

Circuit Court for Howard County
Case No.: C-13-FM-18-000412

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1146

September Term, 2020

CHIDOZIE EMENUGA

v.

IHUOMA EMENUGA

Reed,
Ripken,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: December 1, 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.

Chidozie Emenuga (“Husband”), Appellant, seeks review of a judgment and order of the Circuit Court of Howard County, in which a child support arrearage of \$36,840 was assessed against him and in which the Wife, Ihuoma Emenuga (“Wife”), Appellee, was awarded fifty percent of Husband’s pension account with the African Development Bank. Fifty-thousand dollars of the Wife’s attorneys’ fees also were shifted to Husband.

On appeal, Husband presents this Court with three questions for review:

1. Did the trial court abuse its discretion in determining a child support arrearage, without affording Appellant any credits for payment of expenses?
2. Did the trial court abuse its discretion by its misapplication of the statutory factors and transfer an interest in Appellant’s pension to Appellee?
3. Should the trial court’s award of attorneys’ fees be reversed, as it was arbitrary and incorrect?

For the reasons that follow, we shall affirm the decision of the Circuit Court.

Wife filed a Complaint for Absolute Divorce, or in the Alternative, Limited Divorce, in June of 2018. In her complaint, Wife asked for custody of two minor children (two other children were emancipated), *pendente lite* and permanent child support, determination of the value of all marital property, a monetary award, use and possession of the marital home, transfer of Husband’s interest in the marital home, and a Qualified Domestic Relations Order¹ (“QDRO”) granting her ownership or rights in Husband’s

¹ A Qualified Domestic Relations Order or “QDRO,” is “a vehicle designated by federal law,” for the transfer of ownership of a deferred compensation plan, such as a
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employer-sponsored pension plan with the African Development Bank. Husband filed a Counter-Complaint for Absolute Divorce, in which he sought joint physical and legal custody of the minor children, a determination of the value of marital property, a monetary award, equitable distribution of the parties' retirement accounts, and attorneys' fees.

Wife filed an amended complaint in March of 2019 in which she removed her request for a limited divorce but requested alimony and attorneys' fees.² Husband, in October of 2019, subsequently amended his Counter Complaint to allege that Wife had constructively deserted him.

In July of 2019 Husband and Wife appeared for a *pendente lite* hearing, after which the Magistrate Judge recommended that Husband pay child support of \$2,910 per month *pendente lite* and that his child support obligation begin at the date of filing of the Wife's first amended complaint in March of 2019. The Magistrate Judge calculated Husband's child support arrearage to be \$11,640 from that date.

Husband and Wife each filed exceptions to the Magistrate Judge's findings. Husband asserted, inter alia, that the Magistrate Judge had improperly inflated his income

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pension, as part of the disposition of marital property in divorce proceedings. See Cynthia Kramer & Thomas C. Ries, Fader's Maryland Family Law § 13-4(c), at 513-13 (6th ed. 2016) (footnotes omitted).

² Wife later amended her Complaint in September of 2019 and again in November of 2019, with allegations that are not relevant to the issues presented herein.

and that the calculation of his child support arrearage should have been reserved for the merits hearing. Wife challenged the calculation of Husband's arrearage, because, she alleged, the amount should have been greater, as she had requested child support in her original complaint, in June of 2018.

The trial judge, in October of 2019, following a hearing, denied Husband's exceptions, but granted Wife's exception regarding the amount of Husband's arrearage, which was to be calculated from the time of the filing of the Complaint to total \$40,740. The trial court subsequently issued a Pendente Lite Order, which, in addition to determining custody and visitation of the minor children, ordered Husband to pay \$2,910 per month in child support and additionally pay \$300 per month toward the arrearage.

After a merits hearing, which occupied six days and occurred over a period of a year, from November of 2019 through November of 2020, the Honorable Mary Kramer, of the Circuit Court for Howard County, issued an oral opinion, in which she included various findings related to the divorce. She subsequently issued a Judgment of Absolute Divorce, in which Husband was ordered to pay child support in the amount of \$2,714 per month, along with an additional \$300 per month toward what was his extant child support arrearage of \$36,840. The court also ordered that fifty percent of the marital portion of Husband's pension with the African Development Bank be transferred to Wife via a Qualified Domestic Relations Order and that Husband pay \$50,000 of Wife's attorneys' fees. Husband timely filed a notice of appeal with this Court.

STANDARD OF REVIEW

“We ‘accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings,’ and ‘absent evidence of an abuse of discretion, the trial court’s judgment ordinarily will not be disturbed on appeal.’” *Frazelle-Foster v. Foster*, 250 Md. App. 52, 64 (2021) (quoting *Boemio v. Boemio*, 414 Md. 118, 124-25 (2010)). We evaluate the judge’s factual findings under the clearly erroneous standard. *Simonds v. Simonds*, 165 Md. App. 591, 616 (2005). Accordingly, if “there is any competent evidence to support the factual findings [of the trial court], those findings cannot be held to be clearly erroneous.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016) (alteration in original) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). We review a trial court’s legal conclusions without deference. *Frazelle-Foster*, 250 Md. App. at 64 (citing *Jackson v. Sollie*, 449 Md. 165, 174 (2016)).

CHILD SUPPORT ARREARAGE

Husband contends that, because he had continued to pay the mortgage on the marital home after the parties separated, his total child support arrearage should have been reduced by the amount of mortgage payments made after Wife filed her Complaint. Wife responds that Husband failed to raise this issue before the trial court and, therefore, we should decline to address it.

Rule 8–131, which governs the scope of appellate review, in relevant part, provides:

(a) **Generally.** The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2–322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary and desirable to guide the trial court or to avoid the expense and delay of another appeal.

Under the Rule, generally, “a party cannot raise an issue on appeal unless the issue has been either raised in or decided by the trial court.” *Fischback v. Fischback*, 187 Md. App. 61, 78 (2009).

Husband did not raise the issue of crediting mortgage payments, which had been made by him, to his total child support arrearage, during any of the proceedings at the trial court. Although use and possession of marital home, as well as the home’s value, were issues during the merits hearing, Husband failed to suggest that his child support arrearage should have been reduced by the value of mortgage payments he had made. After the court issued its judgment, Husband failed to raise the issue of crediting mortgage payments to his arrearage in a motion for reconsideration,³ so that we shall not

³ Rule 2–535, which governs a trial court’s revisory power over its judgments, in relevant part, provides:

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action

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address this issue.⁴

Husband asserts, as he did below, that his child support arrearage also should have

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that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

⁴ Were we to address Husband's contention that his arrearage should have been reduced by the value of mortgage payments, which had been made by him, we would find that such a contention lacks merit, because mortgage payments are not among those credits which may, under Section 12-204 of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.) be factored into the calculation of child support.

Where one parent has sole physical custody of the children, each parent's child support obligation is then calculated pursuant to Section 12-204(1) of the Family Law Article, which provides:

(1) *Cases other than shared physical custody cases.* — (1) Except in cases of shared physical custody, each parent's child support obligation shall be determined by adding each parent's respective share of the basic child support obligation, work-related child care expenses, health insurance expenses, extraordinary medical expenses, and additional expenses under subsection (i) of this section.

(2) The obligee shall be presumed to spend that parent's total child support obligation directly on the child or children.

(3) The obligor shall owe that parent's total child support obligation as child support to the obligee minus any ordered payments included in the calculations made directly by the obligor on behalf of the child or children for work-related child care expenses, health insurance expenses, extraordinary medical expenses, or additional expenses under subsection (i) of this section.

The obligor parent's child support obligation is adjusted for any pre-existing child support payments and/or pre-existing alimony payments, Section 201(c) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.), along with any alimony awarded to the obligee, Section 12-204(a)(2)(ii) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.).

All references to the Family Law Article in this opinion are to Maryland Code (1984, 2019 Repl. Vol.).

been reduced by undefined amounts, which he alleges had been paid by him for medical and educational expenses for the minor children. Section 12–204 of the Family Law Article provides guidance for the calculation of child support, which, in relevant part, provides that, “[t]he basic child support obligation shall be determined in accordance with the schedule of basic child support obligations in subsection (e) of this section.” Section 12–204(a)(1) of the Family Law Article.

Calculation of the basic child support obligation begins with the determination of each parent’s actual income, which is defined as

(b) *Actual income.* — (1) “Actual income” means income from any source.

(2) 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.

(3) “Actual income” includes:

- (i) salaries;
- (ii) wages;
- (iii) commissions;
- (iv) bonuses;
- (v) dividend income;
- (vi) pension income;
- (vii) interest income;
- (viii) trust income;
- (ix) annuity income;
- (x) Social Security benefits;
- (xi) workers' compensation benefits;
- (xii) unemployment insurance benefits;
- (xiii) disability insurance benefits;
- (xiv) for the obligor, any third party payment paid to or for a minor child as a result of the obligor's disability, retirement, or other compensable claim;
- (xv) alimony or maintenance received; and

(xvi) expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent's personal living expenses.

(4) Based on the circumstances of the case, the court may consider the following items as actual income:

- (i) severance pay;
- (ii) capital gains;
- (iii) gifts; or
- (iv) prizes.

(5) "Actual income" does not include benefits received from means-tested public assistance programs, including temporary cash assistance, Supplemental Security Income, food stamps, and transitional emergency, medical, and housing assistance.

Section 12–201(b) of the Family Law Article.

The total of the parents' adjusted actual incomes and the number of their children are used to identify the basic child support obligation within the schedule of guidelines contained in Section 12–204(e) of the Family Law Article. The basic child support obligation is "divided between the parents in proportion to their adjusted actual incomes."

Section 12–204(a)(1) of the Family Law Article.

Where one parent has sole physical custody of the children, each parent's child support obligation is calculated pursuant to Section 12–204(l)(1) of the Family Law Article, which provides: "[E]ach parent's child support obligation shall be determined by adding each parent's respective share of the basic child support obligation, work-related child care expenses, health insurance expenses, extraordinary medical expenses, and additional expenses under subsection (i) of this section."

In calculating an arrearage, the trial court is obligated to credit the payor for “payments that the court finds have been made during the period beginning from the filing of the pleading that requests child support.” Section 12–101(b) of the Family Law Article.

Judge Kramer, in determining Husband’s child support arrearage, made the following findings related to his monthly child support obligation:

I find husband’s income is \$10,201 per month. Wife’s income is \$16,823 per month. The work-related childcare expenses average \$2,074 per month^[5]

Ad.^[6] is in private school in Bryn Mawr at a cost of \$33,500 per year. She’s always been in private school. . . .

Health insurance cost for the children. Both parents provide health insurance for Am. and Ad. Wife pays \$348 per month for herself, Am., and Ad. One-third of that expenses would be used for child support computation. Husband pays \$383.52 per month for himself and the four children. One-fifth of that expense will be used in the child support computation.

With respect to Husband’s child support arrearage, Judge Kramer found:

Husband will also pay \$300 per month against the child support arrearage. I calculated that to be \$36,840.

* * *

Okay. The way I got the \$36,840. I took the \$40,740 from the pendente-lite order. I deducted from that because Husband has paid his

⁵ Judge Kramer found that Husband’s and Wife’s youngest child has special needs, does not attend school, and is cared for by a Certified Nursing Assistant while Mother is at work.

⁶ In June of 2018, when Wife filed her Complaint, the two youngest children were minors. We refer to them as “Ad.” and “Am.”

\$300 a month for the 13 months. I'm only taking it up to October 31st. He's paid his \$300 per month for each of those months, so that was \$3,900. When you subtract that out it's \$36,840.

Judge Kramer had also expressed findings related to the medical and educational benefits available through Husband's employer, which he argues regarding here, about which the Husband did not provide specific information below or here regarding its utilization for the children:

Husband's employer provides a generous tuition reimbursement plan and medical plan. 70 percent of the tuition up to \$40,000 for child and 80 percent of the out-of-pocket medical expenses can be reimbursed. Under the tuition plan, if the employer covers tuition in advance, the amount is taken back out of husband's income if the student does not complete the school year or is not a full-time student.

He had to pay back the advance for Ad.'s final year at Glenelg Country School because she left before the end of the school year. He had to pay back the advanced tuition on Chilezie's tuition at Penn State when he dropped classes and was no longer a full-time student.

As of November 2020, husband had \$5,296.50 in educational expenses removed from his paycheck. In 2019 the total was \$9,798.65.

The 20 percent medical co-pay is deducted directly from husband's paycheck. As of November 2020, that was a total of \$4,901.31. In 2019 the total was \$1,625.01. In 2018 the total was \$3,322.63. . . . The average over the three years is \$273 per month. However, I don't know whether it was for minor children, adult children, adult parents, so it really can't be used in the child support calculation.

Husband failed to prove the amounts of any of his alleged expenses that were for the minor children, because he did not identify nor prove, in any way, the amounts of medical and/or educational expenses nor what were they for, which he avers were attributable to the minor children. It was and continues to be impossible, therefore, to determine from Husband's financial statements, what educational and medical

expenditures had been made for minor children.

The child support guidelines depend on parties identifying what they claim to pay in expenses related to their minor children. *See* Section 12–204 of the Family Law Article. Neither Judge Kramer nor we can be expected to carry Husband’s burden of proof regarding what he avers to have been expenses paid for the benefit of the minor children. Judge Kramer did not abuse her discretion in declining to apply payments, which Husband alleged, but failed to prove that he had made for the benefit of the minor children.

HUSBAND’S PENSION

Husband asserts that the trial judge abused her discretion when she transferred an interest in his pension to Wife, challenging her analysis of what each party was entitled to under the marital award. A trial court’s disposition of marital property entails identifying which property is marital property, pursuant to Section 8–203 of the Family Law Article, followed by the determination of the value of the marital property under Section 8–204 of the Family Law Article. Distribution of marital property between the parties no matter how titled, is dependent on the discretion of the trial judge, who has the authority, to transfer ownership of “a pension, retirement, profit sharing, or deferred compensation plan,” or both. Section 8–205(a) of the Family Law Article.⁷

⁷ Section 8–205(a) of the Family Law Article, which governs monetary awards in divorce proceedings, in relevant part, provides:

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We have explained that “a pension is marital property to the extent that it accrues during the marriage.” *Dziamko v. Chuhaj*, 193 Md. App. 98, 111 (2010) (citing *Deering v. Deering*, 292 Md. 115, 129 (1981)). The contributions during the marriage from income of a spouse plus accruals form the bases of the value of the spouse’s pension, which is factored into the value of the marital award. *Gravenstine v. Gravenstine*, 58 Md. App. 158, 168-69 (1984).

The marital award, of which the marital share of a pension is included, is governed by Section 8–205(a) of the Family Law Article and the factors enumerated in Section 8–205(b) of the Family Law Article determine the amount and methods of payment or transfer:

(b) *Factors in determining amount and method of payment or terms of transfer.* — The court shall determine the amount and the method of payment of a monetary award, or the terms of the transfer of the interest in property described in subsection (a)(2) of this section, or both, after considering each of the following factors:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;

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(a) *Grant of award.* — (1) Subject to the provisions of subsection (b) of this section, after the court determines which property is marital property, and the value of the marital property, the court may transfer ownership of an interest in property described in paragraph (2) of this subsection, grant a monetary award, or both, as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded.

- (2) The court may transfer ownership of an interest in:
 - (i) a pension, retirement, profit sharing, or deferred compensation plan, from one party to either or both parties;

* * *

- (3) the economic circumstances of each party at the time the award is to be made;
- (4) the circumstances that contributed to the estrangement of the parties;
- (5) the duration of the marriage;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
- (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
- (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
- (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

See also Woodson v. Saldana, 165 Md. App. 480, 489 (2005) (explaining that a trial court “must consider the statutory factors enumerated in Section 8–205(b) in exercising its discretion to ‘determin[e] the manner in which [pension] benefits are to be distributed.’”)

With respect to Husband’s pension, Judge Kramer found “that husband has a retirement plan with the African Development Bank. It’s a defined benefit plan and is marital. It will be divided by QDRO.”

Judge Kramer’s finding that Husband’s pension was marital property not only was supported by the Joint Statement of Parties Concerning Marital and Non-Marital

Property,⁸ in which both Husband and Wife agreed that Husband’s African Development Bank pension was marital property. In addition, Wife provided testimony regarding Husband’s employment with the African Development Bank, which demonstrated that the pension contributions had been made during the marriage. Judge Kramer did not err in her finding and determination that the Husband’s pension was marital property.

Judge Kramer detailed her consideration of the requisite statutory factors of Section 8–205(b) of the Family Law Article, to determine the distribution of the marital property:

Both parties made contributions monetary and nonmonetary to the well-being of the family. . . . And each of them took part in caring for the children although I would say wife really had the lion’s share of that because she and the children for a significant period of time lived here in

⁸ Husband and Wife were required to provide the Circuit Court with a list of marital and non-marital property, which included each party’s estimate of the fair market value of those items, pursuant to Rule 9–207, which, in relevant part, provides:

(a) **When required.** When a monetary award or other relief pursuant to Code, Family Law Article, § 8-205 is an issue, the parties shall file a joint statement listing all property owned by one or both of them;

(b) **Form of property statement.** The joint statement shall be in substantially the following form: . . .

(1) The parties agree that the following property is “marital property” as defined by Maryland Annotated Code, Family Law Article, § 8-201: . . .

(2) The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of those sources: . . .

(3) The parties are not in agreement as to whether the following property is marital or non-marital: . . .

* * *

the United States while the husband lived primarily in Nigeria or Ivory Coast.

I've gone through the value and the property interest. Both parties are employed with significant income. Both have significant debt. Husband's living expenses are lower than wife's. I also note he doesn't seem to have taxes taken out of his income. And based on his tax returns that have been filed here, he doesn't pay a lot of taxes out of his income. He has access to homes free of charge through his ancestral clan per his statement. In his interrogatory he's also got . . . an apartment that he can live in for a very low rent through his employer.

When looking at the circumstances that contributed to the estrangement of the parties. The wife moved out of the family home. She believed that husband had young women in his life. She didn't particularly say that there were girlfriends, but did indicate that she believed he had passed two sexually transmitted diseases to her.

Husband felt that there was no reason for the breakup. That it was a fake separation. That she just wanted a divorce and he does not want a divorce. The parties' marriage lasted about 23 years. Wife is 49. I don't know how old husband is, but I don't think he's a whole lot - - not a lot older.

With regard to their physical and mental condition. I know that husband had a brain tumor. He's back to work full-time. Wife appears to be in good health. There's no use and possession. There's no tenancy by the entireties property.

Other factors that I've taken into account is that husband did not make a full and complete discovery disclosure despite being ordered to do so and being sanctioned for failure to do so. It made it difficult for wife who's living full-time in the United States with the children to get access to information that would have been readily available to him in Africa. She had a right to it. She asked for it and she didn't get it.

Had wife hired investigators to procure the documents supporting land ownership, the Court could have ordered husband to pay her costs in doing so as a sanction. But without that the Court cannot speculate as to the ownership and value of the property.

I also take into account that wife has taken on the adult children's college and high school tuition debts during the time she and her husband have been unable to come to any kind of solution to that situation.

Judge Kramer subsequently defined how Husband's pension would be divided:

There will be a QDRO on husband's retirement account with African Development Bank. 50 percent of the marital share. The marital share being the years that husband -- that the parties have been married during the current employment at African Development Bank divided by the total years during the current employment the husband works at African Development Bank.

Judge Kramer's findings pertaining to the factors delineated in Section 8-205(b) of the Family Law Article also were supported by the record.

In considering the first factor, each party's contributions to the family's well-being, Judge Kramer's findings that both parents had contributed to the well-being of the family, and that Wife had been the main caretaker of the children while Husband worked in Africa, is supported by both Husband's and Wife's testimony during the proceedings.

Judge Kramer's findings regarding factor two, the value of the marital and non-marital property, as well as how marital property had been acquired during the marriage, factor eight, were based on financial documents provided by both parties, as well as testimony taken during the merits hearing.

With respect to the third factor, the economic circumstances of the parties, Judge Kramer's findings pertaining to their incomes and debts were based on financial documentation submitted to the court, as well as testimony taken during the hearing. Judge Kramer's finding that Husband's living expenses "are lower than wife's[.]" was based on her review of Husband's tax returns, as well as his answers to interrogatories and his testimony.

Judge Kramer's findings pertaining to the circumstances leading to the end of the

marriage, factor four, and her finding that the parties had been married for twenty-three years, factor five, were based on testimony taken during the merits hearing.

Judge Kramer's findings pertaining to the parties' ages, factor six, and their physical and mental health, factor seven, were based on Husband and Wife's testimony during the hearing.

Lastly, with respect to factor eleven, additional factors that Judge Kramer considered in her analysis of marital property, regarding how Husband had obfuscated his ownership of assets, leading to greater costs for the Wife and her inability to identify his assets, was based on the proceedings during the case. All of Judge Kramer's findings were supported by evidence adduced during the proceedings in the case, and she did not err.

Judge Kramer, then, had discretion, based upon her findings, to order that Wife receive half of the marital portion of Husband's pension. She performed the requisite statutory analysis, which led to her determination that Wife would receive one half of Husband's pension via a QDRO. Where "the record states that all of the required factors have been considered, we will presume that the law was applied correctly." *Hoffman v. Hoffman*, 93 Md. App. 704, 724-25 (1992) (citing *Imagnu v. Wodajo*, 85 Md. App. 208 (1990) and *Randolph v. Randolph*, 67 Md. App. 577 (1986)). There was no abuse of discretion on her part and she did not err.

ATTORNEYS' FEES

Husband asserts that Wife was not entitled to an award of \$50,000 of attorneys' fees.

Attorneys' fees may be statutorily allocated by a court between parties in proceedings pertaining to divorce, according to Section 7–107 of the Family Law Article, entitled “Award of reasonable and necessary expenses,” and which provides:

(a) *“Reasonable and necessary expense” defined.* — In this section, “reasonable and necessary expense” includes:

- (1) suit money;
- (2) counsel fees; and
- (3) costs.

(b) *Award authorized.* — At any point under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *Considerations by court.* — Before ordering the payment, the court shall consider:

- (1) the financial resources and financial needs of both parties; and
- (2) whether there was a substantial justification for prosecuting or defending the proceeding.

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

(e) *Reimbursement.* — The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees.* — As to any amount awarded for counsel fees, the court may:

- (1) order that the amount awarded be paid directly to the lawyer; and
- (2) enter judgment in favor of the lawyer.

Section 8–214 of the Family Law Article, entitled “Award of reasonable and necessary

expenses,” which governs fee-shifting in proceedings related to marital property and employs similar language to Section 7–107, provides:

(a) “Reasonable and necessary expense” defined. — In this section, “reasonable and necessary expense” includes:

- (1) suit money;
- (2) counsel fees; and
- (3) costs.

(b) Award authorized. — At any point in a proceeding under this subtitle, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) Considerations by court. — Before ordering the payment, the court shall consider:

- (1) the financial resources and financial needs of both parties; and
- (2) whether there was substantial justification for prosecuting or defending the proceeding.

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

Reimbursement

(e) The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

Payment to lawyer

- (f) As to any amount awarded for counsel fees, the court may:
- (1) order that the amount awarded be paid directly to the lawyer; and
 - (2) enter judgment in favor of the lawyer.

Fee-shifting may occur in proceedings related to child custody and support, pursuant to Section 12–103 of the Family Law Article, entitled “Award of costs and counsel fees,” which provides:

(a) *In general.* — 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) *Required considerations.* — 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) *Absence of substantial justification.* — 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.

Under the statutes, the trial judge is required to document the financial status of each party, the needs of each party, and whether the party to whom attorneys' fees are awarded was substantially justified in advancing claims or defending claims. Sections 7–107(c), 8–214(c), and 12–103(b) of the Family Law Article.

Judge Kramer presented her findings regarding her decision to shift \$50,000.00 of Wife's attorneys' fees to Husband:

Wife incurred \$81,000 in counsel fees. I don't think I have any idea how much husband incurred. . . .

Wife earns substantially more money than husband. Both have significant debts. I think a lot of the legal work was occasioned by the discovery dispute. I went through the bill in detail.

And I also take into account because when setting attorneys' fees, I'm to look at the financial needs and resources of both parties and I'm very familiar with that having just gone through marital property. But I also look at relative merit. And going forward with and taking a position that a party took, I think there's plenty of instances where husband has told the Court

different stories and he's told one story in his testimony, one story in his 9–207. Perhaps a different story in the answers to interrogatories.

So, there's been a lack of candor. And frankly, a lack of honesty, which is required by the discovery rules. It deprived the Court of the ability to make a proper distribution of marital property. And it was unreasonable. It caused additional time in court. A lot of additional time in court and additional counsel fees to be incurred by wife.

Based on that, taking all of that into account as well as the other provisions of this order, I'm going to order that Mr. Emenuga pay Mr. Silverman \$50,000 as contribution towards Plaintiff's reasonable counsel fees.

Judge Kramer's decision to shift \$50,000 of Wife's attorneys' fees to Husband was based on her consideration of the factors enumerated in Sections 7–107(c), 8–214(c), and 12–103(b) of the Family Law Article. Judge Kramer's findings related to each factor were supported by evidence in the record, including Wife's numerous filings related to her attempts to obtain information from Husband during discovery, as well as documentation of attorneys' fees she had incurred over the course of the proceedings.

The record in this case reveals that Husband failed to provide any information regarding numerous assets listed on the 9–207 statement, including real property, investments, and automobiles, which Wife had alleged were marital property. During discovery, Husband repeatedly failed to produce information related to marital property, in contravention of numerous requests by Wife, as well as court orders. Husband, then, during the merits hearing, provided inconsistent testimony regarding the existence and value of marital property. Judge Kramer acted within her discretion when she awarded \$50,000 in attorneys' fees to Wife.

In conclusion, Judge Kramer did not err in her findings or abuse her discretion in her determinations with respect to Husband's child support obligation, her decision to transfer half of Husband's pension to Wife nor when she shifted \$50,000 of Wife's attorneys' fees to Husband.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**