Circuit Court for Harford County
Case No. 12-C-17-003373

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 974

September Term, 2022

MONIKA NIELSON

v.

HOWARD DEAN NIELSON

Beachley,
Shaw,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: July 3, 2023

* 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).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The Circuit Court for Harford County granted appellant Monika Nielson ("Wife") an absolute divorce from appellee Howard Dean Nielson ("Husband"). Wife noted a timely appeal from the court's order as it relates to the award of alimony and child support, presenting the following questions:

1. Did the court err or abuse its discretion in denying [Wife's] request for indefinite alimony?

2. Did the court err or abuse its discretion in setting the period of rehabilitative alimony for three years opposed to a more substantial period of time?

3. Did the court err or abuse its discretion in failing to award [Wife] backdated child support or alimony?

For the reasons that follow, we conclude that the trial court did not make sufficient findings of fact in its award of rehabilitative alimony to Wife. We therefore vacate the alimony award and remand the matter to the trial court to make further findings in accordance with this opinion. Because the issues of alimony and child support are interrelated, we also vacate the child support award. We otherwise affirm the court's judgment of absolute divorce.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and Wife married in Denmark in August 1998, while Husband was on active duty in the United States Army. While residing in Germany, where Husband was stationed and Wife was a foreign citizen, the couple had two children, a son in 2006 and a

daughter in 2007. In 2008, Husband and Wife moved to the United States and established a marital home in Harford County.[1]

On December 22, 2017, Husband filed a complaint for absolute divorce, alleging that he and Wife had separated without reasonable expectation of reconciliation in June 2015, when he moved into the basement of their home. He set forth counts of constructive desertion and one-year voluntary separation. Husband sought custody of the minor children and a resolution of disputes relating to the parties' real and personal property. Wife answered Husband's complaint in March 2018.

In 2019, after Husband moved out of the marital home, Wife filed a counterclaim for absolute divorce, alleging counts of adultery, desertion, and one-year voluntary separation. Wife sought sole legal and primary physical custody of the children, use and possession of the family home and family use personal property, child support, and alimony.[2]

The divorce trial began on May 10, 2022, and continued on May 11, 2022, and June 27, 2022. At the start of the hearing, Husband and Wife each expressed a desire to be granted a divorce based on a one-year separation. Wife also sought alimony, child support,

[1] Wife became a naturalized U.S. citizen in October 2021.

[2] Husband and Wife subsequently entered into a parenting agreement relating to the children. The trial court incorporated the parenting agreement into its final order of custody, permitting it to be changed only upon the filing of subsequent pleadings and a substantial change in circumstances. Neither party raises any issue regarding custody in this appeal.

use and possession of the family home (with a request for an equal division of the proceeds of the sale), and a determination of the child dependency tax credit for the children.

Wife, age 49 at the start of trial, testified that she met Husband, who was on active military duty, through friends in Germany when she was 23 years old. Husband and Wife began a romantic relationship, and shortly thereafter they moved in together. They married in Denmark in 1998, after which they resided in Germany.

At the start of the marriage, Husband was earning approximately $18,000 per year. Wife, with the equivalent of a U.S. high school diploma, was working as a full-time secretary/administrative assistant making "good money." Wife said she paid 90% of the couple's expenses while they lived in Germany.

In approximately 2001, Husband left active duty to serve in the Army Reserves, then left the Army entirely when he landed a contractor position in Bosnia. By the time the couple's children were born in 2006 and 2007, Husband was working for the U.S. Department of Defense. Wife received three years of paid maternity leave from the German government after the birth of each child. While the parties were living in Germany, Wife earned degrees equivalent to a Bachelor of Arts in Office Management and a Master of Arts in Economics.

In April 2008, Husband informed Wife that he had obtained employment at the Aberdeen Proving Ground in Maryland and that the family would be moving to the U.S. in approximately three weeks. Wife agreed to live in the U.S. for a few years but planned to educate the children in Germany, where her life, job, and family remained.

During the move to the U.S., most of Wife's belongings were lost in transit, so she filed an insurance claim, receiving an approximately $50,000 settlement from the Department of Defense. Wife said Husband deposited the money into his bank account. Wife also left Germany with an approximately $10,000 "nest egg." Husband told Wife the money was to be used as a down payment for a house in Bel Air, which was titled solely in his name, but she believed it was not used for that purpose. She did not know what happened to the money because Husband denied her access to the bank account, but she believed Husband spent most of it in a bar he frequented almost every night. When all the money was gone, Husband told Wife to ask her parents for $50,000.

Wife said that Husband pushed her to get a job, but the cost of childcare for two toddlers was prohibitive. Wife was able to begin work when the younger child started kindergarten in 2012, procuring a job as a sales associate working 15 to 20 hours per week at a Marshall's department store within walking distance of the marital home.

In March of 2016, however, Wife was involved in a car accident that rendered her unable to return to work. The accident left her with spinal injuries, nerve damage, and limited use of her hands. She was totally disabled from March 16, 2016, through May 9, 2016, and was instructed not to lift anything weighing more than ten pounds.

Wife was advised to undergo surgery to treat her injuries, but Husband claimed they could not afford the insurance co-pay. Wife underwent four surgeries related to the injuries to her hands, and successful surgery on one side of her spine in 2020. She hoped to have surgery on the other side of her spine when she could afford it, but otherwise coped by

receiving cortisone and steroid shots in her back, going to physical therapy when she could afford to, and wearing a back brace.

With the help of a friend, Wife found work as a receptionist at a fitness studio in January 2020, but the studio suffered a pandemic-related closing in March 2020. Because of government subsidies, Wife was able to receive unemployment benefits of approximately $1,400 per month.

Wife realized that the path to a higher paying job would require her to have her German educational documents translated, at a cost of $2,000. Although Husband initially agreed to pay the translation fee, he continually refused to do so.[3] Wife could not afford the cost on her own until 2021. Once translated, Wife's educational documents equated her German degrees to a Bachelor of Arts in Office Management and a Master of Arts in Economics. Nonetheless, her only job experience in Germany had been secretarial in nature.

In December 2021, Wife received a $42,000 settlement related to the car accident. She testified that she is storing those funds in a safe at a friend's house, and intends to use the money to pay for her children's college education.

After applying to many jobs, Wife finally obtained a part-time position as an administrative assistant in January 2022, earning $972 per month (more than $400 less than

[3] At trial, Husband acknowledged the truth of that assertion.

the amount she received while on unemployment).[4] After having applied unsuccessfully to at least 43 jobs in a 25-mile radius from her home in the four months prior to trial, Wife was still seeking full-time employment and taking classes at night to catch up on modern technology.

In response to the court's inquiry, Wife said she did not think she was capable of working full-time because the pain in her hands and back would prevent her from sitting for eight-hour stretches. She said she was seeking secretarial-type jobs, with the hope that a prospective employer might accommodate her medical limitations, enabling her to work longer shifts.

Wife advised the court she was seeking indefinite alimony, child support, fifty percent of the children's medical costs (both were about to require braces, and the son had a problem with his leg that required constant medical attention), the ability to claim the children as dependents on her taxes, and use and possession of the family home for six months after entry of the final divorce decree.[5]

Husband, then aged 51, testified at the continuation of the trial on May 11, 2022. He said that after the expiration of Wife's paid maternity leave in Germany, it was his

[4] In her pretrial financial statement, filed pursuant to Maryland Rule 9-202, Wife indicated that her monthly income was $1,460.02 and that her monthly expenses were $7,612, leaving her a deficit of $6,151.98. On August 3, 2021, Wife filed an amended financial statement, showing monthly income of $946.58 and expenses of $7,362, for a deficit of $6,415.42.

[5] Wife later amended her request for use and possession of the family home to one year.

expectation that she would work, because his military income alone was not enough to support the family. He stated that the $50,000 settlement for loss of their belongings upon the move to the U.S. was deposited into an account bearing both their names, to which Wife had full access. The money, he said, had been spent on upgrades and repairs to the marital home, replacing the misplaced personal property, and vacations to Ocean City. According to Husband, none of those funds existed at the time of trial. He added that the money Wife brought with her from Germany, which he estimated to be only $5,000, originated from a loan that had to be repaid.

Since the separation, Husband said he had paid the approximately $1,600 monthly mortgage on the house, plus utilities, insurance, and $830 per month in child support. Husband stated that the parties agreed to these monetary contributions when he moved out of the marital home, and the parties stipulated that his monthly payments to Wife, including mortgage, utilities, and insurance, were in the approximate amount of $3,200. Husband acknowledged, however, that after losing a job, he had not paid the mortgage for five to ten months in 2019 or 2020. Husband asserted that the house had little or no equity.

Husband agreed that his salary as a cyber security expert had increased dramatically when he became a contractor for the federal government, permitting him to reach a stable salary of $105,000 by 2018. A new job in 2021 increased his salary to approximately

$133,000, and he was on track to make $155,000 in 2022.[6]

Husband believed Wife was capable of working and becoming self-supporting because she was an "intelligent woman" who communicates well with others, with "educational credentials to back her." He saw no physical impediment to her being fully employed.

Husband requested that the court deny Wife's alimony request, but alternately argued that if the court awarded alimony, it should take into account the amounts he had spent maintaining the marital home. He further asked the court to permit him to claim at least one of the children as a dependent on his taxes, due to the amount of child support he paid. Husband also requested that Wife not receive use and possession of the marital home for more than three months, as it was his desire to sell the house.

[6] Tax returns and other trial exhibits showed the following incomes for the parties:

2015 Husband earned $73,684. Wife earned $9,785.
2016 Husband earned $72,316. Wife earned $2,454 (she worked only one quarter of the year, due to her car accident).
2017 Husband earned $70,793. Wife earned $860 in unemployment.
2018 Husband's tax return showed income of $1,029. Wife earned no income. (Husband agreed, however, that the 2018 tax return was not accurate, as he had not been unemployed that year. Another document admitted into evidence showed he made $105,877).
2019 Husband earned $105,581. Wife earned no income.
2020 Husband earned $106,631. Wife earned some salary from January through March, plus $1,400 per month unemployment from March through December.
2021 Husband earned $133,245. Wife earned $1,400 per month unemployment through June or July.
2022 The parties stipulated that Husband's salary would be $155,000 because of overtime payments. Wife earned $972 per month through the time of trial.

Given Husband's acknowledgment that he had not paid the $1,600 mortgage for approximately five to ten months, Wife also asked the court for an order for payment of the arrearage because payment of the mortgage was part of their verbal agreement. Husband argued the court should not consider that type of award because Wife had not presented it as an issue before the court and because "[t]here was no actual order for alimony in place." In his view, such an order would be impermissibly retroactive. Moreover, during the time the mortgage was not paid, Wife nonetheless received the benefit of living in the house.

The parties gave closing arguments on June 27, 2022, acknowledging that the main issue in the case was Wife's request for alimony. Because there appeared to be no dispute as to a one-year separation, the court granted an absolute divorce to Wife.

In closing argument, Wife asked for indefinite alimony in the amount of $2,500 per month, arguing that she had gone to great lengths to be self-supporting, but at 49 years old with injuries still requiring surgery, and degrees earned more than 20 years ago in a foreign country and never used, her employment options were limited. Husband had an ability to pay, Wife continued, and she had an inability to meet her own expenses. Even if she were able to procure full-time employment as an administrative assistant, her attorney estimated she could earn $40,000 per year "on a higher end."

Husband argued that Wife had not done all she could to find a reasonable job. She had not updated her resume to include her German certifications, nor sent out enough job applications. Husband's attorney estimated Wife's earning potential to be $60,000 per

year, which he argued should be imputed to her. Husband believed the court should not award Wife alimony, but if it did, it should only grant rehabilitative alimony for an appropriate time until Wife could find employment. Husband also asked the court to consider Wife's $42,000 car accident settlement in its alimony calculus.

The court considered the factors required by Md. Code, § 11-106(b) of the Family Law Article ("FL"), in determining alimony and then ruled:

> In further explanation, first of all, I think that for the three-year period of rehabilitative alimony the request of Mrs. Nielson is quite appropriate and that's what the Court is going to order.[7] I believe that the three-year period hopefully will allow her to get the benefit of the various degrees she's earned, many in Germany, to be able to find substantial employment as an administrative assistant. Whether that would be 40,000 or 60,000 or somewhere in between is not known, but that appears to be the appropriate arrangement.
>
> My mind is really in a state of even balance as to the efforts Mrs. Nielson has made to this point. I can't really find one way or the other that she either was vigorous in her efforts or she, as [Husband's attorney] argues, was not giving a full faith, full effort.
>
> The reason I've opted for rehabilitative alimony is because of the unusual circumstance in this case where really Mrs. Nielson is just completing her various educational needs and is about ready to start and hopefully find the employment that she needs, and I'm not certain one way or the other if she achieves this exactly what she would earn and whether -- I can't say by a preponderance of the evidence at this point in time that their incomes would be unconscionably disparate.
>
> The other advantage the Court has with regard to rehabilitative alimony, that depending on circumstances and no one can really predict the future, there's always a possibility of further review by the Court depending on what happens in the next three years.

[7] Because Wife did not request a three-year period of rehabilitative alimony, we interpret the court's statement as meaning that the amount of alimony requested by Wife—$2,500 per month—was appropriate.

> So bottom line: rehabilitative alimony, $2,500 per month, and we'll make that effective on July the 1st.

The court also awarded Wife $1,880 per month in child support commencing July 1, 2022, the child dependency tax credit for both children, and use and possession of the family home until June 30, 2023, concluding it to be in the best interest of the children to complete the 2022–23 school year.

The trial court issued its written judgment of absolute divorce on July 14, 2022. Wife filed a timely notice of appeal.

DISCUSSION

Wife asserts that the trial court erred or abused its discretion in awarding her $2,500 per month in rehabilitative alimony for three years, rather than the indefinite alimony she sought, given the length of the marriage, the disparity in the parties' standards of living, and the "substantial sacrifices" she made to accommodate and further Husband's career. Even if this Court determines that an award of indefinite alimony is inappropriate, she continues, the rehabilitative alimony award for only three years is contrary to the facts and evidence she presented at trial, as it is not an adequate amount of time for her to obtain suitable employment to put her in an equitable position relative to Husband's earnings.

Husband did not file an appellate brief.

Appellate courts accord great deference to the findings and judgments of trial courts, sitting in their equitable capacity when conducting divorce proceedings. *Tracey v. Tracey*, 328 Md. 380, 385 (1992). Therefore, "[a]n alimony award will not be disturbed upon

appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong." *Id.* (citing *Brodak v. Brodak*, 294 Md. 10, 28–29 (1982)).

Since the adoption of the Maryland Alimony Act in 1980, alimony may be awarded either for a fixed term, referred to as "rehabilitative alimony," or for an undefined amount of time, referred to as "indefinite alimony." *Walter v. Walter*, 181 Md. App. 273, 281 (2008). "Because the purpose of alimony is the 'rehabilitation of the economically dependent spouse,' Maryland favors the provision of rehabilitative alimony for a fixed term to assist the dependent spouse in becoming self-supporting." *Kaplan v. Kaplan*, 248 Md. App. 358, 371 (2020) (quoting *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184–85 (2016)). The preference for rehabilitative alimony stems from "the conviction that 'the purpose of alimony is not to provide a lifetime pension, but where practicable to ease the transition for the parties from the joint married state to their new status as single people living apart and independently.'" *Solomon v. Solomon*, 383 Md. 176, 194–95 (2004) (quoting *Tracey*, 328 Md. at 391).

Still, indefinite alimony is appropriate when fairness requires it, particularly after the dissolution of long-term marriages. *See Boemio v. Boemio*, 414 Md. 118, 143–44 (2010) ("To award indefinite alimony in a twenty-year marriage is not at all unusual."). Indefinite alimony is warranted "if the standard of living of one spouse will be so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court." *Karmand v. Karmand*, 145 Md. App. 317, 338 (2002).

When deciding whether and how to award alimony, the trial court must consider the following factors:

(1) the ability of the party seeking alimony to be wholly or partly self-supporting;

(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;

(3) the standard of living that the parties established during their marriage;

(4) the duration of the marriage;

(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

(6) the circumstances that contributed to the estrangement of the parties;

(7) the age of each party;

(8) the physical and mental condition of each party;

(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;

(10) any agreement between the parties;

(11) the financial needs and financial resources of each party, including:

(i) all income and assets, including property that does not produce income;

(ii) any award made under §§ 8-205 and 8-208 of this article;

(iii) the nature and amount of the financial obligations of each party; and

(iv) the right of each party to receive retirement benefits; and

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

FL § 11-106(b). "[A]lthough the trial court is not required to use a formal checklist," and each individual factor in the statute does not have to be satisfied, the court is required to demonstrate that it at least took each factor into consideration when making its findings prior to granting alimony. *Simonds v. Simonds*, 165 Md. App. 591, 604–05 (2005) (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999)).

After considering the factors in subsection (b), a court may award indefinite alimony in 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).[8]

Against this backdrop, we summarize the court's findings as to the FL § 11-106(b) factors:

- Wife, the party seeking alimony, does not have the ability to be wholly or partially self-supporting. To gain sufficient education or training to find suitable

[8] The trial court here did not analyze Wife's indefinite alimony request under FL § 11-106(c)(1), presumably because Wife's argument in favor of indefinite alimony focused on the disparity in the parties' standards of living.

employment, Wife, who has "some degree of education and training," would be required to finish the courses she is taking, and then find suitable employment.

- While living in Germany, Wife was the main monetary contributor, although Husband did work. Once in the U.S., Husband was almost always the sole monetary contributor, while Wife was the main non-monetary contributor, taking care of the house and the children. The couple's standard of living during the 24-year marriage was "modest at best."

- In assessing the circumstances that contributed to the parties' estrangement, the court placed no blame on either party, citing a "multitude of circumstances," including Wife's unfamiliarity with the U.S. when she arrived, Husband's control of the family's finances, and the couple's dispute over what employment Wife should obtain.

- Husband, 51, and Wife, 49, are both mentally alert and competent. Husband has no physical impairments. After her serious car accident, Wife has "many physical issues, but as of right now there's no reason why she can't have full-time employment."

- Husband, earning over $150,000, has the ability to meet his needs and pay alimony to Wife. The couple's current agreement for Husband to pay $3,200 per month does not earmark any amount specifically toward alimony. Wife's income is minimal, but she has the $42,000 from her settlement at her disposal. There was no evidence presented at trial of the right of either party to receive retirement benefits, and their financial obligations were set forth on the financial statements submitted to the court.

- Because the parties agreed to the disposition of their limited marital assets at the beginning of trial, the court declined to issue a monetary award.

We acknowledge that the circuit court at least touched upon the FL § 11-106(b) factors as mandated by our caselaw. But as we shall explain, the court's analysis suffers from many of the same errors that this Court articulated in *St. Cyr v. St. Cyr*, 228 Md. App. 163 (2016).

In *St. Cyr*, we held that the trial court's failure to conduct the statutory alimony analysis required vacation of the rehabilitative alimony award. We noted that the trial

court's opinion "included a detailed and thorough discussion" of the statutory factors, and found that the wife was capable of earning $20,800 per year, but "the court did not explicitly compare that level of income with Wife's reasonable needs," and did not make a finding as to whether the wife would be wholly or partly self-supporting at that income level. *Id.* at 185–86. Because of the trial court's failure to make a specific finding of the wife's needs, we could not determine if the wife would be self-supporting at the anticipated income level. *Id.* at 186. "A calculation of the recipient spouse's future expenses and income 'is obviously an important component to any finding of self-sufficiency.'" *Id.* at 187 (quoting *Doser v. Doser*, 106 Md. App. 329, 354 (1995)). In making a determination about whether the parties' standards of living will be unconscionably disparate for FL § 11-106(c)(2) indefinite alimony, "[a] trial court must evaluate and compare the parties' respective post-divorce standards of living" based on their "respective financial means." *Id.* at 189. By awarding the wife "a specific amount of alimony for a specific duration" without first making "any meaningful prediction about Wife's future prospects for self-sufficiency," the trial court erred. *Id.* at 193.

Here, the trial court did not make a finding as to the needs of the parties, instead merely stating: "I reviewed their expense statements and have taken that into account." The trial court's failure to make a finding as to Wife's reasonable needs makes it impossible for us to determine when and if Wife will be self-supporting or whether the parties' standards of living will be unconscionably disparate. Moreover, the court made no express finding as to Wife's imputed income, stating that "[w]hether that would be 40,000 or

60,000 or somewhere in between is not known." *See St. Cyr*, 228 Md. App. at 188 ("Nevertheless, by making an inconclusive finding on the issue of when Wife 'will have made maximum financial progress,' the court compounded the earlier difficulty that arose from the lack of a clear finding regarding the income Wife needed to become self-sufficient."). Therefore, we must vacate the trial court's three-year rehabilitative alimony award (and its implicit denial of Wife's request for indefinite alimony). We will remand the matter to the trial court for a determination of Wife's anticipated income and her reasonable expenses. *See id.* at 188 ("In general, a party is self-supporting if the party's income exceeds the party's 'reasonable' expenses."). After the court makes the requisite determination, it should proceed to determine whether Wife is entitled to indefinite or rehabilitative alimony. If the court determines that the present record is insufficient to make the necessary findings, it may request further evidence. *See id.* at 195. At bottom, we urge the court to articulate with specificity the basis for any alimony award in accordance with our caselaw. Until the trial court has the opportunity to address these issues on remand, "the rehabilitative alimony award that we vacate as a 'final' judgment shall be given the force and effect of a *pendente lite* award." *Simonds*, 165 Md. App. at 613. Accordingly, Husband must continue to pay Wife $2,500 per month as *pendente lite* alimony, not as rehabilitative alimony. *See K.B. v. D.B.*, 245 Md. App. 647, 678–79 (2020). Additionally, we must also vacate the child support award because the issues of alimony and child support "are so interrelated that, when a trial court considers a claim for any one

of them, it must weigh the award of any other." *St. Cyr*, 228 Md. App. at 198 (quoting *Turner v. Turner*, 147 Md. App. 350, 400 (2002)).

In light of the length of the marriage and the large disparity between the parties' expected incomes,[9] if the trial court denies indefinite alimony on remand, it should provide a detailed discussion of its reasoning. *See Kelly v. Kelly*, 153 Md. App. 260, 279 (2003) ("[I]ndefinite alimony is not necessarily required simply because there exists a gross disparity of income. But when indefinite alimony is denied and such a disparity exists, it is error to deny the request without explicitly discussing the disparity issue."); *cf. Boemio*, 414 Md. at 142–43 (FL § 11-106 "itself directs that judges must consider the length of the marriage as part of their evaluations. It is obvious, then, that the legislature decided that a long marriage called for more alimony than a short one."); *St. Cyr*, 228 Md. App. at 196 ("In cases involving dramatic income disparities after long marriages, this Court has found an abuse of discretion in a trial court's failure to award indefinite alimony.").[10] We

[9] Even assuming no increase in Husband's income, if Wife achieves an income in the range anticipated by the trial court ($40,000–$60,000), Wife's income would then be 25.8% to 38.7% of Husband's. Although there is "no hard and fast rule regarding any disparity" in income that would warrant an award of indefinite alimony, *Tracey*, 328 Md. at 393, we observe that this Court and the Maryland Supreme Court (formerly the Court of Appeals) has accepted trial courts' findings of unconscionable disparity in cases involving a similar level of disparity of incomes. *See Tracey*, 328 Md. at 393 (28%); *Caldwell v. Caldwell*, 103 Md. App. 452, 464, (1995) (43%); *Rock v. Rock*, 86 Md. App. 598, 613 (1991) (20–30%); *Broseus v. Broseus*, 82 Md. App. 183, 196–97 (1990) (35%); *Bricker v. Bricker*, 78 Md. App. 570, 577 (1989) (35%).

[10] In its consideration of rehabilitative versus indefinite alimony, the trial court made the following comment:

(continued)

reiterate, however, that the focal point under FL § 11-106(c)(2) is not disparity of income, but whether "the respective standards of living of the parties will be unconscionably disparate."

Finally, Wife avers that the trial court erred or abused its discretion in declining to order Husband to pay her approximately $16,000, as a "retroactive support award" representing the ten months she alleges that Husband did not pay the mortgage on the family home, as agreed in the couple's support agreement.[11] The trial court found it was not within its authority to make such an award, as the money Husband paid for the mortgage was not earmarked as child support, and the issue "really. . . should have been considered as marital property and monetary award." The court further found that, in any event, Wife was not harmed because she received the benefit of living in the house even when the mortgage was not paid.

> The other advantage the [c]ourt has with regard to rehabilitative alimony, that depending on circumstances and no one can really predict the future, there's always a possibility of further review by the [c]ourt depending on what happens in the next three years.

Modification of alimony is available under FL § 11-107 for both rehabilitative and indefinite alimony, and we do not fully understand the court's description of it as an "advantage" of rehabilitative alimony specifically. On remand, the court should be careful not to rely on the ability of the parties to request a modification in making its decision. *See Lee v. Lee*, 148 Md. App. 432, 452–53 (2002).

[11] At trial, Wife's counsel made clear that Wife was not requesting any retroactive support award other than the amount of unpaid mortgage, and she does not argue on appeal that the court erred by not ordering retroactive support payments for the entire pre-trial period. Essentially, her argument is more akin to a request for enforcement of the parties' oral agreement than a request for retroactive support.

Pursuant to FL § 12-101(a)(1), "Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial pleading that requests child support pendente lite, the court shall award child support for a period from the filing of the pleading that requests child support." Wife requested child support *pendente lite* in her counterclaim filed April 24, 2019. The trial court was therefore required to award child support retroactive to April 24, 2019, unless it found that such an award would be inequitable.

The parties agree that, at a minimum, Husband paid $830 directly to Wife as child support. The remaining payments Husband was required to make under the parties' oral agreement, $770 for utilities and insurance and $1,600 for the mortgage, were not differentiated as either child support or alimony.[12] The only evidence of Husband's failure to make mortgage payments was his testimony that, at some point in either 2019 or 2020, he missed "several" mortgage payments, "probably" more than five, and "maybe" more than ten, though he did not believe it was more than ten missed payments.

We agree with Husband that the record is insufficient to prove the exact number of months Husband did not pay the mortgage. Nor does the record establish the number of

[12] Even if we accept, as Wife argued at trial, that the entire $3,200 Husband agreed to pay each month was child support, and Husband failed to pay the mortgage for 10 months, Wife would not be entitled to $16,000. Because Husband was paying $1,600 in child support during the months when he did not pay the mortgage ($830 directly to Wife and $770 in utilities and insurance), and the ultimate child support award was $1,880, he was only short a total of $2,800 ($280 per month for 10 months). Furthermore, other than those months when he did not pay the mortgage, Husband was paying $1,320 per month more than the $1,880 child support award.

missed mortgage payments after Wife filed her counterclaim in April 2019. Under these circumstances, we perceive no error in the court's determination that an award of retroactive support would be inequitable. As noted by the trial court, other than speculative economic damage to Wife when the house is eventually sold,[13] Wife did not explain how she was harmed by Husband's failure to pay. Although the couple's support agreement required Husband to pay approximately $1,600 per month directly to the lender, the fact remains that Wife was not obligated to pay the mortgage and she enjoyed the benefit of living in the house even when the mortgage was not paid. We therefore affirm the court's denial of Wife's request for $16,000 in "retroactive support" payments.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY GRANTING REHABILITATIVE ALIMONY AND CHILD SUPPORT VACATED. JUDGMENT OF DIVORCE OTHERWISE AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[13] According to Wife's recent filings in the circuit court, the house is currently in the process of being foreclosed.