Circuit Court for Calvert County
Case No. C-04-FM-21-000429

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1618

September Term, 2022

JOSEPH SHYMANSKI

v.

HEATHER SHYMANSKI

Arthur,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 8, 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.

On October 13, 2022, the Circuit Court for Calvert County entered a judgment of absolute divorce between the appellant, Joseph Shymanski ("Husband"), and the appellee, Heather Shymanski ("Wife"). In its written order, the court found, *inter alia*, that Husband had dissipated the parties' marital assets in the amount of $42,000 and that Wife held title to less than an equitable portion of the parties' marital property. Accordingly, the court granted Wife a monetary award in the amount of $181,000. On appeal, Husband presents four issues for our review, which we have reordered and recast as follows:

1. Did the court overvalue the parties' marital interests in the marital home?

2. Did the court err in finding that loans made to two limited liability companies amounted to an aggregate $111,800 in marital property?

3. Did the court err in determining that Husband had dissipated $42,000 in marital assets?

4. Did the court err in fashioning Wife's monetary award by failing to adequately address the factors enumerated in Maryland Code (1984, 2019 Rep. Vol.), Family Law Article ("FL"), § 8-205(b)?

For the reasons that follow, we will affirm in part, vacate the circuit court's monetary award, and remand for further proceedings consistent with this opinion.

BACKGROUND

In February 2014, Husband purchased a six-bedroom house in Huntington, Maryland ("the Home") for $450,000, with a down payment of $160,000, thereby adding it to his real estate portfolio, which then included two rental properties located at 1616 and 1619 D Street, S.E., Washington, DC. Husband and Wife were wed in Maine on July 30,

2014. That same month, the parties and Wife's three children from a prior marriage moved into the Home, which was and would remain titled solely to Husband.

Two children were born of the parties' union, one in December 2014 and the other in December 2015.[1] During the first four years of their marriage, Husband worked as a self-employed professional event photographer, while Wife was a full-time stay-at-home mother.

In 2018, the parties formed New Day Farms, LLC ("New Day") with their then friends, Maggie Travis and her husband, Mike, each of whom owned a 25% membership interest thereof. New Day operated a hemp farm on real property owned by Apple Tree Vineyard & Farms LLC ("Apple Tree"), which Mike and his father, Jim Travis, co-owned, and sold "hemp products" online and at festivals.[2] Wife's duties at New Day included overseeing sales and managing the books, while Mike operated the hemp farm. Husband, by contrast, adopted a "hands-off" role.

Beginning in March 2020, Husband's freelance photography business no longer generated income, purportedly due to the COVID-19 pandemic. Accordingly, Wife applied for unemployment benefits on his behalf. Husband testified that Wife "was giving [him] about 55 percent and keeping about 45 percent" of that income "for her own personal account and her own personal use." Between 2020 and 2021, Husband obtained Small

[1] Neither party challenges the court's rulings with respect to custody and child support.

[2] For the sake of clarity and intending no disrespect, we will refer to Mike, Maggie, and Jim Travis by their first names.

Business Administration loans in the aggregate amount of approximately $65,000, a portion of which he invested in Bitcoin through Coinbase Exchange, a cryptocurrency investment platform.

On July 18, 2021, Wife left the Home, taking the children with her, and moved to a farmhouse in Newport, Pennsylvania, which her parents had purchased at auction and where Wife resided rent free. Three days after Wife's departure, Husband filed a complaint for limited divorce, wherein he sought, among other things, joint legal and primary physical custody of the children, *pendente lite* child support, *pendente lite* possession and use of the Home, as well as "a monetary award adjusting the equities and rights of the parties in the marital property[.]" Wife filed a counter-complaint for limited divorce on July 27th and answered Husband's complaint on August 2nd. In the former filing, Wife sought, *inter alia*, sole custody of the children, *pendente lite* alimony, and reasonable attorney's fees.

On August 9, 2021, the court held a *pendente lite* hearing on the issue of child custody. In an ensuing *pendente lite* order entered on September 27, 2021, it granted the parties joint legal custody of their two mutual children with primary physical custody to Husband. On October 21st, the parties entered into a *pendente lite* consent order, whereby they withdrew their requests for *pendente lite* support, and Husband agreed to contribute $10,000 toward Wife's legal costs and attorney's fees.

Although she no longer occupied the Home, Wife continued to work for New Day, and in January 2022 began receiving a commission on the sales she made. During the ensuing four months, New Day's sales significantly increased. After making approximately

$10,000 worth of sales in April, however, Wife quit. According to the parties' joint statement of marital and nonmarital property ("the Joint Property Statement"), by August 4, 2022, New Day's bank account balance was $9,548. In or around July 2022, Wife obtained substitute employment as a soliciting agent with New York Life Insurance Company. Wife testified that although she was then "precontract" and not yet earning an income, her full-time contract would be "triggered" within approximately one week, at which time she would earn $2,000 per month, plus commissions.

On July 19, 2022, Husband filed an amended complaint for absolute divorce, alleging a one-year voluntary separation, desertion, and adultery, seeking, *inter alia*, primary physical and sole legal custody of the parties' two biological children, child support, use and possession of the Home, and a "monetary award adjusting the equities and rights of the parties in the marital property and reduc[ing] said award to judgment." On August 3rd, Wife filed both an answer to Husband's complaint and an amended counter-complaint for absolute divorce, wherein she sought sole custody of the two children, a monetary award reduced to judgment, attorney's fees, and alimony.

Following a four-day hearing, the court announced its factual findings from the bench on October 11, 2022. Based upon those findings, which we will discuss below, the court determined that the "total value of the property interest of [Husband] is $1,109,425.33[,]" while "[t]he value of the property of [Wife] is $245,939.75." After addressing the statutory factors enumerated in FL § 8-205(b), the court ordered Husband

to pay Wife a monetary award in the amount of $181,000 so as to effectuate an equitable distribution of the parties' property.[3]

[3] FL § 8-205(b) provides:

> (b) The court shall determine the amount and the method of payment of a monetary award . . . after considering each of the following factors:
>
> (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
>
> (2) the value of all property interests of each party;
>
> (3) the economic circumstances of each party at the time the award is to be made;
>
> (4) the circumstances that contributed to the estrangement of the parties;
>
> (5) the duration of the marriage;
>
> (6) the age of each party;
>
> (7) the physical and mental condition of each party;
>
> (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
>
> (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
>
> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and

(continued…)

We will include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

Standard of Review

"[W]e utilize the 'clearly erroneous' standard to the court's determination of what is, and what is not, marital property because '[o]rdinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property.'" *Richards v. Richards*, 166 Md. App. 263, 271 (2005) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229, *cert. denied*, 361 Md. 232 (2000)). Ordinarily, the valuation of marital property is also "a question of fact subject to the clearly erroneous standard of review." *Abdullahi v. Zanini*, 241 Md. App. 372, 413 (2019). "In contrast, we review the [court's] determination of questions of law under a 'de novo' standard of review." *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). This includes the interpretation of Maryland case law as well as statutory law. *Goff v. State*, 387 Md. 327, 337-38 (2005).

I.

Husband contends that the court undervalued his nonmarital share of the Home and overvalued the parties' marital interests therein. He advances three arguments in support of that contention, which we have reordered for purposes of analysis. First, Husband asserts

> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

that the court failed to credit him for over $50,000 in nonmarital funds he purportedly used to make mortgage payments on the Home. Secondly, he claims that the court clearly erred in determining the amount of marital debt by which the property was encumbered. Finally, he argues that the court applied the incorrect formula for determining the parties' marital interests in the Home.

A. Husband's Uncredited Mortgage Contributions

Husband claims that the court "made two mistakes when identifying the source of funds used to acquire the [Home]." First, he argues that the court "did not give [him] credit for the six mortgage payments [Husband] made between when [he] purchased the [Home] in January 2014 and when the parties married in July 2014." Secondly, Husband complains that the court disregarded contributions to the Home's mortgage payments which were purportedly derived from nonmarital rental income.

When determining an equitable distribution of marital property, Maryland courts must undertake a three-step process. First, a court "shall determine which property is marital[.]" FL § 8-203(a). Second, it is required to "determine the value of all marital property." FL § 8-204(a). Third, a court must "decide if the division of marital property according to title would be unfair. If so, [it] may make a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled." *Flanagan*, 181 Md. App. at 519-20 (quotation marks and citation omitted). The arguments at issue implicate the first step, *i.e.*, the court's determination of which property is marital.

Marital property is defined as "property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). Marital property generally does not include assets "(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources." FL § 8-201(e)(3). However, "[p]roperty that is initially non-marital can become marital," *Innerbichler*, 132 Md. App. at 227, as where nonmarital and marital property are commingled "to the point that direct tracing is impossible[.]" *Melrod v. Melrod*, 83 Md. App. 180, 188, *cert. denied*, 321 Md. 67 (1990). *See also* Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-9(d) (7th ed. 2021) ("'Directly traceable' means a dollar for dollar trace is required.").

"In determining marital and nonmarital property, Maryland follows the 'source of funds' theory[.]" *Dave v. Steinmuller*, 157 Md. App. 653, 663, *cert. denied*, 383 Md. 570 (2004).

> "Under that theory, when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital. Thus, 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."

Pope v. Pope, 322 Md. 277, 281-82 (1991) (quoting *Harper v. Harper*, 294 Md. 54, 80 (1982)).

"[I]n order to apply the source of funds theory in Maryland, it is necessary to adopt . . . an interpretation that defines the term 'acquired' . . . as the on-going process of making payment for property." *Harper*, 294 Md. at 80. "Under the 'ongoing process' theory, if a couple has a mortgage . . . on their property, each time a payment is made, a bit more equity is acquired in the property—more 'marital' property is acquired to the extent that payment of marital funds goes to lessen the indebtedness, and there is an increase in the equity owned by the couple." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-8(e) (7th ed. 2021).

As to the first argument, Husband does not direct us to any evidence of his having made premarital mortgage payments, much less evidence indicating the amount of any such payments or whether and to what extent they were applied to the mortgage principal (as opposed to, *e.g.*, interest). We are, therefore, unpersuaded that the court clearly erred by failing to find that these purported premarital mortgage payments entitled him to additional nonmarital equity in the Home.

With respect to his second argument, Husband testified that the tenants of 1616 D Street, paid their monthly rent via Venmo transfers to his "personal account," which funds were then tendered to the mortgage company, leaving a surplus of "a few hundred dollars monthly, depending on repairs and other needs[.]" Based in part on that testimony, the court found:

> The Bank of America account ending in 8516 titled to [Husband], based on the testimony, this is [Husband's] current checking account. The [c]ourt finds that this account is marital, as the parties are still married and

> the [c]ourt cannot find the source of these funds is directly from rental income associated with 1616 D Street.
>
> * * *
>
> The Bank of America account 4679, titled to [Husband], the [c]ourt finds that this is marital. The [c]ourt cannot identify the source of funds in this account as strictly from 1616 D Street[.]
>
> * * *
>
> The 1616 D Street residence titled to [Husband], the [c]ourt finds that [Husband] acquired the residence prior to the marriage and it is nonmarital property.
>
> The rental income from [1616 D Street] pays for the mortgage and upkeep. And while some of the excess funds were at times transferred into a marital account and used for marital purposes, the initial rental income was used towards [1616 D Street].

In so finding, the court evidently determined that the nonmarital rental proceeds from 1616 D Street were commingled with marital funds, but because the rent received exceeded the mortgage paid on 1616 D Street, the mortgage payments on that rental property were nevertheless directly traceable to the nonmarital rental proceeds. By contrast, application of the surplus funds to the mortgage on the Home did not permit a dollar-for-dollar trace of those funds and they were thus commingled with marital property to the extent that they lost their nonmarital status. *See Melrod*, 83 Md. App. at 187 ("Since Mr. Melrod commingled his income from non-marital sources with his marital income, no specific sum of money used to acquire property or reduce an indebtedness on any property can be directly 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." (emphasis retained)). We do not, therefore, perceive any legal or factual error in the court declining to credit Husband for the rental income purportedly allocated to the marital mortgage.

B. The Marital Debt

We next address Husband's claim that the court miscalculated the amount of the parties' marital debt. "[M]arital debt is considered under the second step of the process …, namely the valuation of marital property." *Schweizer v. Schweizer*, 301 Md. 626, 637 (1984).

'"The sole purpose of applying the concept of 'marital debt' is to diminish the value of marital property, on the theory that to the extent it is encumbered by debt marital property has not been acquired within the contemplation of the Act."' *Coutant v. Coutant*, 86 Md. App. 581, 591 (1991) (quoting *Kline v. Kline*, 85 Md. App. 28, 45 (1990), *cert. denied*, 322 Md. 240 (1991)). When valuing marital property, a court must "deduct[] from the gross value any marital debt[,]" and "[o]nly the net value . . . is, in fact, available for equitable distribution via a monetary award." *Zandford v. Wiens*, 314 Md. 102, 107-08 (1988). *See also Rogers v. Rogers*, 80 Md. App. 575, 585 (1989) ('"[T]he value of marital property is adjusted downward by the amount of the marital debt."' (quoting *Schweizer*, 301 Md. at 637)). Not all debt incurred during a marriage constitutes "marital debt." Rather, "a 'marital debt' is a debt which is directly traceable to the acquisition of marital property." *Schweizer*, 301 Md. at 636. A "nonmarital debt," by contrast, "is a debt which is not directly traceable to the acquisition of marital property." *Id.* at 637.

In determining whether a debt is marital or nonmarital, "[w]ho owes the debt is as immaterial as who owns the property." *Kline*, 85 Md. App. at 45. A marital debt need not, moreover, "be a lien or encumbrance on the property[.]" *Id. See also Rogers*, 80 Md. App. at 585. Rather, in assessing whether a debt is marital or nonmarital, "the critical question is . . . whether the debt is traceable to the acquisition of marital property." *Id.* Thus, an original purchase money mortgage for a marital home "[i]s a marital debt because it [i]s a debt incurred to acquire the property." *Id.*

"When refinancing a property, any amount borrowed in addition to the unpaid balance of the loan made to purchase the property is a non-marital debt, unless used to make improvements to or otherwise contribute to the increased value of the property." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-13 (7th ed. 2021). If, for example, one spouse "subsequently refinance[s] the loan, increasing the mortgage indebtedness, and use[s] the additional funds . . . to pay . . . personal debts[,]" the marital debt remains "[t]he original mortgage balance at the time of the refinancing[.]" *Rogers*, 80 Md. App. at 585. Accordingly, "the difference between that amount and the amount of the refinanced mortgage debt [i]s non-marital debt." *Id.*

In its ruling from the bench, the court found that the then-current mortgage on the Home was $268,900.42. The court revised that valuation in an order entered on December 20, 2022. In that order, it found that "the accurate value of the current mortgage is $236,819.42[,]" but determined that it had "accurately announce[d] . . . the marital share of the [H]ome as $182,511.82[.]" The court based its valuation of the mortgage on a

delinquent mortgage statement dated February 16, 2022. The statement reflects an outstanding principal balance of $236,819.42, as well as total overdue payments in the amount of $35,378.75 and a regular payment due on March 1, 2022, in the amount of $2,099.26, for a total amount due of $37,478.01.

Husband construes the delinquent mortgage statement as "show[ing] a principal balance of $236,819.42 plus *an additional balance* of $37,478.01." (Emphasis retained.) He claims that the court erroneously "relied on the $236,819.42 amount but did not include the additional $37,478.01 that was also owed." Husband is mistaken. The mere fact that he was apparently in arrears on his mortgage payments for over a year does not, *ipso facto*, increase the principal balance by the amount of arrears due. This argument is, therefore, without merit.

Alternatively, Husband claims that "[t]he [c]ourt's reliance on [the delinquent mortgage statement] is . . . misplaced because it was outdated." Instead, he asserts, the court ought to have based its calculation of the parties' marital debt on a mortgage modification agreement dated June 14, 2022, which identifies the then-unpaid principal of $235,654.60, and a new principal amount of $258,650.25. This more recent exhibit, he maintains "provides the most accurate balance on the [Home]." The resolution of this sub-contention turns on whether the refinanced mortgage constituted marital debt.

At the hearing, Husband conceded having recently entered into a loan modification agreement, dated June 14, 2022. Wife's counsel introduced into evidence excerpts of the loan modification agreement, which provided, in pertinent part:

Original Principal Amount: $290,000.00
Unpaid Principal Amount: $235,654.60
New Principal Amount: $258,650.25
New Money (Cap): $22,995.65

In consideration for the $22,995.65 increase in the mortgage indebtedness, Husband's mortgagee lowered the annual interest rate from 4.5% to 3.5% and reduced the regular monthly payment from $2,099.26 to $1,001.99.[4] Although these modifications to the mortgage inure to Husband's benefit as the sole mortgagor and lone title owner of the Home, they do not remotely contribute to an increase in the value of the Home. Accordingly, the difference between the unpaid principal balance at the time of refinancing and the refinanced debt was nonmarital. The marital equity in the home should not, therefore, have been proportionately decreased. Rather, if the court had relied on the loan modification agreement, it would have found that the outstanding mortgage was $235,654.60—the unpaid principal prior to refinancing per the loan modification agreement—rather than $236,819.42—the outstanding principal as of the February 16, 2022, delinquent mortgage statement.[5] *See Lamalfa v. Hearn*, 457 Md. 350, 389 (2018)

[4] Although the excerpted portion of Husband's loan modification agreement introduced at trial did not include these terms, we take judicial notice of the loan modification agreement in its entirety, as it was recorded with the Circuit Court for Calvert County and is readily available via the Maryland State Archives at www.mdlandrec.net. *See* Md. Rule 5-201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

[5] Our holding would be the same even if we considered only those excerpts of the loan modification agreement that were introduced into evidence, as they do not reflect that the additional $22,995.65 that Husband borrowed was "used to make improvements to or (continued…)

("The circuit court is presumed to know and properly apply the law."). Any error that the court committed in relying on the delinquent mortgage statement rather than on the loan modification agreement was, therefore, harmless.

C. The Valuation Formula

Although Husband's first two sub-contentions lack merit, we are persuaded that in computing the value of the parties' marital interest in the Home, the court, as Husband asserts, applied "the mathematical steps in the wrong sequence[.]" As Husband's argument solely concerns the circuit court's interpretation and application of Maryland case law, we will apply the *de novo* standard of review. *See In re G.R.*, 463 Md. 207, 213 (2019) ("[W]here a circuit court's order involves 'an interpretation and application of Maryland . . . case law[,]' we review its decision de novo." (quoting *Goff*, 387 Md. at 337-38)).

In *Grant v. Zich*, 300 Md. 256 (1984), the Supreme Court of Maryland provided the following example of the proper method for calculating the marital and nonmarital interests and value of part marital and part nonmarital property:[6]

> A husband and wife acquired real property for a purchase price of $40,000. The wife contributed a down payment of $10,000 from property that she acquired prior to marriage. The remaining $30,000 was financed by a mortgage signed by both the husband and the wife. One-quarter of the value

otherwise contribute to the increased value of the property." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-13 (7th ed. 2021).

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

> of the property is the wife's nonmarital property and three-quarters of the value of the property is marital property.
>
> If, at the time of the dissolution of the marriage, the property has appreciated in value to a fair market value of $60,000 and the mortgage indebtedness has been reduced to $20,000 by the payment of $10,000 of marital funds, the following division would be appropriate. One-quarter of the $60,000 fair market value of the property, or $15,000, would be the wife's nonmarital property, not subject to equitable distribution. From the remaining $45,000, $20,000, representing the unpaid mortgage balance, would be deducted leaving $25,000 as the net value of the marital property subject to equitable distribution.[7]

Id. at 276 n.9. *See also Scott v. Scott*, 103 Md. App. 500, 515-16 (1995); *Noffsinger v. Noffsinger*, 95 Md. App. 265, 289, *cert. denied*, 331 Md. 197 (1993); *Hoffman v. Hoffman*, 93 Md. App. 704, 714-15 (1992); *Blake v. Blake*, 81 Md. App. 712, 718 (1990). The proper formula for determining the marital portion of partly marital property is, therefore, as follows:

[7] In *Grant v. Zich*, the Supreme Court of Maryland held that because the marital residence at issue in that case "was acquired by an expenditure of both nonmarital and marital property, it must be characterized as part nonmarital and part marital, notwithstanding its titling as tenants by the entirety." 300 Md. at 276. In 1994, however, the Maryland General Assembly amended what is now FL § 8-201(e) by adding a provision providing that "'[m]arital property' includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement." 1994 Md. Laws, ch. 462. In so doing, the legislature "adopted the presumption that a tenancy by the entirety property was marital[,]" thereby superseding, in part, the Court's holding in *Grant. McGeehan v. McGeehan*, 455 Md. 268, 284 (2017). That amendment did not, however, affect the applicability of the *Grant v. Zich* formula to property purchased in part with nonmarital funds where, as here, property is titled solely in the name of one spouse. *See Heger v. Heger*, 184 Md. App. 83, 90-94 (2009) (affirming the court's application of the *Grant v. Zich* formula to a marital residence purchased in part with nonmarital funds and deeded solely to the husband).

1. Down Payment ÷ Purchase Price = % Nonmarital Interest
2. % Nonmarital Interest x Fair Market Value = Present Nonmarital Property
3. Fair Market Value – Present Nonmarital Property = Gross Marital Property
4. Gross Marital Property – Marital Debt = Net Marital Property

See, e.g., *Grant*, 300 Md. at 276 n.9.

In this case, the court determined that Husband had purchased the Home for $450,000 in February 2014. The court further found that he had made a nonmarital down payment of $160,000, thereby acquiring a 35.55% nonmarital interest in the Home. Based upon the testimony of an expert in the field of real estate appraisal whom the court found credible, it assigned the Home a fair market value of $520,000, from which it deducted the $236,819.42 outstanding principal balance on the mortgage reflected in the February 16th delinquent mortgage statement. It then evidently multiplied $283,183.58 by Husband's 35.55% nonmarital share and determined that his total nonmarital interest in the home was $100,671.76. Subtracting that figure from the net value of the Home, the court concluded that remaining $182,511.82 amounted to the parties' collective marital interest therein.

The court correctly determined that Husband possessed a 35.55% nonmarital interest in the Home. It erred, however, by deducting the marital debt from the Home's fair market value, thereby depriving Husband of his 35.55% nonmarital interest in the fair market value thereof, or $184,860, not subject to equitable distribution. The court should instead have multiplied the $520,000 fair market value of the Home by Husband's 35.55% interest therein and found that $184,860 of the fair market value was his nonmarital

property. It should then have subtracted the $236,819.42 outstanding mortgage balance from the remaining $335,140, resulting in $98,835.18 in net marital property available for equitable distribution. Thus, when valuing the parties' marital interest in the Home, the court misinterpreted and misapplied the governing case law. Given that the court's monetary award to wife was based on an erroneous valuation of the parties' property interests, we must vacate that award and remand for reconsideration.

II.

Husband also challenges the circuit court's finding that one loan in the amount of $71,800 made to Apple Tree and another in the amount of $40,000 to New Day constituted marital property. He asserts that the loaned funds are directly traceable to the sale of real property he acquired before the marriage and are therefore nonmarital assets. Alternatively, Husband claims that "the debt owed on the loans ha[s] no real current value because New Day is effectively insolvent." Wife rejoins that "[w]ith the loans listed as separate assets by each party on [the Joint Property Statement], and a clear estrangement of [her] by [Husband] from the persons owing the money to the parties, it was appropriate for the . . . [c]ourt to include the value of those assets within the marital property award."

In the Joint Property Statement, both parties included among their assets a $40,000 loan to New Day and a $71,800 loan to Apple Tree. They disagreed, however, as to whether those loans constituted marital or nonmarital property. At the hearing, Husband testified that his premarital personal savings account had a balance of approximately $110,000 before the parties were wed. In 2016, he sold 1619 D Street—property that he had

purchased prior to the marriage—and deposited over $300,000 in proceeds from the sale into that account.

Husband testified that in or around December 2018, he began making a series of transfers from his premarital savings account to Wife's personal checking account in the aggregate amount of approximately $120,000.[8] He described the transfers as having been in the amounts of "usually five or ten thousand dollars, as needed, as requested by [Wife]." Wife, in turn, transferred (at least the majority of) those funds to New Day and Apple Tree. Husband's uncontroverted testimony was corroborated by bank statements for Wife's personal account, which he introduced into evidence. Beginning on December 4, 2018, those bank statements reflect 14 transfers from Husband to Wife totaling $120,000, and an aggregate $58,450 in ensuing transfers from Wife's account to Apple Tree and $48,200 to New Day. Although there exists a $13,350 difference between the funds Husband transferred to Wife and those that she transferred to New Day and Apple Tree, Husband explained that Wife had made purchases directly on behalf of "the hemp farm" because it was more expeditious for her to do so "and then get reimbursed."

When announcing its findings from the bench, the court deemed nonmarital the savings account from which Husband had purportedly transferred funds to Wife's personal account to effectuate lending those funds to New Day and Apple Tree. It then concluded

[8] Husband's testimony was not entirely consistent with respect to the amount of funds lent to New Day and Apple Tree. Initially, he testified: "[W]e ultimately put in $115,000 to start the hemp farm." However, Husband subsequently averred that the loans "amounted to . . . almost 120,000, that went into either the apple farm or the hemp farm" and "[w]e . . . spent $120,000 to start the hemp farm from my savings."

that although the parties each own a 25% membership interest in New Day, the company itself was valueless. With respect to the Apple Tree and New Day loans, the court concluded:

> Appletree loan, titled to New Day Hemp, jointly owned by both parties, the [c]ourt finds that it is marital as it was acquired during the marriage as a joint venture of the parties. The value of the loan is $71,800.
>
> The New Day, LLC loan, titled to New Day Hemp, again, jointly owned by the parties. The [c]ourt finds that this is marital, as it was acquired during the marriage and the value of the loan is $40,000.

We agree with Husband that there is tension between the circuit court's classification of his savings account as nonmarital property and its conclusion that the loans, which according to Husband's uncontroverted testimony were derived therefrom, are marital. The court's valuation of the New Day loan is also problematic in light of its findings that New Day was insolvent and therefore valueless. *Cf. Green v. Green*, 64 Md. App. 122, 138-39 (1985) (affirming the trial court's finding that the appellee's loan to a partnership in which she was a member was valueless based upon the managing partner's testimony that "the partnership is insolvent and that in his opinion it was 'very questionable whether this money could ever be repaid'"). On remand, therefore, we direct the circuit court to revisit and clarify or modify these findings.

III.

Next, Husband challenges the court's finding that he dissipated $42,000 in marital assets. He argues that Wife neither argued nor presented evidence that "(i) the marital assets were spent on non-marital things; and (ii) the expenditures were made intentionally to

reduce the amount of marital property available by the time the court issued an equitable distribution ruling." Alternatively, Husband asserts that he satisfied his burden of showing that the funds at issue were appropriately spent on attorneys' fees and family expenses at a time when the COVID-19 pandemic had "virtually eliminat[ed] his normal employment opportunities." Wife responds that she made a *prima facie* case that Husband had dissipated the marital assets, and that he failed to satisfy his ensuing burden of showing that the expenditures at issue were appropriate.

'"The doctrine of dissipation is aimed at the nefarious purpose of one spouse's spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets."' *Omayaka v. Omayaka*, 417 Md. 643, 654 (2011) (quoting *Heger*, 184 Md. App. at 96). Dissipation generally occurs "'where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown.'" *Id.* at 651 (quoting *Sharp v. Sharp*, 58 Md. App. 386, 401, *cert. denied*, 300 Md. 795 (1984)). Cash withdrawals or transfers may still constitute dissipation, however, "on occasions in which . . . the dissipating spouse's *principal purpose* was [one] other than the purpose 'of reducing the amount of funds that would be available for equitable distribution at the time of the divorce.'" *Id.* at 652 (quoting *Welsh v. Welsh*, 135 Md. App. 29, 51 (2000), *cert. denied*, 363 Md. 207 (2001)) (footnote omitted; emphasis retained). Such withdrawals or transfers may amount to dissipation if "marital assets were taken without the claiming spouse's agreement by the other spouse (1) for the other spouse's own benefit (2) for a

purpose unrelated to the marriage (3) at a time when the marriage is undergoing an irreconcilable breakdown." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 13-11 (7th ed. 2021)

The alleging party bears the initial burden of making a *prima facie* case of dissipation. *See Omayaka*, 417 Md. at 656 ("'The . . . initial burden of production in showing dissipation is on the party making the allegation.'" (quoting *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 311 (1994))). Once that party has made a *prima facie* showing of dissipation, the burden of production '"shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate[,]"' *i.e.*, that they were made for family purposes. *Id.* at 657 (quoting *Jeffcoat*, 102 Md. App. at 311). To satisfy this shifted burden, the accused must provide more than vague and unsupported testimony. *See Ross v. Ross*, 90 Md. App. 176, 191, *vacated on other grounds*, 327 Md. 101 (1992). The accusing party, however, retains the ultimate burden of persuasion, and must prove that his or her spouse dissipated marital assets by a preponderance of the evidence. *Compare Omayaka*, 417 Md. at 656 ("It is clear that the ultimate burden of persuasion remains on the party who claims that the other party has dissipated marital assets."), *with Jeffcoat*, 102 Md. App. at 307 ("Under a proper standard, the trial court should be able to find dissipation by a preponderance of the evidence.").

"A trial court's judgment regarding dissipation is a factual one, and, therefore, is reviewed under a clearly erroneous standard." *Omayaka*, 417 Md. at 652. We will not, therefore, disturb a trial court's dissipation determinations "[i]f there is any competent

evidence to support the factual findings below[.]" *Goicochea v. Goicochea*, 256 Md. App. 329, 340 (2022) (quotation marks and citations omitted), *cert. denied*, 483 Md. 277 (2023).

At the hearing, Wife introduced into evidence bank statements from the parties' joint checking account, which documented their banking activities between June 18, 2021, and August 18, 2021. Those statements reflect that on July 8th and August 9th, Husband made payments in the respective amounts of $5,665.72 and $4,141.86 to a Chase credit card account, which Husband testified was held only in his name. The statements further reveal that on July 19th and August 9th, Husband transferred funds in the respective amounts of $2,000 and $10,000 to two checking accounts, both of which (according to the parties' Joint Property Statement) were titled solely to him. Wife also introduced a document confirming that Husband had "cashed out" $24,477.50 from a Coinbase investment account, which Husband testified was derived from a Small Business Administration loan that he obtained in March 2021. At the hearing, Husband confirmed that these transactions had, in fact, been made.

Based on the foregoing evidence, the circuit court made the following factual findings from the bench:

> [Husband] spent $8,000 from the joint account in . . . June into July in 2021, and $10,000 from July into August from the joint account, which is consistent with his testimony and [the joint checking account statements].
>
> He also removed $24,000 from the Coinbase account in September of 2021, which again is consistent with his testimony and [the joint checking account statements].
>
> * * *

> Based on the above findings, the [c]ourt finds there is a *prima facie* case that [Husband] dissipated $42,000 in marital funds.

We find no fault with the court's determination that Wife met her initial burden of production. This does not, however, end our inquiry. We must now determine whether Husband satisfied his shifted burden of "produc[ing] evidence sufficient to show that the expenditures were appropriate." *Omayaka*, 417 Md. at 657 (quotation marks and citation omitted). In support of his contention that they were, Husband relies, in part, on our opinion in *Allison v. Allison*, 160 Md. App. 331, 339-40 (2004), wherein we held that "when . . . a spouse uses marital property to pay his or her own reasonable attorney's fees, such expenditures do not constitute dissipation of marital assets."

Husband did not dispute having transferred marital funds into accounts titled solely in his name. He maintained, however, that the expenditure of those funds was nevertheless appropriate. With respect to the $10,000 withdrawal from the parties' joint checking account, Husband testified: "I withdrew the $10,000 to reserve that for the upcoming credit cards and bills that I could already see." As to the Coinbase investment account withdrawal, Husband averred that he had used those funds to pay the Washington, DC and Maryland mortgages, as well as attorneys' fees.[9] In support of the latter assertion, Husband introduced into evidence a certified copy of invoices showing that between July 6, 2021, and June 15, 2022, he had incurred an aggregate $63,869.47 in attorneys' fees and

[9] With respect to the mortgage payments, Husband testified that he had spent $12,000 on the Washington, DC mortgage in the summer of 2021 and had "been paying the mortgage in the Maryland house for probably the last four or five months."

associated expenses—all of which he had paid. Wife also introduced invoices from her attorney, which reflect fees and costs in excess of $25,000. Husband testified that he had sent a $10,000 check directly to Wife's attorney in October 2021 to assist Wife in paying her legal expenses. Both parties introduced evidence corroborating that testimony. The November 30, 2021, invoice from Wife's attorney confirmed counsel's receipt of $10,000, $750 of which was allocated to the best interest attorney's fee and the remaining $9,250 of which was deducted from Wife's outstanding legal fees. For his part, Husband introduced bank statements for Wife's personal checking account, which included a copy of a check in the amount of $9,250, issued by Wife's attorney on October 27, 2021, and made payable to her. Appearing in the memo line of that check is a notation which reads: "Attorney's fees paid by J.S." Notwithstanding the foregoing evidence, the circuit court found:

> The [c]ourt heard testimony from [Husband] that he used the money from the joint accounts to be able to live – legal fees, gas, mortgage, property taxes, vehicle maintenance, money for the kids in general.
>
> The [c]ourt does note the mortgage on the . . . [H]ome was in arrears of $37,478.01 as of March 2022.
>
> The [c]ourt finds that considering . . . [H]usband's testimony, and a careful review of the financial documents submitted . . . [Husband] has not established how the $42,000 in marital property was spent for family purposes and, therefore, it is deemed to have been dissipated.

Granted, the circuit court was entitled "to accept—or reject—all, part, or none of [Husband's] testimony . . . , whether that testimony was or was not . . . corroborated by any other evidence." *Omayaka*, 417 Md. App. at 659 (emphasis omitted). The court in this case did not, however, make any express credibility findings with respect to Husband's

testimony that he spent the $24,000 he had withdrawn from the Coinbase account on attorneys' fees. It did not address the evidence that Husband had paid $10,000 of Wife's attorney's fees. Nor did the court make any mention of the invoices reflecting an aggregate $63,869.47 in attorneys' fees and costs incurred by Husband—fees and costs that he had paid in full—much less that it questioned the veracity thereof or the reasonableness of the fees reflected therein.

On the record before us, it is unclear whether the court considered *Allison*'s holding that the expenditure of marital assets to pay reasonable attorneys' fees constitutes an appropriate expenditure of marital monies—and not dissipation of marital assets.[10] On remand, we direct the circuit court to reconsider its findings with respect to dissipation in light of this opinion and, if necessary, amend its monetary award accordingly.

IV.

Finally, Husband claims that "the [c]ourt did not address all [of] the factors [enumerated in FL § 8-205(b)] nor explain how th[o]se factors support[ed] the [c]ourt's decision that [he] pay [Wife] $181,000." He asks that we "vacate[] and remand[] to the trial court to show how it calculated this amount, and on the reasons supporting its decision."

We decline to mandate that the circuit court "show its work." "Although consideration of the [FL § 8-205(b)] factors is mandatory, the trial court need not go

[10] Given that Husband's attorney's fees and legal expenses exceeded the funds that the court found that he had dissipated, we need not address whether his other expenditures were appropriate.

through a detailed check list of the statutory factors, specifically referring to each[.]" *Hart v. Hart*, 169 Md. App. 151, 166 (2006) (quotation marks and citation omitted). "This is because a judge is presumed to know the law[.]" *Id.* (quotation marks and citation omitted). That presumption, however, cuts both ways. In arriving at its $181,000 monetary award in Wife's favor, the court presumably relied in part on erroneous valuations of the parties' respective property interests. As discussed *supra*, we must, therefore, vacate the court's monetary award and remand for reconsideration thereof. On remand, the decision to grant an award and the valuation thereof remains committed to the sound discretion of the court, subject to the requirement that it exercise that discretion "in accordance with correct legal standards." *Alston v. Alston*, 331 Md. 496, 504 (1993).

For the foregoing reasons, we vacate the circuit court's monetary award and remand for further proceedings consistent with this opinion.[11]

JUDGMENT AFFIRMED IN PART AND VACATED IN PART. JUDGMENT VACATED WITH RESPECT TO THE MONETARY AWARD. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 75% BY APPELLEE AND 25% BY APPELLANT.

[11] On remand, the court need not permit additional evidence or argument, but is not foreclosed from so doing.