Circuit Court for Baltimore County
Case No. 03-C-18-5328

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1062, September Term, 2020

&

No. 1312, September Term 2020

HEIDI MICHELE WEAVER

v.

BRANDON WEAVER

Graeff,
Reed,
Gould,

JJ.

Opinion by Gould, J.

Filed: September 10, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Heidi Michele Weaver ("Mother"), and Appellee, Brandon Weaver ("Father"), were divorced pursuant to a Judgment of Absolute Divorce (the "Judgment") entered by the Circuit Court for Baltimore County. The Judgment addressed and resolved legal custody and shared physical custody of their two minor children, a custody schedule, child support, alimony, and division of marital property.

Neither party was satisfied with the result, prompting both to appeal. For the reasons that follow, we are affirming in part, vacating in part, and remanding this case for further proceedings in accordance with this opinion.

BACKGROUND

Father and Mother married in July 2006. Their daughter, A., was born in 2008, and their son, L., was born in 2010. The parties separated in March 2018 and divorced in October 2020, after seven days of trial and argument.

On October 15, 2020, before entering the Judgment in this case, the trial judge provided a copy to the parties and then explained it in open court in order to provide a record of the reasons for his decisions. On October 30, 2020, the Judgment was entered.

After the court announced its decision to the parties, it learned that its child support and alimony awards were wrong because of (1) a "computer malfunction . . . that caused an inaccurate child support award"; and (2) "the 'new' law" relevant to child support did not apply but applied only to cases filed after October 1, 2020. The court changed the child support and alimony awards that Father was required to pay to Mother, and the Judgment entered on October 30, 2020 reflected the new child support and alimony awards.

That same day, the court also entered a Supplement Opinion (the "Supplemental Opinion") in which it explained why the amount of the awards changed.

The court observed that it was "a very contentious case." Addressing physical and legal custody, the court preliminarily observed that both Father and Mother appeared to be "fit and proper parents." The court granted the parties joint legal custody of their minor children and established an unconventional tiebreaking procedure. The court gave Father tiebreaking authority over the children's medical decisions and L.'s sports and extracurricular activities. The court gave Mother tiebreaking authority over the children's religious activities and A.'s sports and extracurricular activities.

The court granted the parties what it referred to as shared physical custody, with Mother having primary residential custody for school purposes, and Father having access to the children every other weekend plus one evening during his off-week. The court determined that the parties would have access to the children over the summer on a "week-on, week-off basis," and that each party would have two non-consecutive weeks of vacation with the children. The court established a schedule for winter and spring school vacations, and split custody for holidays, including Mother's Day, Father's Day, Thanksgiving, Christmas, and Easter.

The court found that Father made 65 percent of the couple's total income and Mother made 35 percent. The court stated:

> As a practical matter, Father's income was a little easier to figure out. And that is only because Father has a W-2 income and as was discussed, his W-2 income is higher than what appears for a variety of reasons and there was ways to ramp up his income that were articulated by counsel for Mrs. Weaver and she was suggesting an income somewhere in the over two

> hundred thousand dollars realm. [Father's counsel] talked about and suggested if you are going to do that, an income of 180, if you take all these factors into consideration, I'm finding in my calculations are based on the Father making one hundred eighty thousand dollars a year. And that is for a variety of reasons, many of which were articulated by counsel for Mrs. Weaver, and also the suggestion by [Father's counsel]. I appreciate the suggestion because, quite frankly, it is a specific number but not a mathematically specific number. It is arrived to by rounding. And that rounding is taking the various things that Mr. Weaver gets, the gas, some of which is related to work, some of which is not, certainly not fair to associate all of those costs on the various credit cards that we had with his work but lots of them are with his work or not with his work. But the approximation of 180 I think is a fairway to look at it under the statute as to how we examine and come to numbers for income.
>
> With Miss Weaver, she had 72 thousand dollars and change income on her income tax return last year. I have rounded her up, less than what [Father's counsel] would like, maybe more than what [Mother's counsel] would like, to eighty thousand dollars. Eighty thousand dollars for a variety of different reasons. Miss Weaver's income is more difficult for a variety of reasons, not the least of which is she is self employed. As many self employed people, she plows some personal expenses into her income and as I was a self employed person for many years doing the exact same thing. I'm not suggesting anything is inappropriate about that. However, under the statute I think I have to take those kind of things into consideration. Also taking into consideration the fact that she has worked historically as a substitute teacher, which she is not doing now, and she works at Harford Community College as a professor. The eighty thousand dollars, that, again, there was testimony about how her real estate company is doing now. It is an up and down thing. The eighty thousand dollars takes all of these things into consideration. I think 72 is kind of a bottom line that I could have found. I think eighty is appropriate given the nature of the other things going on. I think that is a fair estimate of her actual earnings taking all these other side things into consideration.

As a result, the court ordered Father to pay monthly child support and rehabilitative alimony for three years. The Judgment ordered Father to make monthly mortgage payments on the parties' home in lieu of paying child support and alimony directly to Mother, with any excess beyond the mortgage payment to be paid to Mother.

The Judgment also addressed the parties' marital property. The court found that each party would retain their personal property then located in their respective homes. Observing that Mother had claimed as marital property certain items that Father had removed from the marital home, the court stated:

> And I have -- again, in the same property realm, whatever Mr. Weaver has in his house is his. Whatever Miss Weaver has at her house is hers. In this vain, I have another question for the parties. I'm going to ask you. I know this is supposed to be your listening time but I will ask you talk a little bit here. Miss Meadows attached to her suggested order items Brandon Weaver may have from the home. Items from the shed, work stools. I guess you people know what that means. I don't have any idea what that means. Gun safe, personal Christmas ornaments, Jeep parts in the garage, and grandfather's hand planer. I haven't plowed those into this mix here because I don't think we had any testimony about any of this stuff. It doesn't seem like an unfair request. But I would ask you folks to tell me what you think about this. If there is an issue with this, I will figure it out. It doesn't -- none of these things seem to have real value. Like the hand planer is probably something he personally cares about.
>
> So I am bringing this to your attention because I'm not including these as part of the property that Miss Weaver has. I'm holding this in abeyance, much like the white trailer and the Gator. And If you guys can tell me what you want to do with these items. These items don't seem to have real value. Maybe they do. But I will ask you to talk about those amongst yourselves and get back to me on that.

The court granted Mother use and possession of the marital home for three years, set a schedule for sale of the home, and determined that the proceeds from the sale of the house would be equally divided, with Mother getting a $25,000 credit to account for the difference in value of the parties' respective cars. The court ruled that any tax benefits from mortgage, insurance, and property tax payments would go to the party making them.

The court ordered an equal distribution of the parties' marital retirement accounts, except for Mother's John Carroll IRA (the "John Carroll IRA"). The court determined that

25 percent of the John Carroll IRA was marital, and, accordingly, awarded Father one-half of that percentage, 12-1/2 percent.

The court also discussed the parties' business interests. The court stated that Mother had "her own real estate sales organization" and that Father had "an interest in Dvorak[, LLC]." The court did not make any award related to those businesses because it didn't "have any testimony to support what those business values are" and how much the businesses are worth.

The court then addressed other property discussed at trial. As stated by the court:

> There was a Snow Hill property discussed at length. I have left that out of this. Quite frankly, the evidence that I have didn't bring me to a place where I knew exactly what the value was and exactly who owned it. It was somewhat confusing. We had lots of evidence on it. We had the pictures. We had the deeds and such. But I don't think I have evidence that I can make that marital property and make an award of it. So for that reason, the Snow Hill property has been left out.

Additionally, the court discussed the credit card debt and the parties' HELOC, stating:

> With regard to credit card debt and the HELOC. The HELOC is the second mortgage on the family property. There was lots of testimony that, including credit card debt and who was responsible for what. I'm finding nothing about the credit card debt. Meaning that on a going forward basis, both parties are stuck with their credit cards and the credit card debt incurred or paid by the HELOC or the other debt is marital property and marital debt and I'm not going to get into the middle of that. And the HELOC as well will not be credited against the mother. I think and I believe the law frowns upon this for this very reason, that that would require me to go to each and every credit card statement and figure out who was at fault for what. Both parties are on the hook for the HELOC. Certainly there was testimony that Miss Weaver is not good with credit cards and maybe not super responsible with incurring debt. I do find, quite frankly, she is not good with money, but the truth of the matter is I would also find the same thing to be true with Mr. Weaver. I think the parties should be in a better financial position than they are given their

> income. But maybe I'm more frugal than they are. That is not a determination that I'm making that is really relevant to anything other than the fact I'm bringing it up other than the fact it was an issue brought up in trial.

On November 9, 2020, Father moved to alter or amend the Judgment, arguing that certain provisions of the Judgment were "problematic" "due to their unclear nature," and should be altered or amended. Mother opposed the motion, and the best interest attorney responded to the motion stating that "[t]o the extent that [Father's] requests to alter or amend the Judgment of Absolute Divorce are consistent with [the best interest attorney's] recommendations," he supported the requests. The motion was denied on January 12, 2021.

Both Mother and Father timely appealed.

We shall add additional facts as necessary for our discussion.

DISCUSSION

Mother presents ten questions for our review, as follows:

1. Did the trial court err by not finding that the house in Snow Hill, Maryland to be marital property and adjusting the equity thereof or incorporating it into a martial award?
2. Did the trial court err by not finding that Appellee has an ownership interest in Dvorak LLC and adjusting the equity thereof or incorporating it into a marital award?
3. Did the trial court err by not including the personal property removed from the home in determining a marital award?
4. Did the trial court err when it applied the child support guidelines effective October 1, 2020, to find that the parties had shared physical custody?
5. Did the trial court err when it determined legal custody in this action?
6. Did the trial court err when it determined Appellee's income for child support and alimony calculations?
7. Did the trial court err when it determined Appellant's income for child support and alimony calculations?
8. Did the trial court err when it calculated child support?

9. Did the trial court err when it ordered that the child support in this case could be used to pay the mortgage on the marital home?
10. Did the trial court err when it calculated alimony?

Father presents six questions for our review:

1. Did the trial court err in its division of overnights when it clearly meant to award the parties shared physical custody?
2. Did the trial court err when it gave Appellee Father a vague dinner and school holiday schedule?
3. Did the trial court err in its award of use and possession?
4. Did the trial court err when it only granted one half of 12.5 % of the John Carroll IRA to Appellee?
5. Did the trial court err when it considered the HELOC debt marital?
6. Did the trial court err when it did not specify the parties' agreement that Appellant would pay and get tax credit for paying the taxes and insurance on the marital home?

I.

DIVISION OF MARITAL PROPERTY

"'Marital property' means the property, however titled, acquired by 1 or both parties during the marriage." MD. CODE ANN., FAM. LAW ("FL") § 8-201(e)(1) (1984, 2019 Repl. Vol). There is a three-step procedure for allocating marital property. *First*, the court must determine whether the disputed piece of property is, in fact, marital. *Malin v. Miniberg*, 153 Md. App. 358, 428 (2003) (quotation omitted). *Second*, the court must value each item of the property it determines to be marital. *Id*. These two determinations made are reviewed under the clearly erroneous standard. *Id*.; *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). *Third*, "the court must decide if the division of marital property according to title will be unfair; if so, the court *may* make an award to rectify any inequity." *Malin*, 153 Md. App. at 428 (quotation omitted). That determination is reviewed for abuse of discretion. *Flanagan*, 181 Md. App. at 521-22.

The party claiming a marital interest in an item of property bears the burden of proof as to that claim. *Malin*, 153 Md. App. at 428. The party claiming a property item is non-marital has the burden of tracing the item to a nonmarital source. *Id*.

Mother argues that the court made three errors in its award of marital property: (1) failing to include the property located in Snow Hill, Maryland (the "Snow Hill Property") as marital property; (2) failing to adjust the parties' equities to account for Father's interest in Dvorak, LLC ("Dvorak"); and (3) failing to include the personal property that Father had removed from the marital house.

Father claims the trial court erred as follows: (1) the court erroneously determined that he was an owner of Dvorak; (2) the court created confusion in its determination regarding Mother's interest in the John Carroll IRA; (3) the court erroneously determined the HELOC debt to be marital property; and (4) the court failed to include in the judgment the parties' agreement as to taxes and insurance on the marital home.

A.

THE SNOW HILL PROPERTY

Mother argues that she provided the court with prima facie evidence that the Snow Hill Property was purchased by an entity owned by Father during the parties' marriage. According to Mother, Father formed Public Landing Holdings, LLC ("Public Landing") the day before the parties separated and was its sole member. Mother contends that Public Holdings purchased the Snow Hill Property during the parties' marriage;therefore, the Snow Hill Property should have been considered as marital property. In the alternative, Mother argues that Father transferred the Snow Hill Property to Dvorak in order to

dissipate marital assets. Either way, Mother contends, the court erred by failing to account for the Snow Hill Property.

Father claims that he never acquired the Snow Hill Property, let alone used marital assets to do so. Father contends that although he formed Public Holdings, he transferred his membership interest in it to Dvorak, a company in which he claims no interest, on March 16, 2018. Father argues that Public Holdings did not actually acquire the Snow Hill Property until May 11, 2018. Father also contends that, in any event, Mother failed to meet her burden of establishing the "identity and value" of the Snow Hill Property, and, therefore, the court correctly excluded the property from the martial award.

At the outset, we note that the documents pertaining to the Snow Hill acquisition do not align with Father's explanation of it. The documents show that settlement on the Public Holding's purchase of the property took place on May 11, 2018, some two months after Father formed Public Holdings as a limited liability company. The documents also show that Father assigned his membership interest to Dvorak on March 16, 2018, within days of Public Holding's formation, and just one day after Father signed a "limited liability company agreement" as the sole member. Father did not explain why he signed the closing documents as the sole owner when, if the assignment document is legitimate, he had assigned his interest to Dvorak two months prior.

Notwithstanding the inconsistency between Father's explanation and the documents, we see two insurmountable hurdles to Mother's claim of error. *First*, the Snow Hill Property was not purchased by Father; it was purchased by Public Holdings, a Maryland limited liability company. Thus, the Snow Hill Property would not constitute

marital property even under the facts as alleged by Mother. To the extent that any marital property would have been acquired in the transaction, that property would have been a membership interest in the limited liability company, Public Holdings, which is considered personal property. MD. CODE ANN., CORPS & ASS'NS ("CA") § 4A-602 (1974, 2014 Repl. Vol.).

Second, there was no evidence that any marital funds were used by Father to acquire a membership interest in Public Holdings. On that issue, the only evidence we discerned from the trial record was that Public Holdings acquired the Snow Hill Property with funds provided by Dvorak for the down payment, and the balance of the purchase price was borrowed from a bank. But did Dvorak make the down payment as a *loan* to Public Holdings, or as *equity* in Public Holdings? If it was a loan, did Public Holdings have any equity in the Snow Hill Property, or was Public Holdings fully leveraged? If Father owned an interest in Public Holdings, what were the rights attendant to such interest? *See WAMCO, Inc. v. Ne. 400, LLC*, ____ Md. App. ___, No. 2271 (Sept. Term 2019), slip op. at 14-17 (filed July 1, 2021) (explaining the nature of a membership interest and the economic and non-economic rights associated therewith).

The record is silent on these issues, making difficult, if not impossible, a valuation of Father's purported membership interest in Public Holdings, assuming he even had one. As the party claiming that the Snow Hill Property was marital property, Mother "b[ore] the burden of proof as to the classification" of the property, *K.B. v. D.B.*, 245 Md. App. 647, 680 (2020), and was required to "present evidence as to the identity and value of the

property." *Murray v. Murray*, 190 Md. App. 553, 569 (2010). Mother failed to meet her burden.

B.

DVORAK

Mother relies on the court's statement when it gave its decision that Father "has an interest in Dvorak. I don't know what that interest is." Mother contends that having found that Father had an interest in Dvorak, the court erred in not putting a value on it and taking it into consideration when adjusting the parties' equities. Father disputes that he owns an interest in Dvorak, and argues that the court erred in stating that he did.

Mother also relies on testimony from a former Dvorak employee that Father was a part-owner of the company. In addition, Mother contends that Father is the beneficiary of a life insurance policy funded by Dvorak which Father will use to buy the company when his cousin and owner of Dvorak, Tom Dvorak, dies.

We do not need to decide whether the court erred when it found that Father had an ownership interest in Dvorak because even if he did, the court correctly observed that there was no evidence on which it could value that interest. Again, it was Mother's burden to present to the court evidence of Father's interest and its value. *See K.B*, 245 Md. App. at 680; *Murray*, 190 Md. App. at 570. Mother failed to meet her burden, and, on that basis alone, we shall affirm the court's decision not to attribute any value to Father's purported

interest in Dvorak. We need not address Father's contention that the court erred in finding that Father had such an interest.[1]

Similarly, to the extent that Mother is claiming that Father's status as the beneficiary of the insurance policy on his cousin's life reflects an ownership interest in Dvorak, we find no error in the court's failure to treat it as such. Mother's theory is that, although Father actually paid the premiums out of his own account, Dvorak funded the policy by paying additional salary to Father to do so. Thus, Mother argues that the testimony established that when Father's cousin dies, under a buy-sell agreement, Father will buy his cousin's ownership interest from his estate and assume full control over Dvorak.

The problem with Mother's argument is that there was evidence in the record that negated or called into question Father's explanation of the status of the insurance policy and its intended purpose. Although Father testified that he was the beneficiary, the only exhibit in the record from the insurance company listed Father as the owner of the policy, not the beneficiary. Instead, the beneficiary was described as "James A. Shenk, Escrow Agent for Dvorak, LLC." And there is no evidence as to what the beneficiary was bound to do with the death benefits.[2] Further, there is no buy-sell agreement in the record to substantiate Father's assertion that he would purchase Dvorak upon the death of Mr.

[1] We note that in both her counsel's opening statement and in closing argument, Mother failed to provide a cohesive explanation of Father's alleged interest in Dvorak or a basis for valuing that interest.

[2] Because Father was the owner of the policy, and depending on the policy's terms and conditions, the cash value built up in the policy, to the extent there was any, could have potentially qualified as marital property, but there was no evidence in the record on which the court could have made such a finding, let alone put a value on it.

Dvorak. And finally, there is no evidence as to what would have happened to the policy if Father pre-deceased Mr. Dvorak. In sum, based on the paucity of evidence in the record, we perceive no reversible error in the court's decision not to include Father's purported ownership interest in Dvorak, assuming he even had one, in its determination of marital property.

C.

FATHER'S PERSONAL PROPERTY

Mother argues that the court erred by not considering the personal property that Father removed from the marital home. Father agrees that the court erred in failing to go through the property and assign values to it, but contends that any error was harmless. Father additionally notes that Mother fails to acknowledge that the court allowed her to keep all of her personal property.

We agree with Father. Mother contends that the value of the property was $50,000, but identifies no supporting evidence in the record, and instead relies solely on the value she assigned to such property in the joint financial report. Nevertheless, when the court announced its ruling, it stated that it was holding those items "in abeyance" and asked the parties to confer and then report to the court what the parties agreed to do with the property. The court also stated that the "items don't seem to have real value. Maybe they do. But I will ask you to talk about those amongst yourselves and get back to me on that."

Mother does not direct us to any place in the record showing what, if any, follow-up the parties provided to the court as instructed. Nor did we find any such follow-up from our own review of the record. As far as the court was concerned, the lack of follow-up

may have been an indication that the parties had resolved that issue and did not need the court to make a ruling. We are hard-pressed to find error under such circumstances.

D.

USE AND POSSESSION OF THE MARTIAL HOME

Father argues that the court erred and abused its discretion in its award to Mother of the use and possession of the marital home. According to Father, Mother's use and possession of the marital home exceeds the three-year statutory limit, which is established in section 8-210(a)(1) of the Family Law Article, by two days.[3] Father argues:

> The parties' Judgment of Divorce was signed on October 29, 2020 and entered on October 30, 2020, but Appellee Mother's use and possession did not begin under 2 days later, exceeding the time limitations clearly set forth in the statute. If one were to count use and possession running from the date of the judge's oral ruling when the judge granted the divorce, on October 15, 2020, use and possession would be a total of 3 years and 17 days.

Although acknowledging that this argument "may seem trivial," Father nevertheless contends that "it is important for the law to be applied."

Father further contends that he anticipates that Mother's use and possession will be further extended because, at the end of the three years, he and Mother will likely not agree on a "buyout number" for the home, necessitating the appointment of a trustee. Father also contends that the court did not consider that (1) Mother had already enjoyed the use and possession of the marital home prior to the Judgment; (2) the timing was problematic in

[3] FL § 8-210(a)(1) provides: "In any order or decree, or any modification of an order or decree, a provision that concerns the family home or family use personal property shall terminate no later than 3 years after the date on which the court grants an annulment or a limited or absolute divorce."

terms of the minor children's school schedule; and (3) he would incur hardship from paying the mortgage on the marital home.

The Judgment was dated October 29, 2020 and entered on October 30, 2020. We assume the court had its reasons for starting Mother's use and possession on November 1, 2020. We suspect that, given that October 29, 2020 was a Thursday, the court added a few days to allow time for the Judgment to be entered. Nonetheless, as Father argues, pursuant to FL § 8-210(a)(1), Mother's use and possession should terminate three years from the date of entry of the judgment, on October 30, 2023. Because we are remanding this case for further proceedings on other issues, on remand, the trial court should address and correct the discrepancy identified by Father.

We shall otherwise affirm the trial court's use and possession determination. We are not moved by Father's speculation that the use and possession will exceed three years because the parties will not be able to agree on a buyout number for the marital home. If the use and possession order is later violated, the parties and the court can take up that issue at the appropriate time.

Nor are we persuaded by Father's argument that Mother had the use and possession of the marital home prior to the Judgment. The time period specified in FL § 8-210(a)(1) does not start until "the date on which the court grants an annulment or a limited or absolute divorce." As such, the time that Mother may have had use and possession of the marital home prior to the Judgment is irrelevant. *See John O. v. Jane O.*, 90 Md. App. 406, 416 (1992) (citing FL § 8-210(a)(1)) ("[T]he three-year period begins to run from the 'granting of the limited or absolute divorce or annulment.'").

Father's argument that the timing is not good for the minor children's school schedule is similarly unconvincing. The current plan is for the home to be sold when L. is in 7th grade and A. is in 10th grade. Citing to *Barr v. Barr*, 58 Md. App. 569, 585 (1984), Father argues that the children would be better served if the use and possession ended in the spring or summer of 2022 so that L.'s entry into 6th grade and A.'s entry into 9th grade would have been a "more natural transition[.]" As we acknowledged in *Barr*, 58 Md. App. at 585, "[t]he *sole* purpose, not merely the primary purpose, of the use and occupancy provision is to permit the child or children of the family to live in the community and environment which is familiar to them." There, we found problematic the court's unexplained decision to limit the use and possession of the marital home to two years, when a three-year use and possession period would have allowed the child to graduate from the high school she had been attending, instead of uprooting her prior to her senior year. *Id.* In other words, we decided in *Barr* that terminating the use and possession *before* three years *denied* the child more time in her familiar community and environment.

We cannot extrapolate from our ruling in *Barr* a rule that *requires* the court to *terminate* the use and possession to coincide with a child's transition from one school to another. The court concluded that it was in the children's best interest to live in the same familiar environment for the maximum time allowed under the statute, even if it meant that the children *might* have to continue their education at a different school.[4] We find no abuse

[4] The trial court was not required to base its decision on the assumption that once the use and possession terminated, Mother would not be able to find suitable housing in a

of discretion in having the children remain in the marital home for the longest period allowed under the statute.

Finally, as to Father's argument that the award did not consider his hardship in having to pay the mortgage, we disagree. The court considered "the standard of living the parties established during the marriage," and recognized that Father earned 65 percent to Mother's 35 percent of the couple's combined income. More importantly, the court did not actually require Father to bear the costs of the mortgage because it allowed Father to discharge his child support and alimony obligations by paying the mortgage instead of sending money to Mother. In other words, the payment of the mortgage served as the mechanism for paying child support and alimony. As such, we perceive no abuse of discretion here.[5]

E.

THE JOHN CARROLL IRA

Father contends that the court awarded him 12-1/2 percent of the John Carroll IRA, but that the Judgment, as worded, makes it appear that he was instead awarded 6-1/4 percent of the IRA. We agree that the court's wording is ambiguous. As such, on remand, the court should correct or clarify the Judgment to accurately reflect its ruling.

locale that would permit the children to stay in their respective schools. *See St. Cyr v. St. Cyr*, 228 Md. App. 163, 200 (2016).

[5] In any event, later in this opinion, we discuss the court's alimony and child support awards, as well as the order directing Father to pay the mortgage in lieu of paying child support and alimony directly to Mother.

Father also argues that the court erred in not stating that it was retaining jurisdiction "to alter or amend any non-conforming QDRO's" to resolve any future issues regarding the parties' retirement plans. Mother does not oppose this request. Father does not provide authority for the notion that it was a legal error for the court not to have included such language and Mother fails to address this issue, so we will not find reversible error on this issue. On remand, however, the parties can bring the issue to the trial court's attention and the trial court may consider amending the judgment accordingly.

F.

THE HELOC

Father argues that the court erred in considering the HELOC credit debt as marital debt. According to Father, the HELOC was not used to pay marital debt or for improvements to marital property. Father argues that the HELOC was in Mother's name alone, that "[i]t was clear from the evidence presented that large sums of money went toward various credit cards when the HELOC funds were received by Appellant Mother[,]" that Mother only "vaguely testified that some of the credit cards went towards improvements on the marital home[,]" and that sums were used to pay Mother's business expenses.

In response, Mother argues that Father failed to "dispute the trial court's rationale for not considering the HELOC[,]" and that Father "has not directed the Court to any evidence that of exactly what the debt was used for or attempted to trace the debt." Further, she directs us to *Lee v. Andochick*, 182 Md. App. 268, 299 (2008), where we stated that "the phrase 'marital debt' [includes] monies borrowed to make improvements to marital

property—whether the borrowed funds that were utilized ultimately enhances the value of the marital property or not."

When it gave its decision on the HELOC, the court stated: "I think and I believe the law frowns upon this for this very reason, that that would require me to go to each and every credit card statement and figure out who was at fault for what. Both parties are on the hook for the HELOC." We agree. It is neither our responsibility nor was it the responsibility of the circuit court to scour the record to determine what each line item in the HELOC represented. *See Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 618 (2011) ("[A]ppellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented.").

As Father fails to provide evidentiary support for his argument, there is no basis for finding that the court erred.

II.

CUSTODY

A.

STANDARD OF REVIEW

We review a child custody determination using three interrelated standards of review, which we have described as follows:

> [First,] [w]e point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless.

> Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon the factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

The abuse of discretion standard recognizes "the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Santo v. Santo*, 448 Md. 620, 625 (2016) (quotation omitted). An abuse of discretion "may arise when no reasonable person would take the view adopted by the trial court[,]" "when the court acts without reference to any guiding rules or principles[,]" or where "the court's ruling is clearly against the logic and effect of facts and inferences before the court[.]" *Id.* at 625-26 (cleaned up).

B.

LEGAL CUSTODY WITH TIEBREAKERS

Mother argues that it was an error for the court to divide the tiebreaking activities as it did, arguing that it "will lead to confusion, consternation, and dispute." Specifically, Mother contends that she should have the tiebreaking authority for medical decisions and that "[i]t is also incoherent to split the decisionmaking for the minor children's activities," arguing that it will lead to activities that directly conflict. Father contends that the court's decision was well-reasoned and consistent with the recommendations of the best interest attorney. We agree with Father.

When the court announced its decision from the bench, it carefully explained the reasoning behind its tie-breaking decisions, which encompasses over three pages of the transcript. Further, as argued by Father, splitting up the tie-breaking authority was even more favorable to Mother than the suggestion of the best interest attorney, who had a well-reasoned basis for its recommendation that Father be responsible for all decisions regarding extra-curricular activities.[6] As such, the court did not abuse its discretion by imposing an unorthodox division of tie-breaking authority.

C.

SHARED PHYSICAL CUSTODY

Mother claims that the court erred in characterizing the parties as having shared physical custody. According to Mother, the court mistakenly used guidelines that applied only to cases filed after October 1, 2020, and had the court utilized the correct guidelines, it would not have found that there was shared physical custody because the court did not award to Father more than 35 percent of the overnight visits with the minor children.[7] Similarly, Mother contends that the court erred in its determination of the child support award, arguing that that amount was calculated based on incorrect guidelines.

[6] In fact, the best interest attorney suggested that Father be responsible for all decisions regarding extra-curricular activities because he agreed with Father that the children were over-booked.

[7] Prior to October 2020, the threshold for shared physical custody was 35 percent or more of the overnights with the non-custodial parent. *See Rose v. Rose*, 236 Md. App. 117, 131-32 (2018) (quoting FL § 12-201(n) (1984, Repl. Vol., 2017 Supp.)). As of October 1, 2020, that threshold was reduced to 25 percent. FL § 12-201(n).

For his part, Father argues that the court clearly intended to award him shared physical custody but erred in not giving him 35 percent of the overnight visits with his children.

When it rendered its decision, the court clearly expressed its intention to award the parties shared custody, and the transcript reflects eight pages where the court described and explained its rationale in determining that shared physical custody was appropriate. After the court gave its verbal decision but before entering the Judgment, the court realized that the awards had been incorrectly calculated. The court, therefore, entered the Judgment with the corrected awards and included the Supplemental Opinion to explain the changes. As the court stated in the Supplemental Opinion:

> the Court's filing is in error . . . . Under §12-204(d) the Court may use its discretion in setting the amount of child support. In this case, the parties combined earn $21,667 per month or $56,667 beyond the [$15,000] amount at the highest level of the guidelines.
>
> The Court specifically found "shared physical custody" in this matter. Under the "Old" law, shared physical custody is any amount above 35%. (Family Law Article §12-201 N), Mr. Weaver will have 33.4% which falls below the shared custody amount.
>
> The Child Support Guidelines extrapolated to the parties' income provides for the following:
>
> | | |
> |---|---|
> | Under shared physical custody (new law) | $2,092 |
> | Under sole physical custody (old law) (below 35% to Father) | $2,732 |
> | Under shared physical custody (old law) (35.1% to Father) | $1,991 |
>
> As noted above, the "old law" is operative in this case and it is the Court's discretion to set child support as the incomes herein exceed the

> guidelines. The guidelines at their maximum provide for $2,847 total for combined income of 15,000 and two children. At that level, Mr. Weaver would pay $1,964.43 (based upon 69% of $15,000) less $383 for health insurance, for a net of $1,581.43. Clearly, the child support of $1,227 as noted by the Court is inappropriate.
>
> The Court will award child support payable by Brandon Weaver to Heidi Weaver in the amount of $2,092 per month. This amount is the amount that would be awarded under the "new law" extrapolated to the parties' incomes. This amount also reflects the shared custody of the parties despite the fact that under the "old" law, Mr. Weaver would need six additional days of custody to reach shared custody.

From our review of the record, it appears that the court knew exactly what it was doing: it knew that it was awarding what it considered to be shared physical custody even though, technically, the number of overnights with Father were six nights shy of reaching the 35 percent threshold; it knew the factors that were relevant in its decision as to custody; it knew which guidelines applied; and it knew that it was entitled to exercise its discretion in determining the amount of the child support award because the parties' combined income exceeded the guidelines. While the court may not have articulated the entire basis for its custody decisions, including why it did not merely increase the number of visits to reach the 35 percent threshold, here again, we presume the court knew the law and applied it properly. *Aventis Pasteur, Inc., v. Skevofilax*, 396 Md. 405, 426 (2007).

As such, we find no reversible error or abuse of discretion in the court's determination of custody.

D.

DINNER AND SCHOOL HOLIDAY SCHEDULE

Father argues that this case should be remanded so that the court can precisely articulate its schedule for dinners and school holidays, contending that the current schedule for dinner is imprecise and the schedule for school holidays is ambiguous. Mother disagrees.

As we stated in *Leary v. Leary*, 97 Md. App. 26, 54 (1993), "a definitive visitation schedule is preferable . . . ." Unlike in *Leary*, where the court merely ordered "reasonable visitation," 97 Md. App. at 54, here, the court devised an extensive schedule, leaving open only whether the children's visit with Father for dinner during the week would be on a Wednesday or a Thursday. Given that during any potential week the children could have school activities, schoolwork, or extra-curricular activities in the evenings, it is highly likely for some weeks, Wednesday will work better and that for other weeks, Thursday will work better. We do not perceive an abuse of discretion in the court's visitation schedule. Nevertheless, because we are remanding this case on other issues, the court may, at its discretion, reconsider the visitation schedule.

As to school transitions, the court stated:

> During virtual school, drop off will be at 7:30 am. and pickups will occur at 3:30 pm. When in person school begins, drop offs and pickups are to conform to school schedule. When no school, parties will alternate custody with Father having first weekday with no school.

Father argues that this is ambiguous. According to Father:

> The trial court was also vague in its determination that "When no school, parties will alternate custody with Father having the first weekday with no

> school." (E. 76). The parties should not have to interpret what this means. Surely, the court did not intend on a result wherein if there was no school for 3 days straight, that this meant the parties were swapping the children back and forth for 3 days. However, this is how the current order reads if we were to strictly interpret it. Instead, this clause should be remanded, as was also requested in Appellee's Motion to Alter or Amend.

In response to Father's Motion to Alter or Amend the Judgment, the best interest attorney stated as to this issue: "Insofar as Plaintiff believes that the provision in the Judgment of Absolute Divorce regarding days the Children have off from school is confusing or subject to interpretation, [he] believes that it is in the best interest of the Children that the Court clarify that provision."

We agree that this provision is ambiguous and remand it for clarification.

III.

CHILD SUPPORT AND ALIMONY

A.

STANDARD OF REVIEW

"Child support orders are generally within the sound discretion of the trial court." *Knott v. Knott*, 146 Md. App. 232, 246 (2002). Though we review a child support award for an abuse of discretion, the factual findings underpinning an award are reviewed for clear error and will be upheld where any competent evidence supports them. *Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014); *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002); Md. Rule 8-131(c). "As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result." *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (citation omitted).

Similarly, we review the determination of the amount of alimony using the abuse of discretion standard. *Solomon v. Solomon*, 383 Md. 176, 196 (2004). In addition, "[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.* (citation omitted).

B.

MOTHER'S CONTENTIONS

Mother argues that in calculating child support, the court erred in: (1) determining her income; (2) determining Father's income; and (3) using the shared custody guidelines as the basis for establishing child support because Mother was awarded primary physical custody. According to Mother, the court erroneously used the child support guidelines effective October 1, 2020, instead of the "old" guidelines.

Mother further argues that in light of the errors in the child support determination because the amount of child support is a factor in determining alimony, alimony needs to be revisited. Mother also argues that the court erred in ordering "that child support be paid as the mortgage on the property."

Finally, Mother argues that because Father will receive half of the proceeds of the marital home when it is sold, Father "is going to receive half of his contribution for child support and alimony back when the house is sold." According to Mother, this result is inequitable. Father contends that there was no error in the court's decision.

For the reasons explained below, although we don't necessarily agree that the court erred in its ultimate determinations, a remand is necessary for the court to reconsider and/or

further explain its determinations of child support, alimony, and payment of the mortgage and taxes on the marital home.

1. MOTHER'S INCOME

Citing to *Johnson v. Johnson*, 152 Md. App. 609, 621 (2003), Mother argues that the court erred in not using her "current" income. According to Mother, the court improperly based her income on her 2019 income instead of her 2020 income, and thus failed to show a decrease in her income as a realtor due to the COVID pandemic. Mother contends that she doesn't know if her income will ever be at the 2019 level again.

Father agrees that the court erred in its calculation of Mother's income, but not in the same way as Mother. Father argues that the court properly took Mother's prior years' earnings into account. The court's error, according to Father, was that the court did not consider all of Mother's income sources.

We believe they are both incorrect. Section 12-203(b)(2) of the Family Law Article specifically provides that, for the court's income determination, a parent must provide the three most recent tax records, and that in certain cases, a self-employed parent, such as Mother, may be required to provide tax returns for the five most recent tax returns. It is clear to us that when the trial court calculated Mother's income, it carefully considered both the fact that Mother's income declined in 2020 and that Mother had multiple sources of income. As the court stated:

> With Miss Weaver, . . . I have rounded her up . . . to eighty thousand dollars. Eighty thousand dollars for a variety of different reasons. Miss Weaver's income is more difficult for a variety of reasons, not the least of which is she is self employed. . . . Also taking into consideration the fact that she has worked historically as a substitute teacher, which she is not doing now . . . .

> The eighty thousand dollars, that, again, there was testimony about how her real estate company is doing now. It is an up and down thing. The eighty thousand dollars takes all of these things into consideration. I think 72 is kind of a bottom line that I could have found. I think eighty is appropriate given the nature of the other things going on. I think that is a fair estimate of her actual earnings taking all these other side things into consideration.

As such, we find no abuse of discretion in the court's determination of Mother's income.

2. FATHER'S INCOME

Mother contends that the court erred by "fail[ing] to completely calculate [Father's] income and apportion what his 'actual income' was . . . ." According to Mother, the court did not base its decision on a "mathematically specific number." Father disagrees.

Mother's argument misconstrues the court's analysis. The court did, in fact, use a specific number, although it arrived at that number not solely through a mathematical calculation, but by considering a number of inputs, including expenses paid by Dvorak and then rounding up to $180,000. The court explained:

> And that rounding is taking the various things that Mr. Weaver gets, the gas, some of which is related to work, some of which is not, certainly not fair to associate all of those costs on the various credit cards that we had with his work but lots of them are with his work or not with his work. But the approximation of 180 I think is a fairway to look at it under the statute as to how we examine and come to numbers for income.

We find no abuse of discretion in the court's determination of Father's income.

3. CALCULATION OF CHILD SUPPORT AND ALIMONY

Before addressing these issues, it is helpful to recall the way in which the court settled on its child support and alimony determinations. Initially, the court determined that Father would pay $1,227 per month in child support, and another $1,200 per month in alimony, for a total of $2,427.00 per month. The court orally announced this decision to

the parties on October 15, 2020. The court based its child support award on a finding that it was granting shared physical custody and that this was an above-guidelines case.

After the court orally announced its decision, the court issued the Judgment and a Supplemental Opinion. The Judgment reflected that the court had revised the monthly child support and alimony payments to $2,092 and $500, respectively, for a total of $2,592 per month. In the Supplemental Opinion, the court explained that it revised the awards because the original calculations were wrong due to (1) a computer malfunction; and (2) the fact that the court did not properly consider that the new law regarding custody that went into effect October 1, 2020 only applied to cases filed after that date.

Child support and alimony serve different purposes. Child support is "premised on the concept that 'a child should receive the same proportion of parental income, and thereby enjoy the same standard of living, he or she would have experienced had the child's parents remained together.'" *Smith v. Freeman*, 149 Md. App. 1, 18 (2002) (quotation omitted).[8]

[8] In 1989, the General Assembly enacted guidelines to compute child support obligations "based on specific descriptive and numeric criteria . . . ." *Voishan v. Palma*, 327 Md. 318, 322 (1992) (quotation omitted). Section 12-204(e) of the Family Law Article provides a schedule for child support award based on the parties' monthly income up to $15,000. To use the guidelines, the court must first determine the adjusted actual income of each parent as well the expenses incurred in raising the child, and then apply those numbers within its framework. *See Reuter v. Reuter*, 102 Md. App. 212, 235 (1994). Where the income of the parties is above the guidelines, however, "the trial court enjoys significant discretion in determining the amount of the basic child support award." *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (citation omitted); *see also* FL § 12-204(d) (in cases where the parties' combined income exceeds the highest level on the guidelines provided under FL § 12-204(e), known as "above-guidelines" cases, "the court may use its discretion in setting the amount of child support."); *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018). For cases above the guidelines, the court considers the parties' financial circumstances, the reasonable expenses of the child, the

When a court determines a child support award, it must balance the best interests of the child against the financial ability of the parents.[9] FL § 12-204(d); *Frankel v. Frankel*, 165 Md. App. 553, 587 (2005). On the other hand, the purpose of alimony is rehabilitative. *Blaine v. Blaine*, 336 Md. 49, 67 (1994); *see also* FL § 11-106(b).[10]

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parties' station in life, the parties' age and physical condition, and the expenses in educating the child. *Walker v. Grow*, 170 Md. App. 255, 266 (2006).

[9] Several factors are relevant in setting child support in an above the guidelines case, including "the financial circumstances of the parties, their station in life, their age and physical condition, and expenses in educating the children." *Collins v. Collins*, 144 Md. App. 395, 443 (2002) (quoting *Unkle v. Unkle*, 305 Md. 587, 597 (1986)).

[10] Pursuant to FL § 11-106(b), the court is to consider the following factors when making an alimony award:

> (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

Between the hearing on October 15 at which the court rendered its initial decision and put its reasoning on the record, and October 29, 2020, when it signed the Supplemental Opinion, both the child support and alimony numbers changed, and the combined total increased by $165 per month. Because child support and alimony serve different purposes, the dramatic swings in the child support and alimony figures from the initial decision to the final decision require further explanation. Likewise, because the combined amount of the payments increased by $165 per month in that same period, a further explanation is warranted.[11]

The court did not explain the rationale behind its requirement that in lieu of paying child support and alimony directly to Mother, Father would pay the mortgage and would be entitled to take the deduction for the interest paid on the mortgage.

From our review of the record, it appears that the mortgage was a fixed mortgage amortized over 30 years, meaning that the loan is to be repaid in fixed monthly payments for 360 months. Each payment, although fixed, consists of both accrued interest and principal. With each payment, the amount allocated to interest goes down and the amount allocated to principal goes up. Interest on the mortgage is tax deductible, and although the

whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

[11] The court only stated that the new child support award was an exercise of the court's discretion to use the new guidelines, "extrapolated to the parties' income." The court stated that the reduction in alimony was the result of "the dramatic increase in child support which is related to the standard of living the parties established during the marriage, and the ability of the party from whom alimony is sought to meet his needs while meeting the needs of the party seeking alimony."

principal is not tax deductible, the principal is recouped when the property is ultimately sold. Thus, it makes a difference economically if, instead of directly paying Mother $2,592 for the combined child support and alimony, Father pays that same amount on the mortgage.

To Mother, the net effect is that even though the amount of Father's cash payment is the same, she ultimately winds up with less money in her pocket (and Father winds up with more) than if Father makes the payment to her instead of the mortgage company. It does not appear from the record that the court considered the net financial effect to the parties by having Father discharge his child support and alimony obligations in this manner. Therefore, we are vacating and remanding the child support, alimony, and mortgage payment determinations for the court to reconsider its determinations and, if it continues to require Father to pay the mortgage instead of paying Mother directly, to set forth its rationale for doing so.

C.

TAXES AND INSURANCE ON THE MARITAL HOME

According to Father, the Judgment inappropriately fails to "include language that requires Defendant Mother to pay the taxes and insurance on the Home." While not acknowledging a clerical error, Mother states that "[t]o the extent that any administrative error was made with regard to the tax and insurance payments, it should be corrected."

As such, on remand the circuit court should clarify the Judgment to indicate that Mother should pay taxes and insurance on the marital home.

CONCLUSION

To summarize our holdings, on remand the court should:

1. Clarify Father's interest in the John Carroll IRA;

2. Clarify, if it deems appropriate, the visitation schedule for when the children go to Father for dinner;

3. Clarify the visitation schedule for school holidays;

4. Reconsider and explain its child support, alimony, and mortgage payment determinations;

5. Clarify that Mother must pay the taxes and insurance on the marital home; and

6. Take up any other issue that the court, in its discretion, believes is appropriate and necessary including, if it so determines, whether to retain jurisdiction over matters pertaining to the parties' retirement plans.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 90 PERCENT BY APPELLANT AND 10 PERCENT BY APPELLEE.