Circuit Court for Prince George's County
Case No. CAD20-15366

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1264

September Term, 2021

KIMBERLY A. CRAGG

v.

KYLE D. CRAGG

Kehoe,
Tang,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: August 14, 2023

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

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

This appeal arises out of a divorce proceeding between Kimberly A. Cragg ("Kimberly") and Kyle D. Cragg ("Kyle").[1] After a trial on the merits, the Circuit Court for Prince George's County awarded Kimberly rehabilitative alimony for just shy of eighteen months, child support, and use and possession of the family home for six months. The court denied her requests for retroactive application of Kyle's alimony and child support obligations, and it denied her request for attorney's fees. On appeal, Kimberly challenges these determinations. For the reasons set forth below, we shall affirm in part, vacate in part, and remand so the court may re-evaluate the alimony determination, along with child support and fees.

FACTUAL BACKGROUND

The parties, both approximately 50 years old at the time of trial, married in 1999 and have two children, K.C. (born 2003, now emancipated) and S.C. (born 2012). During the marriage, the parties resided in the marital home located in Laurel, Prince George's County ("Laurel home"), the parties' primary asset. The parties lived above their means and accumulated significant debt during the marriage. They variously liquidated retirement, savings, and/or other funds to pay off a family vehicle, credit card debt, private school tuition, living expenses, legal fees, and other financial obligations.

[1] We refer to the parties by their first names to avoid confusion and mean no disrespect.

In March 2019, after 20 years of marriage, the parties separated. Kyle eventually relocated to Clarksville, Howard County, where he rented a single-family home near S.C.'s school, while Kimberly remained in the Laurel home.

Parties' Employment History

When they married, the parties were employed. Kyle obtained a bachelor's degree and served 10 years of active duty with the military followed by a few years in the reserves. Kimberly was employed with the National Institutes of Health ("NIH") earning about $67,000 per year. She obtained a Bachelor of Science degree in health services management and began a master's program in leadership shortly thereafter.

For a few years, the parties earned comparable salaries until Kyle became employed as a government contractor. He later became director of business development for a company, earning $220,000 per year. By the end of trial, Kyle had changed employment but continued to earn the same salary.

Kimberly's employment history, on the other hand, was not as consistent. In 2003, Kimberly experienced a high-risk pregnancy with the parties' first child (K.C.) and was placed on bed rest. As a result, she was unable to complete her master's program after finishing only one class. When K.C. was born, Kimberly resigned from NIH, but she "never stopped working completely." In addition to caring for K.C., Kimberly worked in two different capacities—she worked for Kyle's company, and she started a property management company—both of which allowed her to mostly work remotely from home.

Around 2008, Kimberly resumed her employment with NIH as a clinical recruiter. In 2012, Kimberly experienced another high-risk pregnancy, this time with S.C. She suffered a pregnancy-related injury, which led to her final resignation from NIH in June 2012. At the time, her annual salary was about $76,000.

Kimberly's Medical Issues

In 2013, Kimberly and the children were involved in a car accident, resulting in injuries to Kimberly's back. She testified that, because of the accident, she had a curvature to her spine, she limped to take pressure off her left leg, she suffered from short-term memory loss, and she required pain management care. Kimberly had been able to care for the children, drive, clean, and shop for groceries by making modifications, getting injections, and taking medication, but she was not able to stand, sit, or lay for more than a certain number of hours.

Kimberly testified that she "cannot work . . . unless it's a 1099 after surgery." She explored having surgeries to her back, neck, and spine but expressed concern about the attendant risks that might leave her "worse off." She did not have any surgery currently scheduled and was unsure when surgery would be possible as she wanted to first exhaust "all other avenues." She planned to consult with her pain management doctor as soon as possible, followed by a neurologist, explaining that "there's several steps." She did not have a plan for becoming self-supporting after having surgery because "[she] can't assume everything's going to go well with the surgery[.]"

There was no training or services that Kimberly knew of which could help her work and be self-supporting. She stated that "master[']s schools have changed" and completion of her master's program may take "like four years, maybe. I don't know."

Kimberly had not been employed since June 2012, and she had not applied for employment. She received monthly social security disability income ("SSDI") in an amount of $1,547. S.C. also received social security disability benefits in the amount of $796 per month, which Kimberly received on the child's behalf as the representative payee.

PROCEDURAL BACKGROUND

Custody and divorce proceedings separately ensued in the Circuit Court for Prince George's County. At the conclusion of the custody proceeding (case number CAD19-15796), the court entered, in May 2021, the last operative custody order that granted the parties joint legal and shared custody of S.C., in relevant part, as follows: during the school year, Kyle has primary custody of S.C., and Kimberly has access with the child three weekends each month; during the summer, Kimberly has primary physical custody of S.C., and Kyle has access three weekends each month plus two weeks; and Kyle has tie-breaking authority with respect to educational decisions. The court did not resolve child support issues.

In the underlying divorce proceeding (case number CAD20-15366), the court addressed property distribution, consideration of a monetary award, alimony, child support, use and possession of the Laurel home, and the parties' respective requests for attorneys' fees. In March 2021, the court issued a consent *pendente lite* order that granted Kimberly

use and possession of the Laurel home and required Kyle to continue paying, *inter alia*, the mortgage (approximately $2,950 per month), utilities, automobile insurance, and health insurance for Kimberly and the children.

The trial on the merits spanned four days between May 4, 2021, and June 30, 2021, on all issues, except custody. On August 24, 2021, the court delivered an oral opinion, portions of which will be introduced later in the discussion as they become relevant.

On September 21, 2021, by order of judgment of absolute divorce, the court granted Kimberly use and possession of the Laurel home for a period of six months (commencing September 10, 2021, until March 10, 2022), after which the home would be listed for sale.

It awarded Kimberly rehabilitative alimony structured as follows:

> ORDERED, that commencing on September 10, 2021 until March 10, 2022, [Kyle] shall pay rehabilitative alimony in the amount of Two Thousand Nine Hundred and Fifty-Three dollars ($2,953.00) directly to the Mortgage Company; and it is further,
>
> ORDERED, that commencing on April 1, 2022, the rehabilitative alimony shall be reduced to the amount of Two Thousand Dollars ($2,000.00) per month and shall be paid directly to [Kimberly] until December 31, 2022.

With respect to child support, the court ordered Kyle to pay child support for S.C. as follows:

> Commencing on September 10, 2021 until December 31, 2022, [c]hild support is set at Zero Dollars ($0.00) based on the Guidelines Worksheet, which has been adjusted due to [Kimberly]'s receipt of Social Security Disability Income for the benefit of the minor child [in the amount of $796 per month]. Commencing on January 1, 2023, [c]hild [s]upport shall be set at One Hundred Sixty-Six Dollars ($166.00)[.]

(Footnote omitted).

The court denied Kimberly's requests for retroactive application of Kyle's alimony and child support obligations, and it denied the parties' respective request for attorneys' fees.[2]

QUESTIONS PRESENTED

In her appeal, Kimberly presents four questions which we have reordered and rephrased for clarity:

I. Did the court err and/or abuse its discretion in determining rehabilitative alimony?

II. Did the court err and/or abuse its discretion in determining child support?

III. Did the court abuse its discretion in denying Kimberly's request for attorney's fees?

IV. Did the court abuse its discretion in granting Kimberly use and possession of the family home for six months?

For the reasons explained herein, we affirm the use and possession period but otherwise vacate the judgment with respect to alimony, child support, and fees and remand the case for further proceedings consistent with this opinion.

[2] The written judgment also addressed the distribution of proceeds from the anticipated sale of the Laurel home, the division of Kyle's retirement assets, distribution of personal property, and health insurance for Kimberly and S.C. Because none of these aspects of the judgment were raised on appeal, we do not discuss them here.

DISCUSSION

I. REHABILITATIVE ALIMONY

Maryland favors the provision of rehabilitative alimony for a fixed term to assist the dependent spouse in becoming self-supporting. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184-85 (2016) (citations omitted). Nonetheless, indefinite alimony is appropriate "if the standard of living of one spouse will be so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court." *Karmand v. Karmand*, 145 Md. App. 317, 338 (2002).

In making an award of alimony, the court must consider the following factors pursuant to Maryland Code Annotated, Family Law Article ("FL") § 11-106(b) (1984, 2019 Repl. Vol.):

> (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.

While use of a formal checklist is not required, the trial court must demonstrate that it has considered all necessary factors. *Simonds v. Simonds*, 165 Md. App. 591, 604-05 (2005) (citing *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999)).

After consideration of the factors set forth in subsection (b), a trial court may only make an award of indefinite alimony if it finds, under subsection (c), that one of the following has been met:

> (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
>
> (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

FL § 11-106(c)(1), (2). These provisions are "a restraint upon the doctrine of rehabilitative alimony" that exist "to protect the spouse who is less financially secure from too harsh a life once single again." *Tracey v. Tracey*, 328 Md. 380, 392 (1992) (citation omitted). Findings predicated on subsection (c) rest upon the court's first-level factual findings of the factors listed in subsection (b). *See Bricker v. Bricker*, 78 Md. App. 570, 577 (1989); *Whittington v. Whittington*, 172 Md. App. 317, 337 (2007).

We will not disturb an alimony award unless we conclude that "the trial court abused its discretion or rendered a judgment that is clearly wrong." *Brewer v. Brewer*, 156 Md. App. 77, 98 (2004) (citation and internal quotation marks omitted). We "accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003)

(citation omitted). We will disturb a trial court's ruling only "where no reasonable person would take the view adopted by the [trial] court," or "the ruling is clearly against the logic and effect of facts and inferences before the court." *Reynolds v. Reynolds*, 216 Md. App. 205, 219 (2014) (internal quotations and citations omitted).

A. Circuit Court's Oral Opinion

The circuit court began its oral opinion by acknowledging that it must consider the factors set forth in subsections (b) and (c). It found that: by the time of trial, the parties had been married for 22 years; both parties made monetary and non-monetary contributions to the wellbeing of the family; and the parties became estranged because they grew increasingly apart.

Regarding the physical and mental condition of each party, Kyle did not claim any physical disability. Kimberly, on the other hand, testified that "she was injured in an automobile accident and can no longer work." The court noted that no medical expert testified about the extent of her limitations.

In its discussion of the parties' standards of living, Kyle's ability to pay alimony, and the parties' financial needs and resources, the court found that they lived beyond their means, incurred significant debt, and "are both in the red when you look at their income and their expenses." Kyle's gross monthly income was $17,630.40, his net income was $11,878.02, and his monthly expenses were $13,779.66, resulting in a monthly deficit of $1,901.64.

The court found that Kimberly's gross monthly SSDI income was $2,316. It did not determine her reasonable needs. Rather, it observed that some of Kimberly's claimed monthly expenses were one-time occurrences, which "would reduce the expenses some[,]" but her expenses still exceeded her income. It concluded that the monthly amount of alimony requested by Kimberly, in the amount of $5,000 or $6,000, could not be maintained without seriously affecting the child's best interest.

In its discussion about Kimberly's ability to be wholly or partially self-supporting, the court found that Kimberly

> has advanced formal education [a Bachelor of Science degree with credits towards a master's degree] and extensive experience as a medical recruiter with NIH. She also started and maintained her own property management business. She earned between [$]60[,000] and [$]70,000 with NIH. [Kimberly] testified that she requires back surgery since the 2013 accident. Since she requires back surgery, [the c]ourt finds since the accident in 2013, she has not schedule[d] it to date. [Kimberly] stated that she has to sit, stand, and lay throughout the day.
>
> The [c]ourt finds that [Kimberly] does have the ability to be wholly or partially self-supporting. Her work experience is impressive and there is no evidence that she is medically incapable of seeking employment, whether in person or remotely. However, she has been out of the work force for nine years.

With respect to "the time necessary for [Kimberly] to gain sufficient education or training to enable [her] to find suitable employment," the court found that "there was no evidence presented that [Kimberly] needed additional education or training. With a nine-year gap in employment, the [c]ourt would find that [she] would need time to update and refresh her skills" in "a field that changes."

The court proceeded to award Kimberly rehabilitative alimony in the amount of $2,000 per month and ultimately structured alimony payments set forth in the written judgment, *supra*. It did not explain how it reached the baseline alimony amount of $2,000.

B. Analysis

Kimberly contends that the circuit court erred in awarding her rehabilitative alimony for two main reasons. First, focusing on the subsection (b)(1) and (2) factors, Kimberly argues that the court did not explain how the evidence justified the amount and duration of the rehabilitative alimony award. Second, she argues that the court failed to conduct the required analysis under subsection (c)(2). Accordingly, Kimberly requests that we reverse the rehabilitative alimony award and remand for further proceedings for an award of indefinite alimony.

Consideration of Subsections (b)(1) and (2)

Kimberly argues that the alimony award was made without any findings as to which specific skills she would need to update in order to become self-supporting and the timeframe within which she would refresh such skills. She further contends that the court failed to "opine on what constitutes the level of 'self-support'" and "what [she] would earn at the end of the [alimony period] which would make her self-supporting."

"The core considerations of [subsections] (b)(1) and (b)(2) are closely connected to the issue of whether to grant alimony for a fixed or indefinite period." *St. Cyr*, 228 Md. App. at 188. In this regard, we take issue with the court's assessment of factors under subsections (b)(1) and (2).

In its discussion of Kimberly's ability to be wholly or partially self-supporting (subsection (b)(1)), the court did not explicitly compare her income with her reasonable needs. "Self-supporting" in this context does not mean that a spouse will earn enough "to hold body and soul together." *Tracey*, 328 Md. at 392. Rather, "a party is self-supporting if the party's income exceeds the party's 'reasonable' expenses, as determined by the court." *St. Cyr*, 228 Md. App. at 186 (citations omitted). "The court determines the appropriate level of reasonable need based on all of the statutory alimony factors [under FL § 11-106(b)], including the standard of living established during the marriage." *Id*.

Although the court remarked elsewhere that some of Kimberly's claimed expenses were one-time occurrences and that her expenses exceeded her income, its oral opinion left the parties and this Court without any clear statement about her reasonable needs. *See id*. at 187. Consequently, we cannot determine whether Kimberly would be wholly or partially self-supporting with her income (current SSDI plus alimony, potential income, or otherwise). *See id*. As we have advised, a "calculation of the recipient spouse's future expenses and income is obviously an important component to any finding of self-sufficiency, and without those findings it is unclear whether, and if so the degree to which, [the recipient spouse] will be able to become self-supporting." *Id*. (cleaned up).

The court's analysis under subsection (b)(2) is also problematic because the court did not give its views as to the time necessary for Kimberly to update and refresh her skills to enable her to find suitable employment. We confronted this issue in at least three cases.

In *Benkin v. Benkin*, we reversed a rehabilitative alimony award that had been established by the trial court at $750 per month the first year, $600 per month the second year, and $500 per month the remaining three years. 71 Md. App. 191, 204 (1987). There, the wife, who suffered from a progressive arthritic condition, had not been gainfully employed outside the home for about 25 of the 28 years the parties were married. *Id*. at 203. We explained that there was "no basis in the record for the five year limitation on alimony[,]" and "nothing in the record to support a rationale for the declining amounts awarded." *Id*. at 203-04. We stated that there must be "some relation between the length of the award and the conclusion[s] of fact[,]" and advised the court on remand to "consider and explain explicitly [its] reasons" for the alimony award. *Id*. at 204.

In *Long v. Long*, we held that the trial court abused its discretion in awarding rehabilitative alimony for a fixed term of four years that was not adequately explained by the evidence. 129 Md. App. 554, 558 (2000). There, the husband earned $150,000 annually, *id*. at 565, while the wife had been unemployed for several years due in part to her agoraphobia. *Id*. at 560-61. The trial court found that the wife could find a job earning at least $2,083.33 per month, *id*. at 580, and ultimately granted rehabilitative alimony for four years in the amount of $3,000 per month. *Id*. at 565. We vacated and remanded the alimony award because the court did not explain what evidence demonstrated that she could retain a job earning that specific amount per month given her mental health condition. *Id*. at 581-82.

In *Lee v. Lee*, we vacated and remanded the trial court's award of rehabilitative alimony due to the court's insufficient rationale for the duration of the award. 148 Md. App. 432, 446 (2002). There, the court awarded the wife, who had worked sporadically at low paying jobs throughout the parties' 28-year marriage, rehabilitative alimony in the amount of $1,500 per month for three years. *Id*. at 433, 435. Besides opining that there were additional courses the wife could take that may increase her income over time, the duration of alimony "appear[ed] to have been pulled out of 'thin air.'" *Id*. at 447. In vacating and remanding the alimony award, we instructed the court to reconsider the alimony issue and explain its "thought process[.]" *Id*. at 456.

In the instant case, the court found that Kimberly "has been out of the workforce for nine years" and "would require refreshing and updating her skills." The court proceeded to limit alimony to less than eighteen months. It stated later in its oral opinion that "the rehabilitative alimony is for [Kimberly's] education and training," but it did not identify the skills, education, and/or training that she needed, nor did it explain why this period would be sufficient time for her to update such skills or complete the education and/or training.[3] Because the court "failed to draw a solid line between the facts and the remedy, explaining fully how the former justifies the latter," it abused its discretion. *Long*, 129 Md. App. at 582-83.

[3] At oral argument, Kyle's counsel suggested that the court determined the alimony period based on the impression that Kimberly could work soon after completing her surgeries. The court, however, made no such finding.

Failure to Consider Subsection (c)(2)

Before delving into the substance of subsection (c)(2), we briefly address subsection (c)(1). We have interpreted this prong "to mean that indefinite alimony may be awarded where, due *solely* to age, illness or infirmity, the party cannot reasonably expect 'to make substantial progress toward being self-supporting.'" *Benkin*, 71 Md. App. at 198 (emphasis added). In other words, if a spouse's disability has a "totally disabling impact" on her ability to earn a living, she would qualify for indefinite alimony under (c)(1). *Id*. at 204. In *Benkin*, that was not the case. There, we held that the trial court did not err in refusing indefinite alimony under subsection (c)(1) where the wife's arthritic condition "was not of sufficient magnitude to support the conclusion that *solely* due to her infirmity or disability she cannot be expected to make substantial progress toward becoming self-supporting." *Id*. at 198 (cleaned up and emphasis added).

Here, Kimberly suggests that her inability to work due to age and disability qualified her for indefinite alimony under subsection (c)(1). Although the court did not expressly articulate its analysis or reasoning under subsection (c)(1), it implicitly found that Kimberly had the ability to work to some degree. Even if the court concluded that subsection (c)(1) did not apply (*i.e.*, Kimberly could make progress toward becoming self-supporting), the court may award indefinite alimony under subsection (c)(2). *St. Cyr*, 228 Md. App. at 189 (citing *Tracey*, 328 Md. at 392 ("self-sufficiency does not *per se* bar an award of indefinite alimony.")).

We have explained that subsection (c)(2) "presupposes that even after considering that the party seeking alimony has some earning ability and therefore will be able to make some progress toward closing the gap between the unconscionably disparate standards of living, it is reasonable to expect that the gap will continue to be unconscionably disparate." *Benkin*, 71 Md. App. at 198-99 (citation omitted). The analysis under this prong requires a trial court to

> evaluate and compare the parties' respective post-divorce standards of living as a separate step in making its judgment on a claim for indefinite alimony. In this context, standards of living means how well the respective parties can live based on their respective financial means. To make the necessary comparison, the court should project those standards for the future, based on all of the available evidence.
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> A comparison of the parties' predicted future incomes is not the sole component of the comparison of future living standards, but it is necessary. In analyzing whether indefinite alimony should be granted under FL [§] 11-106(c)(2), it is of paramount importance to know what future income (of the dependent spouse) is being projected.

St. Cyr, 228 Md. App. at 189 (cleaned up). When either denying or granting a request for indefinite alimony, the trial court must "explicitly discuss the [unconscionable] disparity issue." *Hart v. Hart*, 169 Md. App. 151, 170 (2006); *see Goshorn v. Goshorn*, 154 Md. App. 194, 216 (2003) (recognizing that the court is not required to "use the term 'unconscionable'" when weighing "the equities of the case").

The record does not demonstrate that the circuit court performed the required analysis. *See Lee v. Andochick*, 182 Md. App. 268, 287-88 (2008) ("[K]nowledge of the law does not obviate the requirements . . . that the court discuss how, in the court's opinion,

the living standards would be unconscionably disparate absent an award of indefinite alimony."). Specifically, it did not address whether the parties' "respective standards of living . . . will be unconscionably disparate" at the point in time when Kimberly "will have made as much progress toward becoming self-supporting as can be reasonably expected." FL § 11-106(c)(2). Accordingly, we vacate the alimony award and remand for reconsideration of the alimony issue. *See St. Cyr*, 228 Md. App. at 190 ("This Court will vacate an award and remand for reconsideration of the alimony issue if the record makes it unclear whether the trial court made the necessary prediction and comparison of the parties' incomes and living standards at the point of maximum rehabilitation.").

Kyle acknowledges that the court did not project Kimberly's income but argues that she failed to put on evidence about the financial progress that she was likely to make. We confronted a similar argument in *St. Cyr*, where the husband claimed that the wife failed to satisfy her burden of proving she was entitled to indefinite alimony. *Id*. at 194. There, the husband suggested that, because the wife offered no credible evidence on her future prognosis, the court did not need to make findings as to her rehabilitation period and future standard of living. *Id*. We rejected the contention, explaining that we could not uphold an alimony determination that was not based on sound legal principles and competent evidence. *Id*. at 194-95.

We recognize that the evidence may not have been sufficient for the court to conduct the required analysis under subsection (c)(2). As in *St. Cyr*, we offer the following guidance on remand:

> In conducting further proceedings, the court may accept additional evidence on those issues. Both parties may introduce additional evidence on the issue of both of their earnings, past and present, including evidence that is up-to-date. Wife shall continue to bear the burden of proving her entitlement to indefinite alimony. She must show that, projecting into the future *from the present (not from the time of the merits trial),* even after she will have made as much progress toward self-sufficiency as reasonably can be expected, there will be an unconscionable disparity between her standard of living and that of her former husband.
>
> When the court receives fresh evidence as to the current incomes and needs of both parties, it may become possible to produce evidence relative to Wife's prospects for future earnings. For instance, Wife might be able to offer the type of "anecdotal" or other testimony that the court lacked at the time of the original judgment. If the court believes that it still lacks sufficient credible evidence to make the necessary findings, it might appoint a neutral expert under Md. Rule 5-706 to assess Wife's earning capacity. Even though expert testimony is not usually required for predicting whether a party will become self-sufficient, testimony from a court-appointed expert, whose fees are paid by the parties (perhaps from the proceeds of the sale of the house), may be a practical method for making an alimony determination here.

228 Md. App. at 195-96 (cleaned up).

We cannot conclude, as Kimberly desires, that she is entitled to an award of indefinite alimony. Such determination would be premature because the analysis and findings under subsection (c)(2) are incomplete. *See Lee*, 148 Md. App. at 455-56 (remanding instead of reversing where trial court's failure to conduct (c)(2) analysis was the "missing ingredient"); *St. Cyr*, 228 Md. App. at 189-90 ("If a reviewing court is in the dark as to what future income the trial judge thought the dependent spouse would have, the court is unable to determine whether the trial judge abused his or her discretion in the alimony ruling.") (cleaned up). As stated in *Long*, "we are not requiring the trial court to order an award of indefinite alimony, although that may be [its] ultimate conclusion, after

taking into consideration all the factors set out in the statute. Instead, we simply instruct the court below to award alimony in a manner congruent with its findings of fact" and analysis required by the statute and cases interpreting it. 129 Md. App. at 586-87 (citation omitted).

Because we are vacating the alimony award, there is no reason for us to comment on the amount(s) of the now-vacated award and the denial of Kimberly's request for retroactive application of Kyle's alimony obligation. *See Whittington*, 172 Md. App. at 342. The court will have an opportunity to revisit both aspects on remand.

Our decision to vacate the alimony award affects other monetary aspects of the written judgment that are the subject of appeal. Because a trial court's determinations as to alimony, child support, and fees involve overlapping evaluations of the parties' financial circumstances, "when this Court vacates one such award, we often vacate the remaining awards for reevaluation." *St. Cyr*, 228 Md. App. at 198 (citation omitted). Therefore, we will also vacate the interrelated orders regarding child support and denial of the parties' counsel fees. On remand, the court must reconsider alimony, child support, and the parties' respective requests for attorney's fees.

II. CHILD SUPPORT

Kimberly argues that, because this is an above-guidelines case, the circuit court was not bound by the guidelines and thus erred in calculating the support pursuant to them. She also claims that the court abused its discretion in offsetting Kyle's child support obligation by the amount of SSDI benefits S.C. received and denying her request for retroactive child

support. We shall not address these arguments because, as discussed *supra*, the court's determinations as to alimony and child support involve an overlapping evaluation of the parties' financial circumstances.

For clarity on remand, however, we summarize the principles for determining the amount of child support in above-guidelines cases. In an "above guidelines case," the trial court enjoys significant discretion in determining the amount of the basic child support award. *See Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013). "[T]he trial court need not use a strict extrapolation method to determine support[,]" but "may employ any 'rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it.'" *Malin*, 153 Md. App. at 410 (citation omitted). In exercising its discretion, the court "must balance the best interests and needs of the child with the parents' financial ability to meet those needs." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002) (citation omitted). Factors relevant in setting child support in an above-guidelines case include the parties' financial circumstances, the "reasonable expenses of the child," and the parties' "station in life, their age and physical condition, and expenses in educating" the child." *Id*. (citation omitted).

In *Voishan v. Palma*, our Supreme Court acknowledged that the guidelines "establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule." 327 Md. 318, 331-32 (1992). "Beyond this, the trial judge should examine the needs of the child in light of

the parents' resources and determine the amount of support necessary to ensure that the child's standard of living does not suffer because of the parents' separation." *Id*. at 332.

Otley v. Otley illustrates this concept in an above-guidelines case. 147 Md. App. 540, 562 (2002). There, the court used the guidelines as a starting point and then extrapolated, finding that "the highest guideline amount of child support would be $985 per month; and the figure extrapolated from the guidelines would be approximately $1,200 per month." *Id*. at 560. Without explanation, the trial court awarded $952 per month, which was $33 lower than the maximum guideline amount of $985. *Id*. at 561. We vacated the child support award and remanded for further proceedings, explaining that, "[b]ecause of the rebuttable presumption articulated in *Voishan*," "it was incumbent upon the court to fully explain the reasoning for its decision as to the amount of child support[.]" *Id*. at 562.

We have also said that in an above-guidelines case, a child's social security benefits are "simply one fact of the many available to [the circuit court] upon which to base an award" of child support. *Tucker v. Tucker*, 156 Md. App. 484, 494 (2004) (citation omitted). They "are by no means an automatic credit or necessarily a dollar for dollar set off against a child support obligation." *Id*. at 495. "But the court may, in exercising its discretion, adjust the parties' total child support obligation by reducing it in some measure to reflect the Social Security benefits the [child is] receiving." *Id*. at 496. In doing so, the court "must balance the best interests and needs of the child with the parents' financial ability to meet those needs." *Id*. at 494 (citation omitted).

On remand, the court will have an opportunity to re-evaluate the child support determination and the effect of the child's social security benefits, if any, on the child support obligation. It will also have an opportunity to revisit Kimberly's request for retroactive application of any child support obligation. *See K.B. v. D.B.*, 245 Md. App. 647, 688 (2020).

III. ATTORNEY'S FEES

We shall not address the merits of Kimberly's assertion that the circuit court erred in denying her request for attorney's fees because the financial status of the parties may change as a result of our remand for reconsideration of alimony and child support. On remand, the court will have the opportunity to reconsider the parties' respective requests for fees, evaluate the relevant factors, and determine whether a fee award is appropriate, and if so, the amount.

IV. USE AND POSSESSION

Kimberly contends that the circuit court abused its discretion when it granted her use and possession of the Laurel home for only six months. Specifically, she contends that uprooting S.C. from her environment was contrary to the child's best interest and would result in substantial hardship to Kimberly given her financial condition.

In connection with divorce and related proceedings, the trial court may "exercise its power to 'enable any child of the family to continue to live in the environment and community that are familiar to the child' and 'to provide for the continued occupancy of the family home . . . by a party with custody of a child who has a need to live in that home.'"

Kelly v. Kelly, 153 Md. App. 260, 268-69 (2003) (quoting FL § 8-206). For a period of up to three years after the date of the divorce (FL § 8-210(a)), the court may grant a party the sole use and possession of the family home. FL § 8-208(a)(1)(i).

To evaluate a claim for use and possession of the family home, the court must consider: "(1) the best interests of any child; (2) the interest of each party in continuing (i) to . . . use the family home or any part of it as a dwelling place; or (ii) to . . . occupy or use the family home or any part of it for the production of income; and (3) any hardship imposed on the party whose interest in the family home . . . is infringed" by a use and possession order. FL § 8-208(b). The trial court's decision in awarding possession and use of a family home is a matter of discretion. *St. Cyr*, 228 Md. App. at 199.

The court did not abuse its discretion in imposing a six-month period of use and possession. As to the first statutory factor, it considered the best interests of the child, recognizing that S.C. "has grown up in the family home, has friends in the neighborhood" and has "familiarity" there. That fact was balanced against the child's anticipated enrollment in a new school in Howard County where "she will attend school with friends in her new neighborhood" and spend "the majority of her overnights" with Kyle during the school year pursuant to the custody order. In weighing the other two factors, the court acknowledged Kimberly's interest in continued use of the family home, her concerns about her inability to afford relocation, and the effect relocation efforts would have on her health. It also recognized that Kyle wanted the home sold and proceeds divided to "relieve some of [the parties'] financial burden[.]" In our view, the court struck a reasonable balance

among the three statutory considerations and appropriately fashioned a "limited use and possession so that everyone can get adjusted." We do not perceive an abuse of discretion in the ordered use and possession period.

CONCLUSION

We conclude by relying again on *St. Cyr* for its guidance on remand on the issue of alimony which is applicable here:

> The court may accept additional evidence about each party's actual or potential income, including evidence about their incomes since the original trial. The parties should supplement the record with enough additional information for the court to evaluate all of the considerations under FL § 11-106(b) and (c). Specifically, the evidence must address the unresolved issues about whether Wife is currently self-supporting, what level of income she would need to become self-supporting, whether she needs any period of additional training or education to gain suitable employment, how much she can reasonably be expected to earn in her progress toward becoming self-supporting, and how much time she would need to achieve that progress. If necessary, the court should exercise its power under Md. Rule 5-706 to appoint a vocational rehabilitation expert.[4]
>
> After resolving the factual issues, the court should examine all necessary factors and exercise its independent judgment to determine the appropriate amount and period of an award under FL § 11-106(b) and (c). If the court determines that a fixed term is appropriate, it should explain the duration based on the evidence.
>
> Even if the court expects Wife to become self-supporting in the near future, the court should fully analyze whether indefinite alimony is appropriate under FL § 11-106(c)(2). Based on all of the evidence, the court should predict the parties' future incomes and standards of living at the time when Wife will have made maximum progress toward becoming self-supporting and then compare their living standards at that time. If the court finds that

[4] At oral argument, Kimberly suggested that the court should also appoint a medical expert to assess the extent of her disability and prognosis for rehabilitation. We leave it to the court, on remand, to appoint one, if necessary.

> their respective standards of the parties will be unconscionably disparate, then the court should award indefinite alimony in an amount sufficient to alleviate the remaining disparity.

228 Md. App. at 201-02 (citation omitted). After resolving Kimberly's alimony claim consistent with this opinion, the court should re-assess the child support issue. Based on any revised findings and rulings on alimony, the court should also re-assess (as needed) the parties' respective requests for fees.

Until the circuit court completes the proceedings required by this opinion, the existing order for child support will continue to have the force and effect of a *pendente lite* award. *See Simonds*, 165 Md. App. at 613.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART AND VACATED IN PART. JUDGMENT WITH RESPECT TO ALIMONY, CHILD SUPPORT, AND ATTORNEYS' FEES VACATED; CHILD SUPPORT PROVISION TO REMAIN IN FORCE AND EFFECT AS PENDENTE LITE ORDER PENDING FURTHER ORDER OF THE CIRCUIT COURT; JUDGMENT OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT TO PAY TWO-THIRDS OF COSTS AND APPELLEE TO PAY ONE-THIRD OF COSTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1264s21cn.pdf