

Circuit Court for Frederick County
Case No.10-C-15-002403

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1500

September Term, 2016

ROBERT S. JAMES

v.

BARBARA WAGNER JAMES

Graeff,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 30, 2018

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

On August 26, 2015, Barbara Wagner James, appellee (“Wife”), filed a complaint in the Circuit Court for Frederick County seeking an Absolute Divorce from Robert S. James, appellant (“Husband”). On August 18, 2016, the circuit court granted Wife an Absolute Divorce, and it ordered, *inter alia*, that Husband pay Wife indefinite alimony in the amount of \$1,500 per month.

On appeal, Husband presents a single question for this Court’s review, which we have rephrased slightly, as follows:

Did the circuit court err and/or abuse its discretion by ordering Husband to pay \$1,500 per month in indefinite alimony?

For the reasons set forth below, we shall remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On March 27, 1999, Husband and Wife were married in Frederick County, Maryland. No children were born of the marriage.

On June 27, 2015, the parties separated. Wife continued to reside in the marital home, which she purchased prior to the marriage. Husband rented a separate apartment.

At the time of the proceedings, Wife was 63 years old and Husband was 47 years old. Both parties have a high school education.

Wife testified that, two years into their marriage, she learned that Husband had engaged in a six-month extramarital affair with another woman. The parties subsequently attended marriage counseling, but Wife stated that it “didn’t work.” Prior to that, Husband had gone to counseling separately for anger issues.

During the marriage, Wife and Husband often drank together. Wife testified that they were “always intoxicated.” In 2009, following an argument between Husband and Wife, the police were called to the residence. Husband resisted arrest, and the police tasered and pepper-sprayed Husband. In 2013, police again were called to the house regarding a domestic disturbance that Wife described as “another fight.” Wife testified to other problems in her marriage, including text messages from women claiming that her Husband was going to leave her and making disparaging remarks about her age and appearance.

With respect to her career, Wife testified that she had been an employee with the Montgomery County Public Schools (“MCPS”) for more than 33 years, in various capacities. Since 1995, Wife had been a paraeducator, helping special education students. She had a ten-month employment contract with MCPS, earning approximately \$42,000 per year. She did not work in July or August.¹

In her current position, Wife was at the top of her pay grade, and except for cost-of-living increases, she was unlikely to increase her earnings. Wife testified that she had not sought out any other job opportunities, but she noted that she took free classes offered by MCPS to “keep updated on [her] computer skills.”

¹ Although Wife had worked summer school in the past, she stated that she got “paid four hours and that’s it.” She testified that she could not work that summer for several reasons, including that she had to get surgery on her wrist.

Wife indicated that, in 2016, her salary would increase by approximately one percent to adjust for cost-of-living. Wife noted, however, that she was currently eligible to retire from MCPS, allowing her to receive benefits from an employer-based pension. These benefits would increase based on her time of service, but a statement dated June 30, 2014, indicated an estimated benefit of \$1,026 per month.

Wife also was eligible to start drawing social security benefits. If she started collecting benefits at the time of the hearing, she would be eligible to receive \$1,102 per month, but if she waited until age 66, or full retirement, she would receive \$1,504 per month. If she waited until age 70, Wife was eligible to receive \$2,017 per month. In addition to these benefits, Wife had a 403(b) retirement account with a balance of \$48,483.87, and a Roth IRA with a balance of \$12,099.20.

Wife testified that she had some health issues, including high blood pressure and high cholesterol, as well as anxiety, for which she was taking medicine. She also had an “aorta valve that has a mild leakage,” which her cardiologist was monitoring. She had a prior wrist injury, for which she had received worker’s compensation, and she was receiving physical therapy for a knee injury. Due to the knee injury, Wife was “not allowed to use [her] right knee for hardly anything,” but she stated that, as long as her “MRI [magnetic resonance imaging] turn[ed] out fine,” and surgery was not required, she would return to work in the fall.

With respect to the marital home, Wife purchased it in December 1997, prior to the marriage, contributing \$5,000 toward the \$83,300 purchase price. She had refinanced the

home several times. According to a statement dated May 29, 2016, \$72,239.68 remained outstanding on the mortgage, and the monthly payments were approximately \$575 per month.

Regarding marital finances, Wife testified that the parties had maintained a joint bank account, from which the mortgage and “[a]ll of [their] bills . . . throughout the marriage” were paid. Wife also maintained multiple personal bank accounts. One account primarily was used for her personal bills, which had a balance of \$2,561.40. A second account contained \$4,858.84. A third account was used for her twelve-year-old grandson, which was closed and reopened as a custodial account in the grandson and Wife’s name, which contained approximately \$32,420.57. There also was an account with PayPal that had a remaining balance of \$1,655.60.²

Wife’s financial statement showed a monthly deficit of \$1,500. She had been covering that deficit by withdrawing money from her various bank accounts. In addition to those withdrawals, Wife relied on credit cards to address her shortfall, and her credit card balances had “[d]ramatically” changed over the past year.³

² The court subsequently found that each account was marital property.

³ Wife testified that some of her credit card debt was attributed to the ongoing litigation, including \$7,000 charged on a Discover credit card and \$7,000 from Fidelity for attorney’s fees, for which she had paid approximately \$17,700 at the time of the proceeding. She also had credit card debt in the amount of \$600 owed to Kohl’s for clothes, and she had approximately \$19,000 outstanding on her 2015 Nissan Altima.

Husband testified that, after the parties separated, he moved into a one-bedroom apartment, where he was paying \$1,265 in rent. He spent approximately \$4,000 to buy furnishings, including a bedroom and living room set.

At the time of the proceedings, Husband was employed as a Work Force Leader with the Montgomery County Department of Liquor Control (the "Department"), where he had worked for approximately 16 years. Husband's tax returns listed his federal adjusted gross income for 2015 as \$87,091. He testified that his salary was approximately \$67,000, but he was eligible to earn overtime pay. He expected his overtime hours to decline in the future, however, due to management and workforce changes. When questioned about his ability to earn a higher salary or obtain a promotion, Husband responded: "Somebody would have to quit or pass away." He testified that he had approximately 14 years remaining with the Department until he was eligible to retire. He was unaware of any employer-based pension, but he had a 401(a) valued at \$114,333, which he had access to beginning at age 65 ½.

Husband testified that he owned a 2008 Nissan Armada, which Kelly Blue Book valued at \$8,087, and a 2001 Suzuki Intruder motorcycle, which he valued at approximately \$1,000. He had two personal accounts, a savings account with Montgomery County Credit Union containing \$2,691.73, and a PNC checking account, which he used for bills, that contained \$5,096.37. Husband had approximately \$3,000 in credit card debt.

Husband testified that he no longer used the parties' joint checking account, which he believed had, at the time of separation, approximately \$8,000 in the account.⁴

Husband's financial statement showed that he incurred a monthly deficit of \$617. He testified that he was dealing with this deficit by using his credit cards. He decreased his dining out expenses because he could not continue to afford eating out, but his grocery expenses increased because he was cooking more at home.

At the conclusion of testimony, Wife's counsel argued that the case was clear that indefinite alimony was necessary, noting that the parties had been married for almost 20 years, there was a considerable disparity in age, an unconscionable disparity existed between the parties' income, and Wife had reached the "maximum amount to be self-supporting," as she was eligible for full social security retirement benefits in three years.

Husband's counsel argued that, although the pay differences "seem[ed] jarring," the only factor that weighed strongly to Wife's benefit was the length of the marriage. Counsel argued that Husband's housing costs were four times Wife's cost, that Wife was able to support herself and pay her bills, and that the parties' standards of living were relatively consistent post-separation. Husband's counsel argued that alimony was not warranted, but at most, counsel suggested an alimony award of \$265 per month for a period of three years.

The court then rendered its ruling. The court first addressed the request for a division of marital property and a monetary award. Because the court's finding in this

⁴ A statement from March 2015 was entered into the record indicating that the parties' joint checking account had \$12,805.47.

regard is not at issue in this appeal, but its subsidiary findings are relevant to the alimony award, we will discuss them briefly. The court found that the marital home had a value of \$136,074, a marital value of \$126,549, with a total marital value to each party of \$63,275. Rather than provide a marital award to Husband based on the value of the home, which would require Wife to sell the home, the court ruled that Husband would keep the entirety of his 401(a) retirement account, in the amount of \$114,333, and Wife would keep the home.⁵ Wife's share of Husband's retirement account was \$57,000. The court explained that, although this was not equal, it was equitable.

The court ruled that Husband would receive a marital share of Wife's retirement accounts and pension. With respect to the other marital assets, such as bank accounts, investments, and vehicles, the court found that Wife had assets totaling \$41,497, exclusive of her equity in the house, while Husband had assets totaling \$16,787, not including retirement benefits. The court declined to adjust the equities to these assets.

The court then addressed alimony. It found that Wife earned less than half of Husband's income, but both parties worked hard and Wife took care of the house and the dogs. The court found that the parties were married for 17 years, and at the time of the proceedings, Wife was 63 and Husband was 47. It stated that, if it used age 70, Wife had seven years of earning capacity, whereas Husband had 23 years. With respect to their physical and mental conditions, the court found that Husband was in "very good physical shape," in contrast to Wife, who had "some physical problems," work limitations, and

⁵ The court found that Husband's 401(a) retirement account was marital property.

faced the possibility of surgery. The court stated that it gave “quite a lot of weight to” the circumstances that contributed to the estrangement of the parties, which included, as “a significant contribution,” domestic violence.

The court found that Wife was partly self-supporting, and Wife incurred a monthly deficit of \$1,500, in contrast to the Husband’s \$600 monthly deficit.⁶ It further found that Wife had no more than “seven years left in being able to support herself.” The court stated: “I don’t think that it’s reasonable that [Wife] is expected to live on her own . . . on the modest income that she makes and I found that income to be \$42,346.” Noting that Husband’s salary was more than twice that of Wife’s salary, the court found that Husband had the ability to contribute to Wife’s post-divorce needs while meeting his own.

With respect the request for an indefinite alimony award, the court stated:

I may award indefinite alimony if I find due to the age, illness, infirmity, the party seeking alimony cannot reasonably be expected to make substantial progress. I don’t see how [Wife] can improve in her employment between now and retirement age of, you know, maybe 65, but at least 70. I believe that he has 23 good more years. If she’s got seven years, he’s got 23 good more years of earning. Even after the party seeking alimony will have made as much progress towards becoming self-supporting as can be reasonably expected, the respective standard of living will be unconscionably disparate. At this moment she’s making less than half of what he’s making and I don’t find that that is going to increase. And with his good work history I think his income can certainly increase.

After noting that it was taking into consideration that Wife had more assets than Husband, the court stated:

⁶ The court noted that it reviewed both parties’ financial statements and found them to be “very reasonable.”

I believe that [Wife] probably needs more than \$1,500 per month indefinite alimony, however I'm taking into consideration that she does have \$40,000 in assets and I must take into consideration as well [Husband's] ability to meet his own needs.

Therefore, . . . I'm gonna order \$1,500 per month indefinite alimony because I find that if I did not the standard of living[] . . . would be unconscionably disparate. If she retires at 65 based on her health issues she's gonna get \$1,500 Social Security, \$1,500 here, that's \$3,000. He's making [\$]87,000. . . . When I take out his taxes and all his other contributions I think that's approximately \$4,790 per month that he would net, minus \$1,500 a month, he's at \$3,290 a month. Again, that's speculation because I think that's what the law requires me. All I can do is crunch these numbers and see. But I believe that would give him an ability to meet his own needs and to meet her needs. At this moment he's got a really reasonable financial statement. He's only short six --not, not only, I know it's a lot of money, \$617 is a lot of money. But he's got a good work history and I believe he's gonna be increasing in his income and he's only 47 years old which sounds younger all the time to me. . . . So I am not otherwise adjusting the equities with regard to the additional assets that [Wife] owns, nor [Husband]. I'm allowing him to keep his. I'm allowing her to keep hers. But I've limited indefinite alimony to \$1,500 per month.

On August 18, 2016, the circuit court issued an order requiring, *inter alia*, that Husband pay Wife \$1,500 per month, effective August 1, 2016, as indefinite alimony. This appeal followed.

DISCUSSION

Husband contends that the circuit court erred and abused its discretion in ordering indefinite alimony to Wife. He argues that no alimony was warranted, and the circuit court was clearly erroneous in several of its factual findings. Additionally, he asserts that the court abused its discretion by ordering indefinite alimony without making findings regarding how the parties' post-divorce living standards would be unconscionably disparate.

I.

Husband first contends that, based on the statutory factors, an award of alimony was “wholly inappropriate.” In support, he argues that several of the circuit court’s factual findings were clearly erroneous, including: (1) that Wife was only partly self-supporting in light of “clear evidence” that she was earning more than \$42,346; (2) that Husband caused the break-up of the parties’ marriage; (3) that Wife’s health issues prevented her from working in the summer; and (4) that Husband could not meet his own needs while paying alimony.

We note that “appellate courts will 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) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)). We review the award of alimony under an abuse of discretion standard and uphold the factual findings of the trial court unless clearly erroneous. *Solomon v. Solomon*, 383 Md. 176, 196 (2004).

When considering whether to award alimony to a spouse, the court is guided by enumerated factors contained within Md. Code (2012 Repl. Vol.) § 11-106(b) of the Family Law Article (“FL”). The factors the court shall consider include:

- (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.

FL § 11-106(b).

Although each individual factor does not have to be satisfied, the court is required to demonstrate that it at least took each factor into consideration when making its findings prior to granting alimony. *Simonds v. Simonds*, 165 Md. App. 591, 604-05 (2005) (statutory factors are non-exclusive); *Crabill v. Crabill*, 119 Md. App. 249, 261 (1998) (courts are not “required to employ a formal checklist, mention specifically each factor, or announce each and every reason for its ultimate decision.”). Ultimately, the party seeking alimony bears the burden of meeting the statutory factors. *Thomasian v. Thomasian*, 79 Md. App. 188, 195 (1989).

The statutory scheme governing alimony “generally favors fixed-term or so-called rehabilitative alimony,’ rather than indefinite alimony.” *Solomon*, 383 Md. at 194 (quoting *Tracey*, 328 Md. at 391). The preference for rehabilitative alimony stems from “the

conviction that ‘the purpose of alimony is not to provide a lifetime pension, but where practicable to ease the transition for the parties from the joint married state to their new status as single people living apart and independently.’” *Id.* at 194-95 (quoting *Tracey*, 328 Md. at 391).

Notwithstanding the general rule favoring fixed-term alimony, the statute recognizes two “exceptional circumstances” in which a court may award indefinite alimony. *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 142 (1999), *cert. denied*, 358 Md. 164 (2000). Pursuant to FL § 11-106(c), the circuit court may award a requesting spouse alimony for an indefinite period if it finds that:

- (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.

With that background in mind, we address Husband’s specific contentions.

A.

Self-Supporting

Husband contends that the court’s finding that Wife was only partly self-supporting was clearly erroneous, asserting that the evidence showed that she earned more than \$42,000 and could earn additional income in the summer. Husband asserts that this evidence showed that Wife was “wholly self-supporting.”

The court clearly considered whether Wife, the party requesting alimony, had the

ability “to be wholly or partly self-supporting.” FL § 11-106(b)(1). The court found that Wife was “clearly self-supporting, partly self-supporting now.” In making that finding, the court noted that, although Wife was making \$42,000, Wife had a monthly deficit of \$1,500, and at age 63, she had a limited amount of earning time, “at most seven years.” It further stated that it was unclear whether “any more employment hours [were] possible due to [Wife’s] physical condition, due to her age, [and] due to her education.” Given this record, we cannot conclude that the circuit court was clearly erroneous in finding that Wife was partly self-supporting.⁷

B.

Circumstances Leading to the Separation

Husband next contends that the court’s finding that he was the cause of the parties’ divorce was clearly erroneous. Although he acknowledges that there was testimony that he was physically violent with Wife, he asserts that the testimony related to an incident in 2009, and the parties lived together for six years thereafter, with no reports of violence.

The circuit court stated that it gave a lot of weight to the factor set forth in FL § 11-106(b)(6), regarding the circumstances that contributed to the estrangement of the parties.

The court stated:

I found [Wife’s] testimony to be very credible, that things were violent in the home. They were violent in the home, it was, it was corroborated by Ms.

⁷ We further note that, even if Wife was wholly self-supporting, indefinite alimony can be awarded, and was awarded here, under the circumstances where, at the time Wife “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.” Md. Code (2012 Repl. Vol.) § 11-106(c)(2) of the Family Law Article (“FL”).

Moore. I saw pictures. [Wife] was physically harmed. [Husband] had to be subdued by the police to include being tased and pepper-sprayed on at least one occasion of domestic violence. One instance of domestic violence resulted in him being charged. Her not choosing to prosecute, that didn't go anywhere, but I did hear testimony that he was also charged with resisting arrest. These all are circumstances that I find to be unreasonable for any person to maintain safety and dignity in the home and that's a condition the Court takes into consideration. And that is what I believe to be a significant contribution to the estrangement of the parties, domestic violence.

Based on our review of the record, the circuit court was not clearly erroneous in its findings in this regard.

C.

Physical and Mental Health of the Parties

Husband contends that the circuit court was clearly erroneous in finding that Wife's health conditions prevented her from working during the summers. He argues that, although Wife "had some health issues, there was no evidence those health issues interfered with her job."

Wife testified that she had health problems that prevented her from working in the summer of 2016. She further testified to other health problems she faced. After hearing this testimony, the court stated: "I don't know that any more work is possible for her, [if] any more employment hours is possible due to her physical condition, due to her age, due to her education." We cannot conclude that the court was clearly erroneous in making this factual finding.

D.

Ability to Meet His Own Needs

Husband next challenges the court's findings pursuant to FL § 11-106(b)(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." In that regard, the court found: "I believe that [Husband] has the ability to contribute to her needs while meeting his own, his income being \$87,0[91]. Again, based on last year's . . . he's making more than twice of what she's making."

Husband contends that the court's findings that he had the ability to pay alimony while meeting his own needs was clearly erroneous, asserting that he "simply does not have the ability to pay alimony while meeting his own needs." He argues that his financial statement shows that he had a monthly deficit of \$617, "leaving him with no money from which to pay alimony."⁸

Wife did not respond to Husband's contention in this regard.

Although the court properly noted the parties' income, it did not explain how, based on the evidence, it determined that Husband had the ability to pay the alimony award and

⁸ Husband also argues that the court erred by determining that "he had the ability to pay alimony based on an unsubstantiated belief that his income will increase at some point in time," and the "inclusion of a speculative increase in [his] earnings [was] unsupported by the evidence." The court's discussion of Husband potential for an increase in income, however, was made in the context of determining whether to award indefinite alimony, which does require the court to compare the parties' predicted future incomes. *See St. Cyr v. St. Cyr*, 228 Md. App. 163, 189 (2016). Husband is correct, however, that a projected

take care of his needs. As Husband notes, his financial statement, which the court stated was “really reasonable,” stated that he had a monthly deficit of \$617. On this record, we cannot determine how the court arrived at the conclusion that Husband could pay \$1,500 in alimony while meeting his needs. Accordingly, we must remand for further proceedings regarding the amount of the alimony award.⁹

II.

Duration, Indefinite Alimony

Husband next challenges the duration of the alimony award, arguing that the circuit court abused its discretion ordering him to pay indefinite alimony. As indicated, *supra*, FL § 11-106(c) provides that the circuit court may award a requesting spouse alimony for an indefinite period if it finds that:

- (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.

income finding must “appear to be based on reasonable inferences drawn from competent evidence.” *Id.* at 190.

⁹ Although the court found that Husband’s financial statement was reasonable, we note that Husband listed \$632.00 in monthly expenses for replacement furnishings for his apartment. He testified that he purchased some furniture when he moved out of the marital home, but did not explain why he would need such a high expense on a continuing basis. Additionally, we note that his monthly expenses included \$1,521 for entertainment and recreation, including \$600 for dining out and \$600 for “Other.” Wife, by contrast, listed her total monthly expenses for entertainment to be \$460.

Because the court stated that it was ordering indefinite alimony on the basis of an unconscionable disparity in the parties' standard of living, we will address that prong in our analysis.

Husband argues that the court "erred by not stating how the parties' lifestyles were unconscionably disparate" without an award of indefinite alimony. He asserts that the court improperly focused only on the income disparity between the parties.

"[T]he issue of unconscionable disparity must be determined by projecting into the future, to a time of maximum productivity of the party seeking the award, and not by looking solely to the past." *Whittington v. Whittington*, 172 Md. App. 317, 339-40 (2007). The burden of proof regarding unconscionable disparity is "upon the economically dependent spouse who seeks alimony for an indefinite period." *Thomasian*, 79 Md. App. at 195. *See St. Cyr*, 228 Md. App. at 197 (FL § 11-106(c) "requires a comparison of the disparity in the parties' future standards of living at the hypothetical point in time when [the requesting spouse] will have made as much progress toward becoming self-supporting as can reasonably be expected."). *Accord Francz v. Francz*, 157 Md. App. 676, 701 (2004) (to be eligible to receive indefinite alimony, the appellant must show that, projecting into the future, even after he or she will have made as much progress toward self-sufficiency as reasonably can be expected, there will be an unconscionable disparity between their standards of living). As such, the court's forward projection should be "based on the evidence, beyond the point in time when a party may be expected to become self-supporting." *Roginsky*, 129 Md. App. at 146.

In *Ware v. Ware*, 131 Md. App. 207, 232 (2000), we explained that a finding of mathematical disparity will not automatically trigger an award of indefinite alimony, and the trial judge must carefully consider each of the twelve factors spelled out by FL § 11-106(b) that are pertinent to a particular case. “The interplay of those factors may frequently have a strong bearing on whether a disparity can fairly be found to be an unconscionable disparity.” *Id.* at 232-33. Although there is no “hard and fast rule regarding any disparity” in income for purposes of awarding indefinite alimony, *Tracey*, 328 Md. at 393, to be unconscionable, the disparity in the post-divorce standards of living must work a “gross inequity.” *Brewer v. Brewer*, 156 Md. App. 77, 100, *cert. denied*, 381 Md. 677 (2004); *Karmand v. Karmand*, 145 Md. App. 317, 338 (2002) (Indefinite alimony warranted where “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.”).

Here, in finding an unconscionable disparity, the court took into account Wife’s age and physical condition. The court noted that, at age 63, Wife had a limited period of working years, “at most seven years,” as opposed to Husband, who had 23 years of earning capacity. The court also noted Wife’s physical problems, which had resulted in worker’s compensation benefits, and possible surgeries in the future, which the court found “could impact her ability to take care of herself.”

As Husband notes, in finding an unconscionable disparity warranting an award of indefinite alimony, the court focused primarily on the parties’ future income. Although, as

indicated, factors other than income are relevant to a finding of unconscionable disparity, a mathematical comparison of income is “the starting point of the analysis.” *Roginsky*, 129 Md. App. at 146 (quoting *Blaine v. Blaine*, 336 Md. 49, 71 (1994)).

The court found that, if Wife retired at age 65, she would have a monthly income of \$1,500,¹⁰ whereas Husband, with a yearly salary of \$87,000, would have a monthly income of \$4,790, which results in Wife having approximately 31% of Husband’s salary. The court’s findings of an unconscionable disparity in living standards is consistent with other cases finding an unconscionable disparity based on the relative percentage of the dependent spouse’s income when compared to the other spouse’s income. *See Tracey*, 328 Md. at 393 (28 percent); *Caldwell v. Caldwell*, 103 Md. App. 452, 463-64 (43 percent), *cert. denied*, 339 Md. 166 (1995); *Bricker v. Bricker*, 78 Md. App. 570, 577 (1989) (35 percent).¹¹

Under these circumstances, we perceive no error or abuse of discretion in the court’s decision that indefinite alimony was warranted. As indicated, however, we remand for further proceedings regarding the amount of the alimony award.

¹⁰ Wife’s testimony was that she would be eligible for \$1,504 per month in social security benefits if she retired when she was 66.

¹¹ This is particularly the case where Husband is only 47 years old, and it is reasonable to project that he, as opposed to Wife, will be able to increase his income in future years.

CASE REMANDED TO THE CIRCUIT COURT FOR FREDERICK COUNTY, WITHOUT AFFIRMANCE OR REVERSAL, FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE SPLIT EQUALLY BETWEEN THE PARTIES.