)).

In Maryland, we have rejected the distinction between employee benefits that have vested and those that have not.

[T]he fact is that the concept of vesting, though embodied in the retirement plan document itself, really has little meaning from the standpoint of the ultimate decision which must be made under the marital property act. Our equitable distribution statute requires that property acquired during marriage be subject to equitable distribution upon divorce. There is no requirement of

¹¹ Again, Husband noticeably does not differentiate between the vested and unvested portions of his stock grants, nor does he address Wife’s argument as to his unvested deferred compensation accounts.

vesting. In the final analysis, one must determine whether a property right has been acquired during the marriage and whether equity warrants its inclusion in the marital estate in light of its limitations. If deemed includable, the court must mold its judgment to assure a fair allocation of that right.

Deering v. Deering, 292 Md. 115, 127 (1981) (cleaned up). *See also id.* at 123 (holding that a spouse’s pension accumulated during the marriage constitutes marital property whether vested or unvested, matured or unmatured, noting that “pension benefits have become an increasingly important part of an employee’s compensation package”); *Otley*, 147 Md. App. at 549-52 (holding that unvested and unexercised stock options were marital property subject to distribution because the option was acquired during the marriage, even though husband had to continue to work in the future for a certain period of time). FL § 8-204(b) provides a circuit court with the ability to distribute unvested assets on an “if, as, and when” basis.

In *Green*, 64 Md. App. at 131-32, a husband had a stock option plan that allowed him to purchase up to 20,000 shares of his employer’s stock, exercisable over five-year increments on each employment anniversary date, but only if husband met certain employment retention criteria. The trial court treated the stock to which husband had exercised his right to purchase as marital property and assigned a value. *Id.* at 132. As to the stocks where the option to exercise had not yet arrived, husband argued those stocks had not been acquired during the marriage and had no fair market value. *Id.* The circuit court agreed. *Id.* We reversed on appeal, stating that the restricted stock option plan was employee compensation. *Id.* at 136. *Cf.* Elizabeth Barker Brandt, *Valuation, Allocation, and Distribution of Retirement Plans at Divorce: Where are We?*, 35 Fam. L.Q. 469, 483

n.48 (Fall 2001) (stating that the majority of states include nonvested retirement benefits as marital property). In valuing the stocks, we suggested using the “if, as, and when” approach instead of a valuation approach as it “has proven to be a workable method for the allocation of unmatured pensions[.]”¹² *Green*, 64 Md. App. at 137-38.

Here, Husband received from his employer restricted stock and deferred compensation awards that the parties listed on their joint 9-207 Statement. The evidence presented at trial shows that Husband has received a stock option grant each year since 2016, and the award is divided in half between an employee bonus award and an employer matching award. The employee bonus award vests immediately, Husband testified it “is mine no matter where I am,” but Husband cannot exercise the option to sell the restricted stock for four years. The employer matching award vests after four years, during which

¹² We described the “if, as, and when” approach as follows:

That value may be determined by taking into consideration the market value of shares of . . . stock as of the time of that decree, and the cost to the appellee of exercising the options. The court may, then, pursuant to the third step of the process, determine a percentage by which the profits should be divided if, as and when the options are exercised. Under such an approach to the equitable allocation of this marital property, the appellee is under no compulsion to exercise his options. At the same time, however, the appellant’s equitable interest in the options, if exercised, is protected. We believe this approach fairly implements the process of adjusting the equities between the parties with respect to marital property as mandated by the [Marital Property] Act.

Green, 64 Md. App. at 138. To determine the marital portion of unvested stock options, we have suggested application of a coverture fraction, “time married divided by total years of employment credited toward retirement.” *Otley*, 147 Md. App. at 553.

time Husband must maintain employment with the company.¹³ Husband testified that he had never exercised the option to sell his restricted stock awards until the parties separated and he needed quick access to cash.

Husband also testified about his deferred compensation accounts: a PenCal Exponent Non-Qualified Deferred Compensation Plan (the “first deferred compensation account”) and a PenCal Special Award Plan (the “second deferred compensation account”), which began in 2020 and is the “new name” for his deferred compensation account. He testified that both accounts function the same: his company places funds into the account; the funds vest after four years, if he remains with the company; he can add outside money into the account at any time; and he can direct the investments in the account both before and after the vestment period, but he cannot withdraw money from the account until he retires or leaves the company.¹⁴ The company awarded Husband deferred compensation awards in 2012, 2013, 2015, 2018, and 2020.

The circuit court never addressed Husband’s restricted stock grants (vested or unvested, exercised or unexercised). Although Husband asserts repeatedly on appeal that

¹³ On the parties’ joint 9-207 Statement, Husband listed the value of his vested restricted stock at \$666,309, and the unvested portion at \$387,928. Wife listed the value of his vested, restricted stock at \$716,853, and the unvested portion at \$199,976, with \$2,087 held as fixed income. It is unclear why the parties’ values vary.

¹⁴ On the parties’ joint 9-207 Statement, Husband assigned values to the first deferred compensation account of \$35,960 as marital and \$154,964 as non-marital. Wife assigned the same values on the first compensation account, but called the \$35,960 vested and the \$154,964 unvested. The parties assigned a value of \$124,499 to the second deferred compensation account, with Husband using the term non-marital and Wife using the term unvested.

the circuit court, at Wife’s request, considered the stock awards as income, not property, we cannot tell from the record before us whether this is true or not. Although the court stated that it would not consider as marital property the unvested portion of Husband’s deferred compensation accounts, it is unclear whether the court knew that it could, and, while the court stated that it would include in its monetary award the vested portion of Husband’s deferred compensation accounts, it is unclear whether the court did so. Accordingly, we shall remand the case for further proceedings. As stated above, the circuit court must determine what portion of the restricted stock grants and deferred compensation awards are marital property; the value of the property; and, after reviewing the 11 factors of FL § 8-205(b), determine an equitable and fair monetary award and method of payment.

II. Alimony

Wife argues that the circuit court erred in its alimony determination in two ways. First, the court erred when it failed to include Husband’s deferred compensation and unvested, restricted stock grants as part of Husband’s income. Second, the circuit court erred in denying her indefinite alimony. Husband responds that the circuit court did consider his stock grants as income in its alimony award, as requested by Wife.¹⁵ Husband further responds the circuit court properly explained why it rejected Wife’s request for indefinite alimony and limited alimony to three years.

¹⁵ Again, Husband noticeably does not differentiate between the vested and unvested portions of his stock grants, nor does he address Wife’s argument as to his unvested deferred compensation accounts.

A. Law on alimony

FL § 11-106(a) vests the circuit court with the discretion to determine an amount of alimony and whether alimony is for a period of time or indefinite. Although authorized by statute, alimony awards are founded upon notions of equity, which “requires sensitivity to the merits of each individual case without the imposition of bright-line tests.” *Boemio v. Boemio*, 414 Md. 118, 141 (2010) (quotation marks and citation omitted). In determining an alimony award, whether rehabilitative or indefinite, a circuit court “shall” consider eleven statutory factors set out in FL § 11-106(b) to reach “a fair and equitable award[.]” FL § 11-106(b). No factor is determinative or mandated to be given special weight. *Whittington v. Whittington*, 172 Md. App. 317, 341 (2007).

With the adoption of the Maryland Alimony Act in 1980, the function of alimony awards changed from one of maintenance of the dependent spouse’s standard of living to rehabilitation of the dependent spouse. *Id.* at 335. *See also Boemio*, 414 Md. at 142 (Maryland’s statutory preference favors rehabilitative or fixed-term alimony rather than indefinite alimony for “the purpose of alimony is not to provide a lifetime pension” but to ease the transition of the parties from a joint married state to a single state of independence. (quotation marks and citation omitted)); *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 142 (1999) (“An alimony award should reflect the desirability of each spouse becoming self-supporting and the undesirability of alimony as a lifetime pension.”).

Notwithstanding the statutory scheme favoring fixed alimony, the statute provides that a circuit court “may” award indefinite alimony in one of two exceptional circumstances:

(1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or

(2) *even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.*

FL § 11-106(c) (emphasis added). These exceptions exist to “protect the spouse who is less financially secure from too harsh a life once single again.” *Whittington*, 172 Md. App. at 337 (quotation marks and citation omitted). To meet the unconscionable standard, we have stated that there must be a “gross inequity” in the parties’ post-divorce standards of living or the divorce creates a situation where one spouse’s standard of living compared to the other is “so inferior, qualitatively or quantitatively . . . as to be morally unacceptable and shocking to the court.” *Id.* at 339 (quotation marks and citation omitted).

B. Wife’s first argument: the circuit court erred in not including Husband’s deferred compensation and unvested, restricted stock grants as part of Husband’s income

The following facts were elicited at trial regarding Husband’s income. Husband has worked for Exponent, Inc., for 21 years. He had an average income on his W-2s between 2017 and 2020 of \$443,197.¹⁶ Husband’s accounting expert, Cheryl Gallina, testified that based on Husband’s tax returns and W-2s, Husband had a three-year average annual *cash* income of \$360,002. She did not include Husband’s restricted stock grants or deferred compensation awards in her averages. Wife’s accounting expert, Christopher Rosenthal, opined that Husband had a three-year annual income of \$511,987, which included

¹⁶ Husband’s W-2s between 2017 and 2020 showed incomes as follows: \$441,612; \$360,281; \$543,725, and \$427,169.

Husband’s employee bonus and employer’s matching vested, restricted stock award and Husband’s deferred compensation “payout” in 2019. Rosenthal opined that both Husband’s restricted stock grants that vest immediately every year and the restricted stock grant that he receives as a payout on the fourth year are additional sources of income to Husband because he pays tax on it, regardless of if he exercised his option to sell it. Rosenthal likewise opined that the portion of Husband’s deferred compensation payout every four years should also be treated as income. The court repeatedly disagreed, stating that the awards could not be considered both property and income.

At the conclusion of the evidentiary portion of the proceedings, the circuit court determined Husband’s income for purposes of alimony, stating:

I considered the base salary of the Husband; I considered prior W-2 forms, testimony of experts Husband, in 2021, [had] an income somewhere around Five Hundred and Nineteen Thousand. But after a consideration of all the evidence, I determine for the purposes -- and this is certainly not an exact science -- that his income for purposes that I have to consider it, is Four Hundred and Seventy-Five Thousand per year.

Other than stating that it considered Husband’s base salary, his W-2 forms, and the experts’ testimony, the court offered no further explanation for this finding. Moreover, the court’s arrived at number does not correspond to any number presented to the court.

In *Riley v. Riley*, 82 Md. App. 400, 403, *cert. denied*, 320 Md. 222 (1990), a husband and wife were granted a divorce, and husband was to pay wife a monetary award, which included a portion of his income, and term alimony. Sometime later and after he began receiving his pension, he moved to terminate the alimony award. *Id.* at 404. He argued that because wife had received an equitable share of his pension in the monetary award

determination, the court should not consider his pension in its alimony award. *Id.* at 405.

The court agreed and we reversed on appeal. Chief Judge Wilner, writing for this Court, stated:

Although there is an interrelationship between [alimony and a monetary award based on marital property] in the sense that, as to each, the court must consider the one in deciding upon the other, they have quite different purposes and focuses.

* * *

[A]limony is intended to provide periodic support to a financially dependent spouse following the divorce. . . . [T]he principal focus is really on the future[.]

* * *

A monetary award, on the other hand, is not intended as support, and it focuses not on the future but on the present and past. . . . The sole purpose of the [monetary] award is to assure that the disposition of that property upon the divorce will be equitable in terms of the overall contributions that each party made to the acquisition of the property and to the marriage and its breakup.

* * *

It is true, of course, that, in awarding and setting the terms of alimony, the court cannot properly consider as a resource of the payor spouse property or income that the spouse does not have. Thus, if the court removes an asset or source of income from the payor spouse through a monetary award (or otherwise), it cannot premise an alimony award on the assumption that that asset or source of income is still available to the payor. But we see no reason why it cannot base such an award on assets or sources of income that have *not* been taken from the payor and that do remain available. That does not constitute double dipping, as [husband] alleges. The New Jersey intermediate appellate court reached precisely this conclusion in a remarkably similar case. *See Innes v. Innes*, 542 A.2d 39, 41 ([N.J. Super. Ct. App. Div.] 1988):

“[I]t is not inconsistent for a dependent wife to receive the value of a portion of her husband’s pension as her share of the

marital partnership, and nevertheless look to later pension payments as evidence of her husband’s ability to contribute towards maintaining her at their former marital economic standard.”

Id. at 405-07 (footnote and some citations omitted). *Cf. Olski v. Olski*, 540 N.W.2d 412, 413 (Wis. 1995) (holding that income generated from pension benefits accruing after the marriage that were not treated as property at the time of divorce can be treated as income for purposes of spousal support); *Littleton v. Littleton*, 555 So. 2d 924, 926 (Fla. Dist. Ct. App. 1990) (holding that where pension benefits are not the present source of income for the party compelled to pay alimony, the court approved the consideration of pension benefits as a source of payment for alimony). *See also* J. Thomas Oldham, *Divorce Separation and the Division of Property* § 7.10 (2000) (stating that the majority of courts do not consider it improper to include pension income earned after divorce in a possible alimony award because such income would not have been included in the initial division of property).

Riley is directly on point. Contrary to the circuit court’s understanding, it could have included in its marital award the vested and unvested portions of Husband’s stock grants and deferred compensation awards *and* included their post-equitable distribution as part of Husband’s income in its alimony award determination.

C. Wife’s second argument: the circuit court erred in denying her indefinite alimony

The following evidence was elicited at trial as to Wife’s current and future income. Wife has a bachelor’s degree in journalism, and her highest income, as reflected on her social security statement, was in 2003 when she earned \$50,454. Since the Fall of 2018,

Wife has worked as a librarian assistant at Bates Middle School. At the time of trial, she was earning a taxable income of \$21,443 a year. Wife testified that she would like to work in her former field of editing or as an administrative assistant but was concerned about achieving employment because of her age and she has been out of the work force for many years.

Husband's vocational rehabilitation expert testified that Wife was currently underemployed and could immediately earn an annual salary as an editor of at least \$60,000. Wife's vocational rehabilitation expert agreed that Wife was currently underemployed and opined that it could take a six-month job search, but Wife could earn an annual salary of between \$35,000 and \$38,000, as an administrative assistant or editor, and in two to five years, she could earn a salary of \$50,000. Wife's expert explained that Wife has been out of the workforce for almost 20 years, her skills were "stale," and she would have to "start[] over" and compete against younger and more experienced people.

In determining Wife's current income, the circuit court stated:

The Wife's current income, Twenty-Seven Oh Five Four -- again, I considered testimony from experts, prior W-2's, average income now could be as high as -- somebody said even over a Hundred Thousand Dollars; I'm not seeing that at all. Sixty-Thousand, possibly, a realistic number. . . [sic] But I impute her income to be Forty-Five Thousand Dollars a year, which is one-tenth of the Husband's. And again, this is not an exact science, but it's the best I could come up with based on the evidence in this case.

After addressing each of the 12 alimony factors in FL § 11-106(b), the circuit court noted the two, indefinite alimony exceptions in FL § 11-106(b), emphasizing that under the second exception, the parties' standard of living must be "unconscionably disparate." As to alimony, the court made the following findings: 1) as to Wife's ability to be wholly

or partly self-supporting, the court found that Wife could be “at least partly self-supporting”; 2) as to the time necessary for Wife to gain sufficient education or training to find suitable employment, the court found that, although Wife requested six months to find suitable employment, the court believed she could find suitable employment immediately; 3) as to the parties’ standard of living established during the marriage, the court found that the parties established a “high standard of living” during their marriage and, with the court ordered marital and alimony awards, Wife “will still be able to maintain an extremely high standard of living . . . they’re both going to be millionaires”; 4) as to the duration of the marriage, the court found that the parties lived together while married for 21 years and were married for 23 1/2 years until divorced; 5) as to the monetary and non-monetary contributions of each party to the well-being of the family, the court found that the parties had a “traditional marriage” with Husband as the primary bread-winner and Wife caring for their child and the household; 6) as to the reason for the end of the marriage, the court found that the parties simply grew apart; 7) the court noted that Husband was 52 years old and Wife was 50 years old; 8) the court noted that neither party had any physical or mental conditions; 9) as to Husband’s ability to pay alimony and meet his needs, the court found that “both parties are going to be extremely well-off financially after this case is resolved . . . they’re going to be millionaires”; 10) as to agreements between the parties, the court noted there were none; 11) as to the financial needs and resources of the parties, the court stated that it considered the parties’ financial statements and expense sheets in making its determination; and 12) as to whether a spouse could be eligible for medical assistance, the court did not address as this was not relevant.

The court stated it considered two cases *Whittington v. Whittington*, 172 Md. App. 317 (2007) and *Solomon v. Solomon*, 383 Md. 176 (2004). Without discussing those cases or making any findings regarding the exceptions, the court concluded that “indefinite alimony is not appropriate in this case” and awarded Wife alimony for three years at \$4,000 per month.

We agree with Wife that the circuit court erred in its indefinite alimony analysis. The court determined what Wife could earn now but made no finding as to what she could earn in the future, whether she had the ability to be self-supporting, or whether the parties’ standards of living post-divorce were unconscionable. *Cf. Whittington*, 172 Md. App. at 340 (“[T]he issue of unconscionable disparity must be determined by projecting into the future, to a time of maximum productivity of the party seeking the award[.]”); *Lee v. Lee*, 148 Md. App. 432, 447-49 (2002) (reversing where chancellor made no prediction as to wife’s potential future income, and therefore, the court failed to make an on the record analysis of the FL § 11-106(c)(2) factors), *cert. denied*, 374 Md. 83 (2003); *Freedenburg v. Freedenburg*, 123 Md. App. 729, 748-49 (1998) (directing the circuit court on remand to “articulate more clearly” the basis for its decision to grant or deny a permanent alimony award, particularly directing the court to determine the future income of wife (quotation marks and citation omitted)). Moreover, even a finding of self-sufficiency does not per se bar an award of indefinite alimony where the respective standards of living are unconscionably disparate. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 189 (2016). *See also Kaplan v. Kaplan*, 248 Md. App. 358, 383 (2020) (stating that “comparing the relative percentages of each spouse’s income is a relevant consideration in determining the

existence of unconscionable disparities” and citing cases where unconscionable disparity was found based on the spouses’ relative incomes). On remand, the court must make these findings, and if it determines that the exceptions do not apply and indefinite alimony is not warranted, the court must re-determine Husband’s income to determine its alimony award.

III. Attorney’s fees

Lastly, Wife argues that if we reverse and remand for further proceedings the circuit court’s monetary and/or alimony awards, we must also reverse and remand the court’s award to her of \$7,500 in attorney’s fees. Husband preliminarily argues that we should dismiss Wife’s argument because she waived it when her attorney cashed his check for \$7,500, satisfying the court’s order. Husband alternatively argues that the circuit court did not abuse its discretion in awarding Wife \$7,500 in attorney’s fees.

We disagree with Husband’s preliminary argument. The “acquiescence rule” provides generally that if a party knowingly and voluntarily accepts benefits under an order, the acceptance acts as a waiver of any errors in the order and bars the party from maintaining an appeal. *Dietz v. Dietz*, 351 Md. 683, 689 (1998) (citing *Rocks v. Brosius*, 241 Md. 612, 630 (1966)). *See also Chimes v. Michael*, 131 Md. App. 271, 280 (“It is well settled in Maryland, and the law generally . . . if a party . . . voluntarily accepts the benefits accruing to him under a judgment, order, or decree, such acceptance operates as a waiver of any errors in the judgment, order, or decree and estops that party from maintaining an appeal therefrom.” (quotation marks and citation omitted)), *cert. denied*, 359 Md. 334 (2000). There are, however, exceptions to this general rule. In *Lewis v. Lewis*, 219 Md. 313, 317 (1959), the Maryland Supreme Court held that: “[I]f applicable at all in a divorce

case, the [acquiescence rule] cannot be raised where the benefits accruing to the wife, by reason of the award, provide necessary support until the final adjudication of the case.” In *Dietz*, 351 Md. at 688 (quotation marks and citation omitted), the Court noted another exception to the general rule, where the judgment was “for less than the amount or short of the right claimed” and Husband does not cross-appeal the award.

Here, Husband did not cross-appeal the circuit court’s attorney’s fees award to Wife, and Wife is seeking an increase in the award. Under these circumstances, the acquiescence rule does not apply. Attorney’s fees in the context of a monetary or alimony proceedings are governed by FL § 8-214 and § 11-110, respectively. Both sections are identical and provide, 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.

(d) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

In sum, a court must consider three factors before awarding attorney’s fees: “(1) the financial status of each party; (2) the needs of each party; and (3) whether there was a

substantial justification for bringing, maintaining, or defending the proceeding.” *Malin v. Mininberg*, 153 Md. App. 358, 435 (2003) (quotation marks and citation omitted).

At trial, it was elicited that Husband had incurred \$126,000 in attorney’s fees and Wife had incurred \$88,584 in attorney’s fees. Husband paid Wife \$5,000 as an initial attorney retainer; after the parties separated but before either party filed a complaint for divorce Wife paid attorney’s fees from some of the \$48,000 she withdrew from the parties’ marital account; and Husband contributed \$30,000 to Wife’s attorney’s fees as required by the pendente lite order.

In rendering its decision regarding attorney’s fees, the court stated:

I have considered the financial statements of each party, their income and expenses, the impact of my decision on a marital property award and alimony; and again, I want to re-emp[has]ize it’s not a complicated case. So the justification for the proceeding, in my opinion, was over-kill. And again, I hate to emp[has]ize this again, but I see a lot of money spent here that should have gone to this child. Both parties can afford legal fees and expert fees. Thirty Thousand Dollars has already been awarded to the Wife per previous Order of this Court; Forty-Eight Thousand was used by her for marital funds from a joint bank account. And I’ve also considered the marital award and the alimony that the Wife will be receiving.

The court cited *Abdullahi v. Zanini*, 241 Md. App. 372, 425-26 (2019), where the trial court declined to award counsel fees where wife’s attorney’s fees were \$425,000, and husband’s fees were \$189,000, because the parties had “chosen ‘to engage in protracted litigation,’ as opposed to resolving the issues expeditiously.” The circuit court then stated that the facts of *Abdullahi*, “ring true with this case” and awarded Wife “a token contribution” of \$7,500 for attorney’s fees.

While we do not disagree with the court’s assessment that the parties may have engaged in some unnecessary litigation, we also believe that this was a complicated case with compelling and divergent views regarding the distribution of large sums of property. *Cf. Abdullahi*, 241 Md. App. at 404 (applying the exceptions discussed in *Dietz* where husband did not pursue a challenge to the monetary award, and wife contends on appeal that she is entitled to a larger monetary award). *See generally* E.T. Tsai, *Spouse’s Acceptance of Payments Under Alimony or Property Settlement or Child Support Provisions of Divorce Judgment as Precluding Appeal Therefrom*, 29 A.L.R.3d 1184 (1970, Supp. 1999).

Because we are vacating the circuit court’s monetary and alimony awards, we shall also vacate the attorney’s fees award. *See also St. Cyr*, 228 Md. App. at 198 (“[A] court’s determinations as to alimony, child support, monetary awards, and counsel fees involve overlapping evaluations of the parties’ financial circumstances[,]” and therefore, “when [we] vacate[] one such award, we often vacate the remaining awards for reevaluation.” (quotation marks and citation omitted)); *Doser v. Doser*, 106 Md. App. 329, 335 n.1 (1995) (noting that the factors underlying awards for alimony, counsel fees and a monetary award “are so interrelated” that a reconsideration as to one award requires a new evaluation of the others).

IV. Husband’s cross-appeal

Husband cross-appeals and presents one question for our review. He argues that the circuit court erred in including the equity value of the marital home in Wife’s monetary

award because the court had stated that it would not do so.¹⁷ Citing *Brewer v. Brewer*, 156 Md. App. 77, *cert. denied*, 381 Md. 677 (2004), Wife responds that if the circuit court included the value of the marital home in its calculation of the monetary award, which is not clear given the lack of clarity in the circuit court’s monetary award determination, there was no error.

Because we are vacating the circuit court’s monetary award, we need not address this question on appeal as it can be raised on remand.¹⁸

JUDGMENT OF DIVORCE OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. JUDGMENT GRANTING MONETARY AWARD, ALIMONY AWARD, AND ATTORNEY’S FEES VACATED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HUSBAND.

¹⁷ Before proceeding to its monetary award determination, the circuit court ruled that the parties would equally split the net proceeds from the sale of the marital home. Turning to its monetary award analysis, the court commented on the parties’ marital home, number eight on the parties’ 9-207 Statement, stating: “I’m factoring that out of that list.” Husband argues, however, that the court in fact included the equity value of the marital home in its monetary award, reasoning that the circuit court’s value for the parties’ joint marital property was \$393,421, which is close to \$393,122, which is the total of three jointly owned items on the parties’ 9-207 Statement – two brokerage accounts and the equity in the marital home. Thus, according to Husband’s calculations and argument, the court mistakenly awarded Wife one-half of the marital home’s net proceeds when the home sells *and* one-half of the marital home’s equity in its monetary award. Husband requests that we issue a limited remand for the circuit court to reduce Wife’s monetary award by \$178,061, which is one-half of the equity in the marital home.

¹⁸ We note that in *Brewer*, we upheld a circuit court’s judgment splitting evenly between the parties the proceeds of the sale of the marital home *and* including the proceeds of the sale of the home in making its monetary award. *Brewer*, 156 Md. App. at 111. We held that the circuit court committed no err in doing both because the purpose of a monetary award “is to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage[.]” *Id.* at 110 (quotation marks and citation omitted). Accordingly, a circuit court may split evenly between the parties the proceeds of the sale of the marital home *and* include the proceeds of the sale of the home in making its monetary award, if it *chooses* to do so.