Circuit Court for Anne Arundel County
Case No. 02-C-FM-18-001436

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1141

September Term, 2019

STACY GODFREY

v.

JOEL GODFREY

Reed,
Wells,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: October 2, 2020

After a three-day bench trial, the Circuit Court for Anne Arundel County granted Stacey and Joel Godfrey, respectively appellant and appellee, (hereafter, "Mother" and "Father"), an absolute divorce. Prior to trial, the parties agreed that Mother would have residential custody of the parties' two minor children, a girl, aged 11, and a boy, aged 7. Father would have visitation with the children consistent with an agreed upon schedule. By the end of the divorce hearing, with the court's help, the parties had largely resolved the division of marital property, except Mother's request for alimony. That left the following issues for the court to decide: Father's request for joint legal custody, who would transport the children to and from visitation, child support, alimony, and counsel fees.

After the submission of counsels' written closing arguments, the court rendered a judgment of absolute divorce in which it granted the parties joint legal custody of their children, decided they would equally share transportation duties, and set a child support amount based on a Child Support Guidelines Worksheet calculation. The court denied Mother's request for alimony. Both parties were required to pay their own counsel fees.

In this timely appeal, Mother presents six questions for our review which we have rephrased and condensed into five questions:[1]

[1] Mother's verbatim questions are:

1. DID THE TRIAL COURT COMMIT ERR[OR] BY FAILING TO AWARD APPELLANT LEGAL CUSTODY, OR JOINT LEGAL CUSTODY WITH TIE-BREAKING AUTHORITY [] OF THE MINOR CHILDREN[?]

2. DID THE TRIAL COURT COMMIT LEGAL ERROR IN FAILING TO ATTRIBUTE INCOME TO APPELLEE IN THAT HE HAD CHANGED EMPLOYMNT AND REDUCED HIS INCOME BY $1,470 PER MONTH OR $17,640 PER YEAR[?]

I. Did the trial court abuse its discretion in granting the parties joint legal custody?

II. Did the trial court abuse its discretion in finding that Father had not voluntarily impoverished himself?

III. Did the trial court properly calculate child support?

IV. Did the trial court err in refusing to grant Mother rehabilitative or indefinite alimony?

V. Did the trial court abuse its discretion in determining that each party should bear their own counsel fees?

For the reasons that follow, we hold that after reviewing the record, the court did not abuse its discretion in awarding the parties joint legal custody. Further, the court was within its discretion in denying Mother alimony and counsel fees. We conclude, however,

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3. DID THE TRIAL COURT COMMIT LEGAL ERROR IN INCLUDING APPELLEE'S COST OF HEALTH INSURANCE FOR THE MINOR CHILDREN WHEN THE APPELLANT WAS PROVIDING THE PRIMARY INSURANCE COVERAGE FOR THE CHILDREN[?]

4. DID THE TRIAL COURT ERR INCALCULATING THE APPELLANT'S COST OF WORKRELATED DAYCARE AND EXTRAORDINARY MEDICAL EXPENSES FOR THE MINOR CHILDREN?

5. DID THE TRIAL COURT COMMIT LEGAL ERROR BY FAILING TO AWARD ALIMONY TO APPELLANT?

6. DID THE TRIAL COURT COMMIT LEGAL ERROR BY FAILING TO AWARD ATTORNEY'S FEES PURSUANT TO MD. FAMILY LAW CODE ANN. §§ 7-107, 11-110, AND 12-103[?]

that the trial court did not articulate its rationale for determining Father's income, nor did the court explain its decision for crediting (or not crediting) either party the health insurance costs for the minor children, extraordinary medical costs, or daycare expenses in its child support calculation. Accordingly, we vacate the court's order on those issues, and remand for a further hearing, but otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

According to the testimony and pleadings, the parties met while Father was a Midshipman at the United States Naval Academy. They married in Baltimore on May 20, 2005, shortly after his graduation. Because Father was a commissioned officer in the United States Navy, he and Mother were stationed at a variety of locales, including Hawaii, California, Texas, and Virginia. For reasons that were not explained, while the parties were in California, Father learned that he would not be able to complete his naval career. The Navy subsequently transferred Father to Virginia to begin the process of separation. After Father left the service, he began working at a Houston-based company called Asset Performance Network. In 2018, he left that job, and as we will discuss later, began working for Booz Allen Hamilton in Washington D.C.

During their marriage, the parties had two children, Penelope, born October 10, 2008, and Abner, born May 16, 2012. Abner was born autistic, and his care and its costs form part of one of Mother's allegations of error. At this juncture, it is enough to know that both children attend some form of therapy to help them cope with their parents'

divorce. Abner also attends Turning Point, an Annapolis-based institute, which uses "Applied Behavior Analysis" and is specifically geared to his needs.

While Father was in the Navy, Mother pursued a degree in the arts, and ultimately obtained a Bachelor of Fine Arts in Photography. In 2013, after Father's discharge from the Navy, the parties lived approximately three years in Houston, when he started working with Asset Performance. During that time, Mother was a stay-at-home parent who sold skin care products and did photography on a part-time basis. Later, Father was able to transfer to the Bethesda office of his company and the parties rented a home in Annapolis. Additionally, Mother obtained a job with the United States Naval Academy as a full-time photographer.

The parties' marriage unraveled primarily over a disagreement about whether they would lead a polyamorous lifestyle. While in Houston the parties had experiences with other people in shared sexual relationships. Apparently, during their time in Houston the parties agreed that another woman, Larissa Smith, would become Father's girlfriend. This relationship continued after the parties moved to Maryland. Ms. Smith visited the parties after they resettled in Maryland and spent holidays with them and their children. Mother eventually soured on a polyamorous lifestyle, informed Father of her decision, and he balked. Father moved out of the marital home and took up residence with Ms. Smith in Washington, D.C.

On April 12, 2018, Mother filed a complaint for absolute divorce. In the complaint, among several stated grounds, she claimed Father had committed adultery and deserted the

marriage. In Mother's view, Father was leading "an alternative lifestyle that provided an inappropriate and unstable environment for raising two minor children. Therefore, she demanded sole legal and physical custody of the children, child support, alimony, use and possession of the marital home, and counsel fees, among other relief. Father responded by filing an answer and a counter-complaint for absolute divorce, or, alternately, for a limited divorce.

During the pendency of the divorce proceedings, the parties reached two consent agreements regarding custody. On September 11, 2018, the court entered a pendente lite order addressing custody and visitation. As noted, before the court heard testimony at the divorce hearing, the parties announced that they had reached a final agreement on residential custody.

The divorce hearing spanned three days, June 18 through 20, 2019. Before the trial started, the parties agreed that the grounds for the divorce would be a voluntary separation. The court then heard testimony from Father, Mother, and Ms. Smith. By the end of the trial, the parties had resolved all marital property issues, except for Mother's alimony request. Ultimately, the court granted the parties an absolute divorce, granted Father's request for joint legal custody, set an amount for child support, and denied Mother's dual demands for alimony and counsel fees. Mother filed a timely appeal.

Additional facts may be discussed, as needed.

DISCUSSION

I. The Court Did Not Abuse Its Discretion in Granting the Parties Joint Legal Custody

Mother claims that the court committed reversable error in granting the parties joint legal custody of their two children. The focus of Mother's claim is her insistence that Father was opposed to continuing Applied Behavior Analysis or "ABA" to treat Abner's autism. She asserts that Father "opposed ABA therapy" based on the costs of the treatment, thereby placing Abner's health and education in jeopardy. She argues that at the divorce hearing, she made a compelling case for the court to have granted her "tie-breaking authority," at a minimum. Father counters that he did not oppose ABA therapy but wanted a therapeutic program for Abner that was covered by his health insurance. Father claims that Mother insisted on using her health insurance coverage and would only use Father's plan "as a last resort." Father maintains that the court properly considered the testimony in light of the *Taylor*[2] factors and did not err in awarding the parties joint legal custody of both children.

We review a trial court's custody determination for abuse of discretion. *Santo v. Santo*, 448 Md. 620, 625 (2016); *Petrini v. Petrini*, 336 Md. 453, 470 (1994). We employ this deferential standard of review because of the trial court's unique "opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Id*. Although a deferential standard, abuse of discretion may arise when "'no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding rules or principles.'" *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted). Such an abuse may also occur when the court's ruling

[2] *Taylor v. Taylor*, 306 Md. 290 (1986).

is "'clearly against the logic and effect of facts and inferences before the court' or when the ruling is 'violative of fact and logic.'" *Id.* (internal citations omitted). Simply put, we will not reverse the trial court unless its decision is "'well removed from any center mark imagined by the reviewing court.'" *Id.* at 313 (citation omitted).

We reiterate what is consistently cited in all custody cases. The overarching consideration in child custody disputes is determining what is in "the best interest of the child." *Ross v. Hoffman*, 280 Md. 172, 178 (1977).

The definitive standard for an award of joint legal custody was established in *Taylor v. Taylor*, 306 Md. 290 (1986). There, the Court of Appeals explained that with joint legal custody, "both parents have an equal voice in making [long range] decisions, and neither parent's rights are superior to the other." *Id.* at 296. In joint physical custody, the parents will share or divide custody of the child, but not necessarily "on a 50/50 basis." *Id.* at 297. With respect to a circuit court's authority in child custody cases, "the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Id.* at 301–02. To assist trial courts "in determining whether joint custody is appropriate," *Taylor* established "the major factors" to consider. *Id.* at 307-11.[3]

[3] 1. Willingness of Parents to Share Custody

2. Fitness of Parents

3. Relationship Established Between the Child and Each Parent.

4. Preference of the Child.

5. Potential Disruption of Child's Social and School Life.

In *Taylor*, the Court firmly established that "the most important factor" in deciding whether to award joint legal custody as the "capacity of the parents to communicate and to reach shared decisions affecting the child's welfare." *Id*. at 304. As it explained, "there is nothing to be gained and much to be lost by conditioning the making of decisions affecting the child's welfare upon the mutual agreement of parents who are 'severely embittered,'" and whose "relationship [is] marked by dispute, acrimony, and a failure of rational communication." *Id.* at 305. Accordingly, *Taylor* stands for the proposition that effective parental communication is an important consideration when a court considers whether the parents are suitable for joint legal custody because, in such an arrangement, the parents are charged with making important decisions together that affect a child's future. If the parents cannot make decisions together because, for example, they are unable to put aside their antipathy for each other, then the child's well-being could be compromised. In that situation, joint legal custody would be inappropriate.

6. Geographic Proximity of Parental Homes.

7. Demands of Parental Employment.

8. Age and Number of Children.

9. Sincerity of Parents' Request.

10. Financial Status of the Parents.

11. Impact on State or Federal Assistance.

12. Benefit to Parents.

13. Other Factors

Mother claims the court erred because it ignored the "fact" that Father was opposed to Abner continuing ABA counseling. Significantly, she does not claim that the court erred in misconstruing the *Taylor* factors. Mother's only argument on this point is that she believes that she and Father cannot reach joint decisions about Abner's care. Consequently, in Mother's view, joint legal custody is inappropriate.

The record does not contain the court's rationale for its decision to grant joint legal custody.[4] However, we have the undisputed fact that the parties were able to reach interim custody arrangements, as well as the parties' testimony regarding Abner and the need for ABA counselling. We conclude that the record is sufficiently developed for us to address Mother's precise allegation of error.

Preliminarily, we note that the trial judge recognized the parties demonstrated the ability to compromise and reach two interim custody arrangements. That fact, he observed, was a strong indicator that the parties could effectively make joint decisions that benefited both children.

> THE COURT: Before we do opening statements, I want to say to the parties and you may consider what I'm about to say in a break. I will not prejudge anything in this case and will give you one little piece of advice though, it's my experience that when parties can communicate well enough to come to agreements with regard to physical custody and all the multiple changes that need to be made and all of the complications of life with two children one of whom I am told has some extraordinary difficulties I guess is the most gentle way to put that for now. When parties demonstrate that they can communicate with each other effectively about those things[,] what they are

[4] We caution that *Taylor* instructs, "where the trial judge concludes that joint legal custody is appropriate notwithstanding the absence of a 'track record' of willingness and ability on the part of the parents to cooperate in making decisions dealing with the child's welfare, **the trial judge must articulate fully the reasons that support [his or her] conclusion**." *Taylor*, 306 Md. at 308 (emphasis supplied).

> demonstrating to me as a judge is that they can also communicate well enough with each other to share legal custody.

The judge explained the concept of joint legal custody, at one point defining it as "decision-making power." He all but implored the parties to agree to joint legal custody. Unfortunately, the parties declined to do so.

With this as our backdrop, our focus turns to testimony that might support or dispute Mother's assertion that Father was opposed to ABA therapy. Father testified that Abner had participated in ABA therapy since the family lived in Houston (2013-2017). Father agreed that it was in Abner's best interests to continue ABA therapy. Father's concern was that Abner's therapy costs should be covered under his Health Maintenance Organization (HMO), Kaiser Permanente. Later, Father clarified that Abner ought to participate in ABA therapy through either his HMO or Mother's health insurance with the Naval Academy.

> [FATHER'S COUNSEL]: And did you - - what was your position regarding the children going to a therapist under Kaiser Permanente?
>
> [FATHER]: My position was that, I just - - whether it was my insurance or hers, just having a doctor that was covered by insurance and discussing the cost up-front … I was never given a chance to see what the cost would be for - - and be part of the decision-making process for any of these things in advance.

Father also said that he had been left out of the decision-making process. He explained Abner started at Turning Point at the "end of November or December 2018," but Mother did not tell him until after she had enrolled Abner in the program.

Despite this, he nonetheless felt that he could talk to Mother and resolve other disagreements. His testimony on this point was as follows:

> [FATHER'S COUNSEL]: Okay. And what is your understanding of legal custody?
>
> [FATHER]: My understanding of legal custody is that the - - the party who has legal custody makes all decisions for the children[,] financial, cultural, including my understanding is including even where they reside, what state they reside in.
>
> [FATHER'S COUNSEL]: Okay. And are you and [Mother] able to communicate?
>
> [FATHER]: Yes.
>
> [FATHER'S COUNSEL]: Okay; and are - - are there bumps?
>
> [FATHER]: Yes, there are bumps, but we've used a Parent Coordinator.
>
> [FATHER'S COUNSEL]: Okay. Which Parent Coordinator did you use?
>
> [FATHER]; Susan Krohn.
>
> [FATHER'S COUNSEL]: Okay; and are you willing to utilize the services of Susan Krohn again if you and your former - or, you and [Mother] reach any bumps?
>
> [FATHER]: Yes.
>
> [FATHER'S COUNSEL]: Okay. And are you asking to be included in decisions regarding the children?
>
> [FATHER]: Yes.
>
> [FATHER'S COUNSEL]: Okay; and are you asking that the Court award joint legal custody?
>
> [FATHER]; Yes. I am.

Mother testified that Abner had participated ABA therapy since about 2015 while the parties were in Texas. Mother stated that Abner's first ABA therapist participated in the couple's insurance plan. According to Mother, at that time, Abner had made significant improvement in his behaviors. When the parties moved to Maryland Abner started kindergarten. He also began acting inappropriately again. Having had prior success with ABA therapy while in Houston, Mother sought an ABA counsellor in the Annapolis area. She found Turning Point, located in Severna Park, and promptly enrolled Abner.

At a bench conference during Mother's testimony, as the judge and the attorneys discussed an evidentiary issue, Mother's attorney revealed that she wanted Mother to have sole legal custody of both children because Father wanted "cheaper options" than Turning Point. Mother's counsel admitted she did not know what Father meant by "cheaper options," however.

Once testimony resumed, Mother explained that when Abner started acting out again, she was desperate to find a local ABA therapist. Around the same time, Father changed jobs and started with Booz Allen. That change meant that he now had different health care insurance coverage, namely Kaiser Permanente. Mother admitted that she was unsure if Kaiser would cover Turning Point's costs. But Mother admitted she knew that her insurance coverage would cover the costs, so she enrolled Abner. She also acknowledged that she did not discuss her decision with Father because Abner was out of control and needed immediate intervention.

We understand Mother's desire to quickly find a therapist for Abner. However, we cannot say that the relative exigency of that occasion was indicative of the parties' inability to communicate. After all, Father testified that he thought ABA therapy was important and necessary for Abner. Additionally, he acknowledged that "talk therapy" for both children was helpful. He simply wanted his health insurance, or Mother's, to cover the costs of both therapies. And, in fact, Mother's insurance covered the costs of ABA therapy, exclusive of co-payments. This is precisely what Father wanted. We think this a favorable outcome for the parents and the children. The bottom line is that the parties agreed that insurance should cover the costs of the children's therapies. They simply disagreed about whose insurance that would be.

Significantly, Mother claims no abuse of discretion with regard to the *Taylor* factors. She asserts only that the parties' supposed inability to agree about whose insurance should pay for Abner's ABA therapy revealed that joint custody was inappropriate. We disagree. We conclude that the "track record" of the parties' willingness to communicate and cooperate shows that they can reach joint decisions benefiting both children. *Taylor*, 306 Md. at 304. Consequently, we perceive no error in the court's award of joint legal custody.

II. The Court Did Not Articulate its Rationale for Seemingly Finding that Father Had Not Voluntarily Impoverished Himself

Mother posits that the trial court erred in not finding that Father voluntarily impoverished himself. Her argument is that Father left his job at Asset Performance and took a job with Booz Allen to "deliberately decrease" his income. Had he not done so,

Mother asserts, Father would have had an additional $19,092.00 in annual gross income for which he could have paid additional child support, alimony, or counsel fees. Father maintains he left Asset Performance because "there was no room for advancement," and travelling constantly was literally distancing him from his children. He claims he took a job with Booz Allen to travel less and earn more money.

After a bench trial such as this one, an appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8–131(c). We review the court's findings as to a party's earning capacity under the clearly erroneous standard. *See Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015), *aff'd*, 447 Md. 647 (2016); *Crabill v. Crabill*, 119 Md. App. 249, 265–66 (1998). Under that standard, "[i]f there is any competent evidence to support the factual findings [of the trial court], those findings cannot be held to be clearly erroneous." *Solomon v. Solomon*, 383 Md. 176, 202 (2004) (citation and quotation marks omitted).

Our appellate courts have held that a parent is "considered 'voluntarily impoverished' whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources[.]" *Wills v. Jones*, 340 Md. 480 (1995) (quoting *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993)) (internal quotation marks omitted). *Wills* indicated that, "[t]o determine whether a parent is voluntarily impoverished ... a court must inquire as to the parent's motivations and intentions." *Id.* at 489. In *Wills*, the Court of Appeals explained that "voluntary" means

that "the action [must] be both an exercise of unconstrained free will and that the act be intentional." *Id*. at 495.

In analyzing the issue of voluntary impoverishment, the trial court must consider all of the "enumerated factors" in Maryland Code Annotated, (2019, 2020 Repl. Vol.) Family Law ("F.L.") Article § 12–201(f). *Wills*, 340 Md. at 490. These include recent work history, occupational qualifications, and "prevailing job opportunities." *Id*. In addition, the court may consider other factors, including:

1. his or her current physical condition;

2. his or her respective level of education;

3. the timing of any change in employment or financial circumstances relative to the divorce proceedings;

4. the relationship of the parties prior to the divorce proceedings;

5. his or her efforts to find and retain employment;

6. his or her efforts to secure retraining if that is needed;

7. whether he or she has ever withheld support;

8. his or her past work history;

9. the area in which the parties live and the status of the job market there; and

10. any other considerations presented by either party.

Goldberger, 96 Md. App. at 327 (citing *John O. v. Jane O.*, 90 Md. App. 406, 422 (1992)); *Wagner v. Wagner*, 109 Md. App. 1, 42–45, *cert. denied*, 343 Md. 334 (1996).

Wills requires the trial court consider the enumerated factors in F.L. § 12–201(f) when determining whether a party has voluntarily impoverished themselves. But, here, we

have no record of what the court considered in reaching its decision regarding Father's income. Consequently, we remand for the court to articulate its rationale.

III. The Trial Court Did Not State Its Rationale for How It Calculated Child Support

We now address Mother's claims that the trial court erred in crediting Father's cost of health insurance for the children in its child support calculation. Additionally, Mother alleges the court erred in not including her work-related daycare costs nor crediting her the costs for extraordinary medical expenses for the children. Father argues that he had carried the children on his health insurance during the marriage when he was the only parent working full-time and had coverage through his employer. Only within a year or so of the divorce hearing, after Mother obtained full-time employment, did she unilaterally put the children under her health insurance. Further, Father argues that Mother's testimony about daycare and extraordinary medical expenses for the children was either incomplete or inconsistent, thus the court properly credited her what it did when calculating child support.

We have said that "[t]he parents of a child are his natural guardians and, quite apart from the moral obligations of parenthood, owe the child a legal, statutory obligation of support." *Lacy v. Arvin*, 140 Md. App. 412, 422 (2001). "A parent owes this obligation ... to the child regardless of whether the child was the product of a marriage." *Id*. If the combined adjusted actual income of the parents is $15,000 per month or less, the court must calculate the proper amount of child support using the statutory child support guidelines. *See* F. L.§§ 12–202(a)(1) and 12–204(d). *Cf. Walker v. Grow*, 170 Md. App.

255, 265 (2006) (discussing the statutory obligation prior to the 2010 amendments, increasing the guidelines from a statutory consideration of $10,000 to $15,000).

Ordinarily, child support orders are within the sound discretion of the trial court. *Walker*, 170 Md. App. at 266 (citing *Shenk v. Shenk*, 159 Md. App. 548, 554 (2004)). But, "where the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a de novo standard of review." *Id*. (quoting *Child Support Enforcement Admin. v. Shehan*, 148 Md. App. 550, 556 (2002)).

When calculating child support, the court is obliged to ascertain each parent's "actual income." *Walker*, 170 Md. App. at 267. "'Actual income' means income from any source." F.L. § 12–201(b)(1). *See Walker*, 170 Md. App. at 267. "For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, 'actual income' means gross receipts minus ordinary and necessary expenses required to produce income." F.L. § 12–201(b)(2).

Family Law § 12-204(h)(1) permits the court to add to the monthly adjusted income of whichever party claims it. "Any actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes." In this case, both parents claimed that their employer-based health insurance covered both children. The court added the costs that each parent claimed to their adjusted actual income.

Additionally, F.L. § 12-204(h)(2) permits the court to add to a party's monthly adjusted actual income the cost of "extraordinary medical expenses." "Any extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes."[5]

Similarly, F.L. § 12-204(g) permits the court to add to the basic child support obligation "actual child care expenses" "due to employment or job search of either parent," as "determined by actual family experience, unless the court determines that the actual family experience is not in the best interest of the child." And, F.L. § 12-204(g)(2)(ii) and (3) provide that,

> (ii) if there is no actual family experience or if the court determines that actual family experience is not in the best interest of the child:
>
> 1. the level required to provide quality care from a licensed source; or
>
> 2. if the obligee chooses quality child care with an actual cost of an amount less than the level required to provide quality care from a licensed source, the actual cost of the child care expense.
>
> (3) Additional child care expenses may be considered if a child has special needs.

See, Kirkstan v. Kirkstan, 90 Md. App. 462, 468-70 (1992).

[5] Family Law § 12-201(g):

(g) Extraordinary medical expenses.—

(1) "Extraordinary medical expenses" means uninsured expenses over $100 for a single illness or condition.

(2) "Extraordinary medical expenses" includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.

In this case, the court added to Mother's adjusted actual monthly income $1517.00 for childcare expenses and added nothing for extraordinary medical expenses. Unfortunately, the record does not offer an explanation as to why the court made these decisions. Without a record of the court's thinking to guide our review, we must remand and ask the court to place on the record its rationale for how it calculated child support. In particular, the court should explain why it credited both parties a health insurance payment, even though they do not have a shared residential custody arrangement. We stress that this may be entirely appropriate, as there seems to be no statutory or appellate holding that prohibits it. We simply cannot evaluate the result without knowing the reasoning that supports the decision. Similarly, the court reached a decision regarding the amounts it attributed to Mother for her daycare and out of pocket extraordinary medical expenses. In evaluating Mother's claim of error regarding these issues, knowing the court's reasoning would be helpful in undertaking our review. We remand for this reason.

IV. The Court Did Not Abuse Its Discretion in Denying Mother Alimony

In her fourth allegation of error, Mother asserts that the court abused its discretion in denying her fixed-term or "rehabilitative" *and* indefinite alimony. She argues that the statutory factors found in F.L. § 11-106, favored an award of rehabilitative alimony "for a period of at least 3 years and indefinite alimony totaling $1,500.00." In opposition, Father posits that the evidence showed that Mother was self-supporting, and that the parties' income, though disparate, was not unconscionably so. According to Father, the trial court correctly determined that neither type of alimony was warranted under the circumstances.

A circuit court has the discretion to award no alimony, rehabilitative alimony, or, upon a proper finding of unconscionable disparity, indefinite alimony. Thus, it is reversible error for the court to abuse its discretion in considering an alimony award. *Whittington v. Whittington*, 172 Md. App 317, 339-40 (2007). The principal function of alimony once had been maintenance of the dependent spouse's standard of living. With the adoption of the Maryland Alimony Act in 1980 ("Act"), that function became rehabilitation of the economically dependent spouse. *Karmand v. Karmand*, 145 Md. App. 317, 327 (2002). For that reason, "the 'statutory scheme [governing] alimony generally favors fixed-term or so-called rehabilitative alimony,' rather than indefinite alimony." *Simonds v. Simonds*, 165 Md. App. 591, 605 (2005) (quoting *Tracey v. Tracey*, 328 Md. 380, 391 (1992)).

The preference for fixed-term 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.'" *Simonds*, *supra*, 165 Md. App. at 605 (quoting *Tracey*, *supra*, 328 Md. at 391). *See also Turrisi v. Sanzaro*, 308 Md. 515, 524–25 (1987) (noting that fixed-term alimony "promote[s] the transitional or rehabilitative function" of the Act.)

Although fixed term alimony is favored, the Act's statutory scheme recognizes two exceptional circumstances in which a circuit court may award indefinite alimony. *Turrisi, supra*, 308 Md. at 527 (observing that "the use of indefinite alimony only in exceptional circumstances" is one of the concepts underlying the Act); *Roginsky v. Blake–Roginsky*,

129 Md. App. 132, 142 (1999). These exceptional circumstances appear in F.L. § 11–106(c):

> (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.

When considering making an award for alimony of either type, the court *must* consider several factors. These factors are found in F.L. § 11-106. They are:

> (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.

See, Simonds, 165 Md. App. at 604. These factors are non-exclusive, and "although the court is not required to use a formal checklist, the court must demonstrate consideration of all necessary factors." *Roginsky*, 129 Md. App. at 143.

Here, the court reviewed all the statutory factors and found that neither type of alimony was warranted. At pages 138-140 of Mother's record extract we have a spreadsheet listing each of the factors in F.L. § 11-106 and the trial judge's comments, reflecting his factual findings. The court found that the parties had been married for fourteen years and that during the marriage, both Mother and Father "made substantial monetary and non-monetary contributions to the marital enterprise…" The court found that Mother had obtained a B.A. and was working full-time, earning $47,000.00 per year. She was 42 years old at the time of divorce and was in good mental and physical health. Significantly, the court found that Mother failed to prove why she needed fixed-term, rehabilitative alimony since she had a college degree, was working full-time, and that "[e]ach party has retirement/pension assets or [the] ability to gain same." Additionally, the court noted that Mother "will receive a substantial liquid asset pay-out through marital property distribution agreement placed on the record in addition to monthly child support." Finally, as required in F.L. § 11–106(c)(2), the court compared the parties' income and standards of living and concluded that they were "disparate but not unconscionably so." Consequently, indefinite alimony was inappropriate.

Based on the testimony and the court's analysis of the statutory factors in F.L. § 11-106, we do not consider the court's decision to be an abuse of discretion. *Caccamise v.*

Caccamise, 130 Md. App. 505, 513 (2000) ("The standard of review for alimony awards is the clearly erroneous standard; the decision is upheld 'unless the [court's] decision was arbitrary or [its] judgment was clearly wrong.'" (quoting *Freese v. Freese*, 89 Md. App. 144, 154 (1992)).

V. The Court Was Within Its Discretion to Deny Wife an Award of Counsel Fees

Finally, Mother maintains that the court should have granted her counsel fees and committed reversible error in not doing so. The thrust of her argument is that the court ought to have awarded her attorney fees due to Father's "failure to respond to discovery." Although Mother admits that she did receive a thumb drive with the requested documents after she filed a motion to compel, she claims she had "to expend significant attorney's fees in obtaining [Father's] income and financial records."

Mother also makes a secondary argument. She notes that at one point during the litigation Father had asked for shared physical custody for the minor children. Mother claims his move to Washington D.C. and living in a two-bedroom apartment with Ms. Smith, "were not the actions of a party seeking shared physical custody."

In response, Father asserts that Mother took unnecessary procedural actions during litigation, including seeking "an injunction, subpoena[ing] irrelevant document[s], and took unnecessary deposition[s]." According to Father, Mother did these things well-knowing that the parties had limited financial resources. He says that he was justified in defending himself against Mother's demand for "sole legal custody, limited visitation,

[and] an award of all the marital property." In light of this, Father argues, the court properly required the parties to shoulder their own counsel fees.

Before awarding attorney's fees, the trial court must consider "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the suit." F.L. § 11–110. See also F.L. § 12–103.[6] "The award or denial of counsel fees is governed by the abuse of discretion standard." *Doser v. Doser*, 106 Md. App. 329, 359 (1995).

The trial judge stated his reasons for denying counsel fees using a spread sheet, reproduced at page 141 of the record extract. The judge found that Mother was justified in bringing the divorce action, but her demand for "100% of [the] martial property was not justified[.] [A]nd that [was] clearly illustrated by the fact that the parties agreed at the end of the trial to a 50/50 distribution of marital property." Additionally, the court explained

[6] (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:

(1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or

(2) files any form of proceeding:

(i) to recover arrearages of child support;

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

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

(b) Before a court may award costs and counsel fees under this section, the court shall consider:

(1) the financial status of each party;

(2) the needs of each party; and

(3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

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

that Mother's demand for "unusually high childcare, counselling, and medical expenses for the children," was not completely justified. The court also found that Mother's demand for alimony was unjustified, because she was working, earning a salary of $47,000.00 per year, and she obtained a college degree after Father assigned his "G.I. Bill to her." As for Father, the court noted that he was working full-time and earned a salary of $115,000.00 per year, plus Veterans Administration benefits. In the trial court's view, Father was justified in defending the divorce action.

We hold that the trial court reviewed the necessary factors in F.L. § 11–110 and F.L. § 12–103 together with the evidence adduced at trial. While we might have reached a different result, the court's decision was not so far removed from the center mark to constitute an abuse of discretion. *North v. North*, 102 Md. App. 1, 14 (1994) ("[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.") We conclude that the court's ruling on counsel fees was not "beyond the fringe," and was more than "minimally acceptable." We discern no error here.

THE JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDLE COUNTY REGARDING APPELLEE'S INCOME AND THE AWARD OF CHILD SUPPORT ARE VACATED AND THE CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL OTHER

JUDGEMENTS ARE AFFIRMED. APPELLANT TO PAY TWO-THIRDS OF THE COSTS, APPELLEE ONE-THIRD.