Circuit Court for Prince George's County
Case No. CAD19-04261

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1277

September Term, 2024

KHAMISI EASTON

v.

TAMARA EASTON

Graeff,
Nazarian,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 25, 2026

Khamisi Easton ("Husband") and Tamara Easton ("Wife") married in July 2009. The marriage began to fall apart in 2016 and ended on August 1, 2024, when the Circuit Court for Prince George's County issued a Judgment of Absolute Divorce. In that judgment, the court counted as marital property the equity value of three homes that the parties' prenuptial agreement had defined as nonmarital property; a 2022 BMW i4 that Husband said he purchased during the marriage using a Home Equity Line Of Credit ("HELOC") secured by equity in one of the excluded homes; and two Discover Bank accounts that Husband had closed during the divorce. The court granted Wife a monetary award of $325,450 and an attorney's fee award of $20,000. Husband challenges the court's determination of marital property and award of attorney's fees. We vacate the monetary award and the attorney's fees award and remand this matter to the circuit court for further proceedings consistent with this opinion.

I. BACKGROUND

On or around July 10, 2009, Husband and Wife executed a prenuptial agreement. The agreement provided, in relevant part, that "[a]ll property, assets, or liabilities" that belonged to Husband, as set forth in Exhibit 1 of the agreement, "shall be, and shall forever remain, [his] personal estate, including all interest, rents, and profits which may accrue" from that property, which "shall remain forever free of claim" by Wife. Exhibit 1 listed certain real properties and bank accounts that are pertinent to this appeal:

13908 Carlene Drive, in Upper Marlboro ("Carlene Drive")
6505 100th Avenue, in Lanham ("100th Avenue")

9110 5th Street, in Lanham ("5th Street")[1]
Bank of America Savings
Bank of America Checking
SECU Savings
SECU Checking[2]

The agreement stated as well that "marital property acquired after marriage shall remain subject to division, either by agreement or by judicial determination."

The parties married seven days later, on July 17, 2009, and lived together at Carlene Drive. Wife rented the basement of their home for her licensed daycare business and deposited her income into a joint marital account. Their union dissolved after Husband's unsubstantiated accusations of infidelity. On or around January 26, 2017, he evicted Wife from their home.

A few months before their separation, Wife had brought an action against Husband for equitable relief, case no. CAL16-36414. She alleged that Husband had promised to put her name on the Carlene Drive deed in return for her contributions to its expenses. She alleged further that she had paid all the utility expenses for the home, had made improvements to it, and had given Husband access to funds to pay down the mortgage and other expenses associated with the property in accordance with their agreement. She

[1] We'll refer collectively to Carlene Drive, 100th Avenue, and 5th Street as the "properties."

[2] The prenuptial agreement didn't specify the bank accounts by account number. Husband represented to the court that the accounts referred to the following bank accounts: Bank of America Savings – BOA #6941; Bank of America Checking – BOA #7438; SECU Savings – SECU #1544; and SECU Checking – SECU #4252 and #3056.

claimed that Husband's misleading statements had caused her to enter into the prenuptial agreement with limited information. Wife asked the circuit court to place Carlene Drive into a constructive trust (Count I), issue a monetary judgment to avoid Husband's unjust enrichment (Count II), and vacate the prenuptial agreement (Count III). The parties agreed to dismiss the first two counts, and the court held the third count in abeyance pending further divorce proceedings.

Then on February 1, 2017, Wife filed a Complaint for Limited Divorce and Alimony, case no. CAD17-02880. In response, Husband filed a Complaint for Absolute Divorce or, in the Alternative, Counter-Complaint for Limited Divorce. On December 28, 2017, the parties filed a joint property statement. After a merits hearing, the court granted Wife a limited divorce and denied Husband's request for absolute divorce as premature. At the conclusion of this litigation, the circuit court ordered Husband to pay Wife rehabilitative alimony and to pay $40,000 for her attorney's fees in addition to a $10,000 fee award contained in an earlier *pendente lite* order.

Meanwhile, Husband filed a Complaint for Absolute Divorce and Other Relief, case no. CAD19-042661. He asked the circuit court to ratify and incorporate the terms of the prenuptial agreement into any judgment of absolute divorce, to identify and value all their marital property, and to grant him a monetary award. Wife filed a Counter-Complaint for Absolute Divorce a few months later and requested, again, that the court vacate the agreement.

The circuit court held a merits hearing on Wife's first action to set aside the

prenuptial agreement (CAL16-36414). The court found that there had been "ample opportunity" for each party to seek counsel before entering the agreement. It found further that the properties had outstanding mortgage balances when Husband and Wife executed the agreement. The court concluded that the prenuptial agreement would not exclude any deductions to the mortgage balances that occurred during the marriage and didn't originate from "interest, rents, and profits which may accrue" from the properties:

> COURT: So any changes between 2009, the date that [the prenuptial agreement] was executed, to whenever [the absolute divorce] matter is heard in a subsequent hearing, unless it is derived from interest, rents, or profits any deductions would not be included as part of this agreement. So, any payments that were made to lessen the loan amount aside from any interest, rents, or profits would be considered marital property and would not be included in this prenuptial agreement.

The court applied this logic to the bank accounts in the prenuptial agreement as well:

> COURT: So . . . the balances of any Bank of America savings or checking accounts, any of those accounts as of July 10, 2009, the only [value] that would be added that would remain [Husband's] property would be the interest that had accrued from that time, and that is what the Court understands as the parties understanding and acceptance.

Wife confirmed that she shared the court's understanding of the agreement. The court explained the bounds of the prenuptial agreement to Husband after he expressed confusion about the status of the properties:

> [HUSBAND]: I'm a little confused in regards to the properties that you mentioned.
>
> COURT: Okay. . . . The agreement stated that, in paragraph 1, these are nonmarital assets so they are your properties because they were purchased prior to marriage. Any interest, rents, and profits that have been acquired from that nonmarital asset or

> assets would remain in your possession. However, anything exclusive of that, any—where marital funds may have been used to bring the mortgage loan down is not part of this agreement that was signed by the party. [The agreement] only entailed interest, rents, and profits so any mortgage that was paid either lump sum or monthly is not part of this agreement that the parties had signed. That doesn't mean the property in [and] of itself does not—it's still your property and its free and clear. But if there are—if the loans have been reduced the Court would need to know did that—were those deductions derived from interest, rents or profits. If not, that's not what the parties agreed. Do you understand?
>
> [HUSBAND]: Yes.

Husband took a recess to consult with his counsel. When they returned, his attorney restated the bounds of the agreement as he had explained it to Husband:

> [COUNSEL FOR HUSBAND]: Mr. Easton, with regards to these real properties the agreement is that they are protected and your properties, but to the extent that the mortgages have been paid down during the marriage by funds that can not be characterized as interest, rents, or profits, that is what—this agreement does not cover that. So to the extent that these funds that you used to pay down the mortgage during the marriage can be characterized as interest, rents, and profits, you're protected. But to the extent that they can not fit into those categories, that's an issue for another day. This agreement doesn't cover that. Is that fair, Judge?
>
> COURT: Yes, that is.
>
> [COUNSEL FOR HUSBAND]: Okay.
>
> COURT: And that's your understanding, Mr. Easton?
>
> [HUSBAND]: Yes, Your Honor.

The court placed the parties' agreement on the record and found the prenuptial agreement valid and enforceable.

At that point, the unadjudicated issues were the divorce, the marital award, and both parties' requests for attorney's fees. The court consolidated Wife's action for limited

divorce (CAD17-02880) and Husband's suit for absolute divorce (CAD19-042661) and scheduled trial for February 21, 2023. The court continued the trial date so that the parties could supplement discovery with updated financial information about the fair market values of the properties and the sources of the funds used to pay down each mortgage.

The trial took place on June 14, 2023. Jerome Bell testified as Wife's expert in real estate and forensic appraisals.[3] Mr. Bell concluded to a reasonable degree of certainty that the fair market value of Carlene Drive on July 10, 2009 was $375,000. He appraised its fair market value as $420,000 on October 21, 2017 and $645,000 on February 26, 2023. Mr. Bell testified that the fair market value of 100th Avenue was $210,000 on July 10, 2009, $290,000 on October 26, 2017, and $384,000 on February 26, 2023. Lastly, he appraised the fair market value of 5th Street as $247,000 on July 10, 2009, $285,000 on October 20, 2017, and $385,000 on February 23, 2023.[4] Wife submitted the appraisal reports into evidence.

Husband testified that he purchased the Carlene Drive parcel in 2006 and contracted to have the house built on it between 2006 and 2007. He purchased 100th Avenue in 2001 for $130,000 and 5th Street in 2007, and he took out mortgages on all three properties. He submitted into evidence the original deeds for each property and the loan settlement sheets

[3] Mr. Bell explained that forensic appraisal is the process of assessing the value of real estate on a retrospective date from research of comparable sales, the perceived condition of the property, public records, and Multiple Listing Service data.

[4] Mr. Bell appears to have testified to this last amount mistakenly because his report appraises the house at $384,000.

for Carlene Drive and 5th Street. The evidence revealed that he purchased the Carlene Drive parcel for $250,000 after receiving a land advance on a construction loan and making a down payment of $101,171.48. The evidence revealed also that he purchased 5th Street for $305,000 after making a down payment of $45,266.86.

Husband testified about the prenuptial agreement, his rental income, and his mortgage payments. He said that he lived at Carlene Drive with his daughter and a tenant who paid rent to live in the basement, rented 100th Avenue and 5th Street to tenants, and deposited all rental income into his bank accounts. He testified that he used rental income to pay each mortgage; that he paid all mortgages from BOA #7438; that BOA #7438 held direct deposits of his wages during the marriage as well; and that he transferred funds from his joint account with Wife, including her rent payments for Carlene Drive, into BOA #7438. Later, he said that he deposited rental payments into both his BOA and SECU accounts. To support these claims, Husband submitted into evidence bank statements to trace the rent payments he received, two documents that he prepared—the first listed the rental income he received compared to the mortgage payments he made between 2009 and 2017 and the second listed his mortgage payments from 2001 to 2009—and a paystub indicating that his monthly mortgage obligation for 5th Street was $1,700.76 in 2008.

Next, Husband submitted evidence through which he sought to establish the mortgage balances outstanding at the time of marriage and separation. His documents stated that Carlene Drive had an outstanding balance of $408,660.65 at the end of 2009 and 100th Avenue had a balance of $107,833.77 in 2007, and he testified that 5th Street had a

loan of $275,000 in 2009, an amount Wife verified through her own evidence. Relying on his representation in the parties' joint 2017 statement, Husband testified that the mortgage balance of Carlene Drive in 2017, when the couple separated, was $388,365 and that he had paid off the mortgage for 100th Avenue by then. He submitted a mortgage statement dated January 10, 2017, demonstrating that 5th Street had an outstanding mortgage balance of $257,892.21. He said he paid off that mortgage in 2017 with money he had received from his father ("Father"). He submitted evidence that he deposited $62,940.00 into SECU #1544 in October 2014 and said he received a second payment of $33,437.00 from Father the following month. Husband testified that Carlene Drive still had an outstanding mortgage balance that he continued to pay from BOA #7438.

Husband provided evidence about his BMW and his Discover Bank Accounts. He asserted that his BMW was nonmarital because he had used rental income to purchase it after the couple separated. He said he used a HELOC secured by equity in Carlene Drive for the purchase. He testified that he closed Discover account #7186 in 2016 or 2017 and used those funds to pay for attorney's fees and the mortgage on 5th Street. He said that he used money from his bank accounts, retirement accounts, and life insurance to pay Wife $50,000 in attorney's fees and $72,000 in alimony and to pay his own attorney.

Wife testified about the couple's finances during the marriage also. She said Husband would take money from their joint account as her rent payment and that her wages contributed to updates to Carlene Drive and to paying down the mortgages on the properties. She submitted into evidence records from Husband's Bank of America

accounts, from two jointly held bank accounts, from Husband's SECU accounts, and from his three Discover Bank accounts. And she established that between March 15, 2019 and June 12, 2023, she incurred $42,934.00 in attorney's fees.

After trial, the parties filed written closing arguments and an updated joint statement. Their joint statement stipulated that Carlene Drive had an outstanding mortgage balance of $259,126 and that the mortgages for 100th Avenue and 5th Street had a zero balance.

On August 1, 2024, the circuit court granted Husband a judgment of absolute divorce from Wife, awarded Wife a monetary award of $325,450, and ordered Husband to pay $20,000 for attorney's fees. The court determined that the total value of the marital property was $1,057,455.97, including marital values in the properties of $259,126 (Carlene Drive), $151,771.43 (100th Avenue), and $353,921.00 (5th Street). The court found that Husband hadn't produced adequate evidence to prove that "interest, rents or profits were derived" from Carlene Drive or that any interest that accrued from the bank accounts named in the prenuptial agreement were nonmarital "as both parties deposited into the accounts during the marriage." By title alone, the court determined that Husband possessed 97% of the marital property, so it adjusted the equities to award Wife 35% of the marital property less the rehabilitative alimony Husband had paid already. With regard to the attorney's fees award, the court noted that the case had "lingered for many years" and that even though Wife had contested the prenuptial agreement, the court had to address several motions and hold multiple proceedings because of Husband's "repeated delay and

noncompliance with the Court's orders." Based on the "significant disparity in income" and the required statutory factors, the court determined that a fee award was appropriate.

Husband noted a timely appeal.

II. DISCUSSION

Husband presents two main issues that we rephrase slightly: (1) did the circuit court err in counting the properties, his BMW, and his Discover Bank accounts as marital property and (2) did the court award attorney's fees to Wife justifiably.[5] For the reasons detailed below, we vacate the monetary award and the attorney's fee award and remand this matter to the circuit court for additional proceedings consistent with this opinion.

Whether "all or a portion of an asset is marital or non-marital property" and the value of each item of marital property are questions of fact. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000); *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). We will not disturb a circuit court's factual determination unless it is clearly erroneous. *Flanagan*, 181 Md. App. at 521. Because circuit courts have broad discretion to award attorney's fees, we consider whether the award was an abuse of discretion and will not set

[5] Husband phrased the Questions Presented in his brief as follows:

1. Did the Circuit Court for Prince George's County err in determining that three properties named in a valid prenuptial agreement are wholly marital property for purposes of monetary award?
2. Did the Circuit Court for Prince George's County err in granting an award of attorney's fees to the Appellee?

Wife did not state any Questions Presented in her brief.

it aside "unless the exercise of discretion was arbitrary or the judgment was clearly wrong." *Malin v. Mininberg*, 153 Md. App. 358, 435–36 (2003).

A. The Marital Award Didn't Classify Or Determine The Marital Value Of The Properties Or The Discover Bank Accounts Correctly.

1. The circuit court didn't classify the properties explicitly as marital, nonmarital, or partly marital and partly nonmarital and its valuation of the marital portion of the properties' equity values derived from miscalculations.

Husband argues *first* that the circuit court erred when it failed to decide which properties were marital, nonmarital, or partly marital and partly nonmarital (*i.e.*, mixed) and, instead, counted them as "wholly" marital. Wife asserts that the court didn't classify any of the properties as "100% marital" because it relied on (her) calculations that sought to account for the properties' mixed status. Because the circuit court didn't classify the properties explicitly, we understand Husband's confusion and agree that it failed to make a proper determination on the record.[6]

[6] We don't construe Husband's argument to challenge the bounds of the prenuptial agreement itself. Prospective spouses enter into a prenuptial agreement prior to marriage to "settle in advance alimony or property rights of the parties upon divorce." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 14-2(a) (7th ed. 2021) (cleaned up). Here, the parties entered into a prenuptial agreement on June 24, 2009 and the circuit court found it valid and enforceable in case no. CAL16-36414. When it did, the court explained that "any interests, rents, and profits that have been acquired from [the properties] would remain in [Husband's] possession. However, anything exclusive of that, where marital funds may have been used to bring the mortgage loan down is not part of [the prenuptial] agreement . . ." The court extended this logic to the bank accounts identified in the prenuptial agreement, confirmed that Husband and Wife understood its limits, then placed their shared understanding on the record. We analyze the issues in this appeal against that history.

Maryland law defines marital property as "property, however titled, acquired by [one] or both parties during the marriage." Md. Code (1999, 2019 Repl. Vol.) § 8-201(e)(1) of the Family Law Article ("FL"). If division of marital property strictly according to title would lead to inequity, the court may adjust the equities through a monetary award. *Flanagan*, 181 Md. App. at 519. Before doing so, the court must undertake a three-step analysis. *Alston v. Alston*, 331 Md. 496, 498–99 (1993); *see* FL §§ 8-203–8-205. *First*, if there is a dispute about what is or isn't marital property, the court must determine which property items are marital. FL § 8-203(a). *Next*, the court must determine the value of each marital property item. FL § 8-204(a). *Then*, the court "may . . . grant a monetary award . . . as an adjustment of the equities and rights of the parties concerning marital property." FL § 8-205(a).

Property that doesn't fit neatly into the marital or nonmarital category can be partly marital and partly nonmarital "in accordance with the source of the funds used to acquire it." *Kline v. Kline*, 85 Md. App. 28, 41 (1990). In the context of homeownership, nonmarital property can become partly marital if a spouse uses marital funds toward its mortgage payments. *See id.* ("[T]o the extent that [marital] payments reduced the balance due on the mortgage" we consider the property to have been acquired during the marriage); *Noffsinger v. Noffsinger*, 95 Md. App. 265, 286 (1993) ("Mortgage payments made during the marriage . . . were marital contributions, derived from earnings that were clearly marital income."). When that happens, courts can characterize the formerly nonmarital property "as part nonmarital and part marital" depending on "the source of each contribution as

payments are made." *Harper v. Harper*, 294 Md. 54, 80 (1982). Importantly, "the time at which legal or equitable title to or possession of the property is obtained" doesn't dictate the classification of the marital, nonmarital, or mixed status of a given property item. *Id.*

In this case, the circuit court's order didn't classify the properties clearly. It is undisputed that Husband purchased and made nonmarital investments in the properties before the marriage. He purchased the Carlene Drive parcel, had the house constructed, and made construction and mortgage loan payments. He made down payments and loan payments toward the purchases of 100th Avenue and 5th Street before the marriage. But the court's opinion doesn't state explicitly that the properties are partly marital and partly nonmarital, and it should have. *Harper*, 294 Md. at 80–82; *Hoffman v. Hoffman*, 93 Md. App. 704, 713–14 (1992).[7] Nor did the court make express findings about the extent of Husband's nonmarital investments relative to the investments made by the marital unit and the total investments in the properties. *See id.* These findings are essential to valuing the marital property available for equitable distribution accurately.

We recognize that the evidence at trial didn't persuade the court that Husband's mortgage payments derived exclusively from "interest, rents, and profits which [accrued]" from the properties and, thus, fell within the reach of the prenuptial agreement. Nonmarital

[7] In light of our conclusion that the circuit court should have classified the properties as partly marital and partly nonmarital, we are not persuaded by Husband's argument that Wife conceded the status of the 100th Avenue property when she listed it as nonmarital in the parties' Joint 5-207 statement. The fact that Wife categorized 100th Avenue in that document as both a nonmarital property and a property with a disputed status only reinforces its mixed status.

property, especially that in the form of funds, can lose its nonmarital status when it's mingled with marital property. *See Golden v. Golden*, 116 Md. App. 190, 203 (1997); *Melrod v. Melrod*, 83 Md. App. 180, 187–88 (1990); *Murray v. Murray*, 190 Md. App. 553, 572 (2010). Money is fungible, and without a detailed record of each dollar from rent money having been used to pay the rental property's mortgage, mingling can convert nonmarital funds into marital funds. *See Merriken v. Merriken*, 87 Md. App. 522, 540 (1991) ("'Since [appellant] commingled his income . . . no specific sum of money used to acquire property or reduce an indebtedness on any property can be traced to any source. This inability to trace property acquired during the marriage directly to a non-marital source simply means that all property so acquired was marital property.'" (*quoting Melrod*, 83 Md. App. at 187)); *Melrod*, 83 Md. App. at 186 ("With respect to most of his properties, because of commingling of non-marital and marital income, [husband] could not directly trace any given payment of money to any specific source of funds."). A spouse who claims that a nonmarital asset should retain that status despite commingling must be able to trace the asset directly to a nonmarital source. *Melrod*, 83 Md. App. at 188; *Golden*, 116 Md. App. at 205 ("[A]s to all of the value increases of property resulting from the expenditure of either party's marital income . . . the party asserting that a portion is nonmarital bears the burden of tracing the expenditure to nonmarital funds."). And if they can't, the property at issue is marital. *Noffsinger*, 95 Md. App. at 282 (*citing Melrod*, 83 Md. App. at 187); *Golden*, 116 Md. App. at 205.

In this case, there is no dispute that marital and nonmarital funds were mingled in

connection with these properties. Crediting Husband's representation that the prenuptial agreement excluded BOA #7438 as nonmarital property, the parties agree that account held both rental income and marital property in the form of Husband's wages and that Husband made mortgage payments on the properties from that account while they were married. As a result, Husband carried the burden of untangling these funds and proving that he paid the mortgages exclusively from the "interests, rents, and profits" that accrued from the properties. *See Melrod*, 83 Md. App. at 188.

Husband argues that he traced his mortgage payments to nonmarital funds. Specifically, he claims that the spreadsheet he submitted into evidence demonstrated that the rental income he received for each property exceeded the monthly mortgage due and that he deposited the rent into the same bank account from which he paid each property's mortgage. He contends that he has proven that direct tracing isn't impossible and, therefore, the funds weren't mingled to the point of causing the mortgage payments to lose their nonmarital status. In response, Wife asserts that Husband didn't meet his burden because he couldn't prove that the rental income he received exceeded the monthly mortgage payment obligation for each property.

We agree that Husband didn't satisfy his burden of proving that the properties were fully nonmarital. Husband didn't present a complete evidentiary picture of how his mortgage payments traced back to an exclusively nonmarital source. For example, he didn't prove that the dollar-for-dollar amount of monthly rental income for 100th Avenue went out dollar-for-dollar as a payment to the mortgage lender for 100th Avenue. *See*

Callahan & Ries, *supra*, § 13-9(d) ("'Directly traceable' means a dollar for dollar trace is required."). Husband didn't provide any evidence of or demonstrate a dollar-for-dollar match between the rent he received from his tenants at 100th Avenue and 5th Street and his payments toward those mortgages, or a dollar-for-dollar match between the rent he received from tenants to lease the basement of Carlene Drive and his payments on the Carlene Drive mortgage. He submitted into evidence a spreadsheet that indicated that rental income came in and mortgage payments went out, but those flows don't match the rental income to the mortgage payments dollar-for-dollar or prove that only rental income sourced those payments. If anything, it reveals that the aggregate amount of mortgage payments Husband made each month during the marriage exceeded the aggregate amount of rental income he received each month. The account Husband used to pay his mortgages held his earnings as well, and we question whether the rental income from Wife leasing only part of Carlene Drive could have covered the monthly mortgage completely. The record indicates to us, as it did to the circuit court, that funds other than rental income had to have covered the difference.

The four hundred pages of bank statements that Husband submitted into evidence did not draw a dollar-for-dollar connection between the rental income he received for each property and its corresponding mortgage payment. For example, some of the statements showed deposits of varying amounts into BOA #6941 followed by transfers of varying amounts into BOA #7438. But there is no dollar-for-dollar match that connects the deposit of an alleged rent payment for a certain sum into BOA #6941 followed by a transfer of that

sum to BOA #7438 and a payment of that exact sum out of BOA #7438 to the mortgage lender for the property.

Moreover, Husband didn't submit any evidence about the rental income he received or establish facts about his monthly mortgage obligations sufficient to allow the court to trace the income to those payments. The record contained no evidence of the terms of the tenancies for each property, the number of tenancies, or their rental payment amounts, nor did it paint a complete picture of the monthly mortgage amounts due for each property during each year of the marriage. As the party seeking to keep the nonmarital property separated, Husband bore the burden of putting the pieces together, not the circuit court. And because he didn't, the court could treat any mortgage payments made on the properties after July 17, 2009, and the equity built from those payments, as marital property. *Noffsinger*, 95 Md. App. at 282. The circuit court's conclusion that Husband hadn't traced the mortgage payments directly to a purely nonmarital source wasn't clearly erroneous.

But even though the circuit court was right to treat mortgage payments made after July 2009 as marital property, the work didn't end there. Husband contends that the court disregarded the nonmarital contributions he made and didn't give him credit for the nonmarital portion of each property when it made the monetary award. He asserts entitlement to a "proportionate return of his investment" and asks us to remand the case and instruct the court to value his nonmarital contributions to the properties and credit him with those contributions by excluding them from the marital award. Unfortunately, we don't know if Husband is right because the circuit court didn't make findings about the

nonmarital and marital portions of the equity values of the properties or state whether it credited Husband for his nonmarital investments. The properties were marital only to the extent that Husband paid down their mortgages using marital funds. *See Kline*, 85 Md. App. at 41, 46; *Noffsinger*, 95 Md. App. at 286. The court still had to determine which portions of their equity values were marital and nonmarital, and it didn't. We discuss each property in turn.

a. Carlene Drive

In its opinion, the circuit court determined that the marital portion of the equity value of Carlene Drive was $259,126. It didn't explain how it arrived at this value, but the number appears in joint statements filed before and after trial. In both, the parties stipulated that Carlene Drive had an outstanding principal mortgage balance of $259,126, the number listed in the opinion as the marital portion of Carlene Drive's equity value in a column marked "[fair market value] less any liens/encumbrances." This reliance solely on the mortgage balance was clearly erroneous.

Harper v. Harper, 294 Md. 54 (1982) sets the groundwork for this analysis. *Harper* explains how courts should manage property that "[was] purchased and paid for in part before marriage and in part during marriage with nonmarital and marital funds." 294 Md. at 81. In that case, husband purchased an unimproved parcel of land under a land installment contract before the parties married. 294 Md. at 57. He made all the loan payments before the marriage and continued to make those payments afterwards. *Id.* When he married wife, husband built a house on the land that became their marital home. *Id.* at

57–58. The circuit court decided that both the land and the home were marital property and that each spouse was entitled to half of its value. *Id.* at 58–59. This Court agreed, reasoning that husband had equitable title to the land before the marriage and had acquired legal title only afterwards. *Id.* at 59–61. The Supreme Court disagreed and held that courts must classify a property with mixed status according to the source of funds used to acquire it. *Id.* at 80. Only then, it said, can a court classify and determine the value of the marital property subject to equitable distribution:

> [A] spouse contributing nonmarital property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital and marital investment in the property. The remaining property is characterized as marital property and its value is subject to equitable distribution. Thus, the spouse who contributed nonmarital funds, and the marital unit that contributed marital funds, each receive a proportionate and fair return on their investment.

Id. Under *Harper*, Husband would be entitled to an interest in Carlene Drive in the ratio of his nonmarital investment to the total investments that have been made in the property. *See id.* at 80. And the source-of-funds analysis requires the court to calculate the nonmarital portion of the property. *See Hoffman*, 93 Md. App. at 714. As a result, we must vacate the monetary award and remand this matter for a determination of the marital and nonmarital portions of the equity value of Carlene Drive.

On remand, the court can take additional evidence or perform its calculation against the record developed at trial. The calculation used in *Hoffman v. Hoffman*, 93 Md. App. 704 (1992), may be instructive because it covers circumstances like this where an outstanding mortgage remains on the property. *Id.* at 714–16. In that case, husband

contributed $8,997.35 of nonmarital funds to purchase the marital home, then the couple purchased the home for $74,500. *Id.* at 714–15. The parties agreed that the home had a fair market value of $110,000 and an outstanding mortgage balance of $56,876 at the time of trial. *Id.* at 715. After dividing the nonmarital investment ($8,997.35) by the purchase price ($74,500) the court determined that husband's nonmarital investment amounted to twelve percent of the purchase price and that twelve percent of the current fair market value was $13,200. *Id.* After deducting the nonmarital portion ($13,200) and the outstanding lien ($56,876) from the fair market value ($110,000), the court concluded that the marital property available for equitable distribution was $39,924. *Id.*

To summarize, we vacate the monetary award and remand this matter to the circuit court to determine the marital and nonmarital portions of the equity value of Carlene Drive, to ensure that Husband receives "credit for the net equity attributable to his investment of nonmarital funds," *Noffsinger*, 95 Md. App. at 289, and to make findings to that effect.

b. 100th Avenue

In its opinion, the circuit court determined that the marital portion of the equity value of 100th Avenue was $151,771.43, a number it took from Wife's calculation. Wife took two steps to reach that value. *First*, because neither party had established 100th Avenue's outstanding mortgage balance in July 2009, Wife agreed to accept its "principal balance [of] $83,000," in 2013 to represent the 2009 balance, even though that number wouldn't account for all the mortgage payments made during the marriage. *Second*, Wife proposed using the calculation set forth in *Jandorf v. Jandorf*, 100 Md. App. 429 (1994), "to

determine [100th Avenue's] marital equity," being the only property with equity existing at the beginning of the marriage.

We agree that *Jandorf* is a useful guide for ascertaining the marital and nonmarital portions of a property, like 100th Avenue, with a zero-mortgage balance. In that case, husband inherited a house from his mother that he used as the marital home. 100 Md. App. at 433. At the time of his mother's death, the property had a fair market value of $40,500 and an outstanding mortgage of $7,000. *Id.* Husband and wife paid that mortgage completely using marital funds. *Id.* At the time of trial, the fair market value of the property was $110,000. *Id.* at 435.

On review, we determined the proper formula for calculating the marital and nonmarital portions of a property that had equity before the marriage that grew after the marriage. *Jandorf*, 100 Md. App. at 437–38. We determined that the proportions of nonmarital equity ($40,500) and marital equity ($7,000) to the total equity in the property was, respectively, 85.3% ($40,500/$47,500 x 100) and 14.7% ($7,000/$47,500 x 100). *Id.* at 438. Multiplying the fair market value of the property ($110,000) by these percentages, we concluded that $93,830 of its fair market value was nonmarital and $16,170 of it was marital. *Id.*

Wife's calculation in this case, as relied on by the court, was erroneous. The first problem is Wife's reliance on $83,000 to represent the outstanding mortgage in 2009. She points out correctly that neither party established the actual mortgage amount in place at that time. Husband submitted into evidence a document indicating that his mortgage

balance was $107,833.77 in 2007, and Wife's evidence revealed a principal balance of $83,392.95 when Husband refinanced his mortgage in February 2013. But even if the court accepted the principal balance of the mortgage in February 2013 for purposes of this calculation, the correct number would have been $83,392.95.

The second problem is that Wife's calculation didn't follow the *Jandorf* formula. Wife divided the 2013 mortgage balance by the property's fair market value in 2009, as established by her expert. That calculation is inconsistent with *Jandorf*. To perform the calculation correctly, the court would need to know three facts: (1) the equity Husband built in 100th Avenue through his loan payments before the marriage, which we represent as *nm*;[8] (2) the contributions made by the marital unit, represented as *m*;[9] and (3) the fair

[8] In *Jandorf*, the husband inherited the home, and the court valued his nonmarital contribution by the home's fair market value at the time of inheritance. *Jandorf*, 100 Md. App. at 437–38; *see also Merriken*, 87 Md. App. at 535 ("We define the value of the inherited property as the value that the property held at the time it was inherited . . . ."). In contrast, Husband purchased and built equity in 100th Avenue before the marriage. Therefore, the circuit court should calculate Husband's nonmarital equity contributions by subtracting 100th Avenue's principal loan balance at the start of the marriage from the property's fair market value in 2009 instead of relying solely on the 2009 fair market value, as Wife suggested and as done in *Jandorf*. *See Hoffman*, 93 Md. App. at 714–15 (for example, if spouse used nonmarital funds to cover downpayment on the marital home, and the resulting equity amounted to one fourth of the property's value, then one fourth of the fair market value of the property at the time of trial would be nonmarital property); *Harper*, 294 Md. at 80 ("[T]he spouse who contributed nonmarital funds [should] receive a proportionate and fair return on their investment.").

[9] The contributions made by the marital unit equal the amount by which marital funds paid down the principal loan balance during the marriage. The record reveals that Husband had paid off the mortgage for 100th Avenue by 2017.

market value of 100th Avenue at the time of trial, which is in the record.[10] From there, the court can compute the ratio of marital investments to total investments by dividing the marital contributions by the sum of the marital payments and Husband's nonmarital investments. *See Harper*, 294 Md. at 81–82; *Jandorf*, 100 Md. App at 437–38. Then the court can multiply the fair market value by that number to get the marital portion of the equity value of the home, or *M*. *See id.* at 437–38. Visually, the calculation would be:

$$\frac{m}{m + nm} = M$$

The court can perform a similar calculation to determine the nonmarital portion of the equity value of 100th Avenue, *NM*:

$$\frac{nm}{nm + m} = NM$$

With this guidance, we vacate the monetary award and remand for further proceedings.

c. 5th Street

In its opinion, the circuit court determined that the marital portion of the equity value of 5th Street was $353,921, a number carried over from Wife's calculation. The evidence submitted at trial reveals that Husband purchased 5th Street in 2007 for $305,000 after making a down payment of $45,266.86. On June 3, 2008, Husband refinanced his mortgage with CitiMortgage, Inc., when the unpaid principal balance was $269,515.89. He

[10] On remand, the circuit court can decide whether to take additional evidence or to rely on the evidence adduced at trial. *See Brewer v. Brewer*, 156 Md. App. 77, 108 (2004) ("[E]quity only 'requires that reasonable efforts be made to ensure that valuations of marital property approximate the date of judgment of divorce . . . .'" (*quoting Fox v. Fox*, 85 Md. App. 448, 460 (1991))).

refinanced the mortgage again on February 21, 2013, when the principal loan balance was $273,921.08. According to the appraisals of record, the fair market value of 5th Street was $247,000 around the time the parties married and $384,000 around the time of trial.

Wife's calculation didn't track *Jandorf*. Because 5th Street had zero equity when the parties married in 2009, Wife used the unpaid mortgage balance from Husband's 2013 refinance ($273,921) to calculate the contributions of the marital unit, then subtracted that amount from Husband's purchase price ($305,000) to conclude that he paid $31,079 in mortgage payments before their marriage. Then Wife subtracted Husband's nonmarital payments ($31,079) from 5th Street's fair market value in 2023 ($384,000)[11] to determine that the marital portion of the property's equity was $353,921. That calculation isn't quite right. The parties agree that Husband paid off the 5th Street mortgage by the time of trial. By adopting Wife's calculation, the court appeared to accept also that the marital payments on the loan amounted to $273,921, *m*, that Husband made $31,079 in payments before the marriage, *nm*, and that the 2023 fair market value of the property was $384,000. From that, the correct calculation would be:

$$\frac{\$273{,}921}{(\$273{,}921 + \$31{,}079)} = 0.898$$

From there we multiply the fair market value ($384,000) by 0.898 and determine that the marital portion of the total equity value of 5th Street is $344,832, or 89.8%, and the

[11] Wife's calculation had used $385,000, the appraisal amount that Mr. Bell testified to incorrectly.

nonmarital share is $39,168, or 10.2%.

Husband argues that the circuit court disregarded the fact that Father gifted him money which he used in turn to pay off the 5th Street mortgage. A gift is the "voluntary transfer of property to another without compensation." *Gift*, *Black's Law Dictionary* (12th ed. 2024). The donor (*i.e.*, giver) must have a clear and unmistakable intent "'to permanently relinquish all interest in'" the gift, there must be actual delivery, and the donee (*i.e.*, receiver) must accept it. *Fantle v. Fantle*, 140 Md. App. 678, 689 (2001) (*quoting Dorsey v. Dorsey*, 302 Md. 312, 318 (1985), *superseded on other grounds by statute*, Marital Property Act, 1994 Md. Laws, Chap. 462).

We question whether these payments were gifts. At trial, Father testified that Husband loaned KB & Dako Properties, LLC ("KB & Dako") $62,000 in 2005 to buy a property in Washington D.C. Father said he started KB & Dako with his wife and described it as a "family business," but said he didn't know whether Husband was an owner. He testified that KB & Dako sold the property in 2014 and reimbursed Husband from the proceeds of the sale. Husband submitted into evidence a settlement sheet for that transaction dated October 9, 2014 that included a $62,000 "loan repayment" to him in the settlement charges for the transaction, leaving KB & Dako with $260,583.32 in sale proceeds. But the company's repayment of a loan to Husband wouldn't have transferred its interest in property to him. *See Fantle*, 140 Md. App. at 689. Father testified also that he gave Husband $33,000 a few months later as "a gift." The settlement sheet in evidence included a "Partners/Investor Investment Analysis" from KB & Dako, indicating that

Husband, in his capacity as partner or investor, made a capital investment of $62,000 in the company and loaned it $48,021.90. The real estate sale seems to have been part of a liquidation process—using the sale proceeds and its cash on hand, KB & Dako paid Husband back $48,021.90[12] and divided the remaining money by three, resulting in a $33,437 distribution to Husband. Father testified that when the company closed, he made a capital distribution to Husband and "returned . . . the money that he loaned."

And even if the circuit court had considered KB & Dako's $33,437 payment a gift, the evidence adduced at trial didn't establish that Husband applied it to the 5th Street mortgage. At his deposition and at trial, Husband said he put Father's payments into a Certificate of Deposit account, SECU #1363, and closed it in 2017 to pay off the mortgage. The record contains SECU #1363 bank statements that cover the periods of November 2016 and December 2016 but neither reveals a payment, withdrawal, or transfer of money from that account. At his deposition, Husband said that he closed Discover #5140 to pay off the mortgage and said this again at trial. The record contains bank statements revealing that he deposited $40,000 in Discover #5140 on March 10, 2016 and that he withdrew $40,213.75—all the funds in the account—via official bank check on February 15, 2017. But Husband didn't provide a corresponding mortgage record showing a payment for this amount or show where that bank check went. Husband submitted evidence indicating that his mortgage balance was $257,892.21 in 2017 and at his deposition, he testified that he

[12] Under "Sale of Property," the analysis lists the refunded loan amount as $48,321.90. This entry appears to be a clerical error.

paid off the mortgage after Wife filed her complaint for limited divorce in February 2017, but he doesn't identify record items that cement the connection between Father's payment and his satisfaction of the mortgage. Again, it is up to Husband to put the evidentiary pieces together to form a picture for the court that supports his claim to nonmarital property status. Because he didn't, the circuit court didn't have to factor Father's payment into its assessment of the marital portion of the equity value of 5th Street.

2. The circuit court didn't err in counting Husband's BMW as marital property because Husband didn't prove that he purchased the car using a HELOC secured by equity in Carlene Drive.

Husband argues *next* that the circuit court erred when it counted his 2022 BMW i4 as marital property. He maintains that he purchased the BMW using nonmarital funds, referring to a HELOC secured by equity in Carlene Drive. Wife responds that the equity in Carlene Drive is partly marital, so the BMW is marital property because it was funded in part by marital property. We hold that the circuit court classified the full value of the BMW as marital property correctly.

At trial, Husband testified that he used a HELOC secured by equity in Carlene Drive to buy a 2022 BMW i4 for approximately $55,000. At his deposition, he said that SECU issued the HELOC that he used for this purchase and that he took that HELOC out in 2019. At trial, Wife asserted that the BMW was marital property because Husband bought it during the marriage. And in her Closing Argument Memorandum to the circuit court she challenged Husband's assertion that he used a HELOC to buy the BMW because "he did not submit any documentation to verify his claims." We agree with Wife.

Husband didn't provide the court with any documentation associated with the BMW purchase or even specify the date he bought the car. He provided approximately one hundred and fifty pages of SECU bank statements, but most were incomplete. None of those statements proved that Husband took out a HELOC or borrowed against an existing HELOC for an amount around $55,000. And Husband hasn't provided any documentation that he used the equity in Carlene Drive to secure the HELOC that SECU issued. For these reasons, the circuit court's classification of the BMW as marital property wasn't clearly erroneous.

3. The circuit court should not have counted Husband's Discover Bank accounts as marital property.

Husband's *third* argument is that the circuit court included Discover Bank accounts #5140 and #7186 as marital property improperly. He asserts that he closed both accounts in 2017 before the parties divorced and asks us to remand this matter to the circuit court with instructions to exclude those accounts for purposes of the monetary award. In response, Wife suggests that the court didn't credit Husband's testimony that he spent down and closed the accounts or used them to pay the 5th Street mortgage and Wife's attorney's fees. We disagree. Husband testified that he used the money in those accounts, in part, to pay Wife's attorney's fees and alimony. That use, the court reasoned, could not serve as a ground for a dissipation finding, and the court found that Husband hadn't dissipated those assets. Having found that Husband hadn't dissipated those assets, and there being no dispute that he had closed the Discover accounts before the date of, the circuit court shouldn't have included them as marital property.

Typically, if a bank account is closed prior to the date of divorce, it is not subject to equitable distribution. *Williams v. Williams*, 71 Md. App. 22, 35 (1987) ("The record supports the contention that the [bank] accounts had been closed and, therefore, did not exist on the date of the divorce. The exhibits produced by both parties reflect that this is so. In fact, they reveal that those accounts were closed at least two years before the divorce proceedings. Consequently, the accounts are not marital property in the consideration of which a monetary award may be based."); *see also Melrod*, 83 Md. App. at 194–95 (circuit court did not err when it excluded husband's share of proceeds from the sale of his real estate partnership from marital property award where sale occurred before the divorce and partnership interest didn't exist at time of divorce); Callahan & Ries, *supra*, § 13-11 (dissipation is the exception to the general rule that "property not in existence as of the date of the divorce cannot be marital property." (cleaned up)). To support her dissipation claim, Wife submitted into evidence bank statements from Discover accounts #7186, #5140, and #5133.[13] Each statement showed that Husband closed the accounts in 2016 and 2017, before the parties divorced. In its opinion, the circuit court found that Husband hadn't dissipated his assets; yet it determined that Discover #7186 and #1138[14] were marital

[13] At trial, Husband objected to the admission of his Discover Bank statements because their closing predated the parties' separation. The court overruled his objection based on its understanding that Wife had submitted the statements for the purpose of showing that Husband had dissipated the money in those accounts.

[14] There is no record of a Discover account ending in #1138. The court appears to have valued this account based on the average daily balance of Discover #5140 during the statement period of October 1, 2016 to January 3, 2017, as shown by a statement with

Continued . . .

property, assigned the former a value of $15,172.45, and valued the latter at $40,310.28. This determination was clearly erroneous, *see Melrod*, 83 Md. App. at 194–95 (without evidence that husband dissipated his share of real estate proceeds, "there was no basis for considering the proceeds as marital property"), and we reject Wife's suggestion that a $55,482.73 difference in the marital property calculation amounts to harmless error. We vacate the monetary award and remand this matter to the circuit court to recalculate it without factoring in the Discover Bank accounts.

B. Reconsideration Of The Attorney's Fee Award Is Necessary Because Of Our Vacate And Remand Of The Monetary Award.

Lastly, Husband argues that the circuit court didn't consider his financial status or the attorney's fees he had incurred throughout the divorce when it decided to grant Wife attorney's fees. He contends also that the court failed to consider how Wife had prolonged litigation and added to court costs when she challenged the validity of the prenuptial agreement even after the court deemed it valid and enforceable. And he states that the court failed to provide a "sufficient rationale" for the award, including why he should have to pay another round of attorney's fees and what specific conduct warranted this outcome. Wife responds that the court considered the parties' incomes, expenses, and financial conditions and developed a sufficient record to substantiate its attorney's fee award.

In a proceeding to dispose of marital property, circuit courts can order a party to pay

a page stamp of "TE 1138." Therefore, it appears that the court meant to identify Discover #5140 in its opinion and that the reference to Discover #1138 was a clerical error.

"an amount for the [other party's] reasonable and necessary expense of prosecuting or defending the proceeding." FL § 8-214(b). Before doing so, the 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 proceeding." *Id.* § 8-214(c). If the court finds that either party wasn't substantially justified in bringing or defending against the proceeding and there is no good cause for the lack of substantial justification, the court must "award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding." *Id.* § 8-214(d).

Because we have vacated the monetary award, we must vacate the attorney's fee award for reconsideration on remand. *See, e.g.*, *Flanagan*, 181 Md. App. at 544. We notice, however, that the circuit court's award didn't include a finding as to the reasonableness of the fees incurred by Wife. *See Collins v. Collins*, 144 Md. App. 395, 449 (2002) ("The reasonableness of the attorney's fees must be analyzed once evidence is presented in favor of attorney's fees."). That discussion would include consideration of the "labor, skill, time and benefit received." *Id.* The court's opinion suggests that both parties lacked substantial justification for initiating or defending certain aspects of the proceedings at different times but only awarded attorney's fees to one of the parties. That treatment caught our attention because of FL § 8-214(d). *See supra*. And the opinion doesn't explain how the unjustified conduct bore out in the proportion of attorney's fees awarded or make findings about Husband's ability to pay the fees, Wife's financial resources, or either party's needs. *See Flanagan*, 181 Md. App. at 546. Because the order leaves questions unanswered, the circuit

court will need to address them if it decides to award attorney's fees on remand.

JUDGMENT VACATED WITH RESPECT TO MONETARY AWARD AND ATTORNEY'S FEES; CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE DIVIDED EVENLY.