

Circuit Court for Montgomery County  
Case No. 174988-FL

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1854

September Term, 2022

---

MICHAEL T. MASTERSON

v.

KAY LYNN MASTERSON

---

Graeff,  
Nazarian,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Nazarian, J.

---

Filed: November 29, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Michael Masterson (“Husband”) appeals the decision of the Circuit Court of Montgomery County awarding rehabilitative and retroactive alimony to his now-ex-wife Kay Masterson (“Wife”) as part of their Judgment of Absolute Divorce. He contends that the court erred by failing to state a justification for the alimony award and by including Husband’s meal expenses when calculating his income for purposes of the alimony award. We see no error and affirm.

### **I. BACKGROUND**

Husband and Wife were married in Maryland in 2008. No children were born of the marriage, although both parties have children from prior marriages who are all emancipated by age. When the parties married, Husband owned and operated a roofing company, and Wife worked as an executive assistant for an automobile dealership. Within a few years of the marriage, Wife stopped working for the automotive dealership and became a co-owner of Husband’s roofing company. Wife handled the finances of the roofing company and the parties’ personal finances for the duration of the marriage.

On or about February 9, 2021, after approximately twelve years, Husband and Wife separated. Wife filed a complaint for divorce on the grounds of cruelty and excessively vicious conduct on April 15, 2021. About three months later, on July 7, 2021, Husband filed a counter-complaint for divorce. And on October 21, 2022, Husband filed an amended counter-complaint for divorce on the grounds of a one-year separation. The court held a one-day trial on the merits on November 22, 2022.

At trial, Wife sought alimony, a monetary award, and attorneys’ fees. On December

8, 2022, the court entered a judgment that granted Wife’s request for an absolute divorce, divided the parties’ assets, ordered Husband to pay both retroactive and rehabilitative alimony to Wife, and ordered each party to pay their own attorneys’ fees. We limit our detailed recount of the court’s decision to the alimony award and the calculation of Husband’s income because Husband’s appeal challenges only those aspects of the decision.

The court began by making findings about Wife’s employment status and finances. The court found that at the time of the trial, Wife was earning approximately \$550 per month from her part-time job. As for her future employment prospects, the court noted that Wife “testified that she paid for a 60-hour course she has not yet completed to obtain a real estate license in Virginia,” and that “a realtor friend of hers in Virginia has offered her a place in his company if/when she obtains a license.” The court observed as well that “Wife prefers to live in Maryland where she has lived for well over 15 years.”

With regard to Wife’s finances, the court found that Wife “ha[d] approximately \$15,000 to \$16,000 in credit card debt. Her parents and her daughter have loaned her a total of approximately \$25,000.00 since the separation. She ha[d] a monthly car payment of \$400 . . . .” The court determined that Wife “d[id] not have sufficient income to meet her expenses or maintain a separate residence,” and noted that she “reside[d] with her father on occasion, who she help[ed] care for due to an illness . . . .”

Next, the court made findings about Husband’s employment status and finances. The court found that Husband owned a roofing company that was created after the parties’ separation. The court recognized that Husband’s monthly expenses totaled \$8,779.76. The

court also noted that Husband “testified that a friend has loaned him \$5,000.00 in the last year or so that he has not paid back,” but that Husband has no credit card debt. As for Husband’s income, the court observed that “[i]n order to meet the expenses of \$8,779.76 per month, [Husband] allegedly has income of \$105,357.12 ( $\$8,779 \times 12 \text{ months} = \$105,357.12$ ).”

The court then made an independent calculation of Husband’s income. It stated that “a large majority of [Husband’s] personal expenses such as dining out, golf, groceries, gas, health insurance (\$600/ month) . . . and a myriad of other expenses [were] run through the business and must be considered in any determination of [Husband’s] income.” So when calculating Husband’s income, the court included 50% of the meal expenses listed on his tax returns in addition to his officer compensation and the ordinary business income. Using these sums, the court concluded that “[t]he average of the estimated income for [Husband] for 2018, 2019, and 2020 is \$111,484.33/year or \$9,290.36/month, which is consistent with the income necessary for [Husband] to meet the expenses delineated on his Financial Statement.”

After making these findings, the court assessed Wife’s claim for alimony by examining the considerations set forth in Maryland Code (1984, 2019 Repl. Vol.), § 11-106(b) of the Family Law Article (“FL”), beginning with “the ability of each party to become self-supporting.” The court recognized that Wife could be become self-supporting, but would need rehabilitative alimony due to her financial circumstances:

Wife can be self-supporting but, given the circumstances surrounding the parties’ separation and the time Wife has been

caring for her father, the Court finds Wife has a need for rehabilitative alimony. She is saddled with significant credit card and personal debt and has very limited liquid assets. Wife will incur a monthly housing expense of approximately \$2,500.00. The Court is persuaded that at this time there is a significant disparity in the parties' incomes and ability to meet their needs.

The court next considered the time necessary for Wife to gain the education or training she needed to find suitable employment. It found that Wife was “clearly capable of working as an executive assistant and should be able to earn between \$45,000 and \$65,000 based on her testimony.” But the court concluded that “[t]his factor is not particularly relevant,” referring back to its discussion of the first factor where it found that Wife would need rehabilitative alimony even though she could be self-supporting.

The court then considered the marital standard of living. The court found that “[t]he parties maintained a relatively high standard of living during the marriage,” that they “often dined out, played golf, bought clothes, had nice cars, a nice home, and went on many vacations.” The court also recognized that the marriage had lasted fourteen years, that both parties made monetary and non-monetary contributions to the well-being of the marriage, and that the circumstances contributing to the estrangement of the parties included Wife’s allegations that Husband was physically abusive.

The court considered the age of each party, that Wife was fifty-two years old and Husband was fifty-nine. The court noted that “[b]oth parties are in good physical and mental health, though Husband is expected to have two surgeries in the next three months.” In considering Husband’s ability to meet his own needs while meeting Wife’s, the court

found that “Husband has sufficient income to support himself and pay alimony to Wife on a rehabilitative basis.”

Based on all of these considerations, the court awarded Wife rehabilitative alimony of \$2,500 per month for twenty-four months. The court also awarded Wife retroactive alimony of \$2,500 per month for eighteen months, starting from the date Wife filed the complaint for divorce. Husband timely appealed.

## II. DISCUSSION

This appeal presents two issues: *first*, whether the circuit erred by awarding rehabilitative and retroactive alimony without, as Husband claims, stating the justification for the award explicitly; and *second*, whether the circuit court erred by including Husband’s meal expenses when calculating his income.<sup>1</sup> We hold that the circuit did not err because

---

<sup>1</sup> Husband phrased the Questions Presented in his brief as follows:

- I. Did the Circuit Court commit error by failing to provide a justification for 24 months of rehabilitative alimony?
- II. Was it an abuse of discretion for the court to award retroactive alimony without explanation?
- III. Did the Circuit Court abuse its discretion in including 50% of Husband’s meal expenses as income?

Wife phrased her Questions Presented as follows:

1. When awarding rehabilitative alimony, is a court required to provide justification for the award after considering the factors enumerated in Md. Code, Family Law §11-106(b)?
2. When awarding retroactive alimony pursuant to Md. Code, Family Law §11-106(a)(2) and considering the factors

Continued . . .

we can ascertain the court’s justification for the alimony award from the factual findings it made in the course of considering the FL § 11-106(b) factors, and that the circuit court did not err by including Husband’s meal expenses as part of his income because Husband’s business paid for the meal expenses (among others).

“An alimony award will not be disturbed upon appellate review unless the trial judge’s discretion was arbitrarily used or the judgment below was clearly wrong.” *Boemio v. Boemio*, 414 Md. 118, 124 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 196 (2004)). We will not reverse a trial court’s alimony award unless “no reasonable person would take the view adopted by the trial court” or “the court acted without reference to any guiding rules or principles.” *North v. North*, 102 Md. App. 1, 13 (1994) (cleaned up).

**A. The Circuit Court Did Not Err In Awarding Alimony Because We Can Discern The Justification For The Award From The Court’s Factual Findings.**

Husband contends *first* that the circuit court abused its discretion by awarding rehabilitative and retroactive alimony to Wife without providing any explanation or justification for the award. Wife responds that the trial court “articulate[d] the findings for each of the factors” under FL § 11-106(b), and that consideration of those factors is “tantamount to the justification for the alimony award . . . .” She’s right.

“The amount and duration of alimony is governed by [FL] § 11-106.” *Digges v.*

---

enumerated in Md. Code, Family Law §11-106(b), is a court required to provide justification for the award?

3. When calculating Husband’s self-employed income, can the court include personal expenses paid by Husband’s business?

*Digges*, 126 Md. App. 361, 386 (1999). The statute provides that when determining whether an award of alimony is appropriate, “the court shall consider all the factors necessary for a fair and equitable award.” FL § 11-106(b). Section 11-106(b) lists twelve factors that cover a wide range of considerations about the parties and their earning capacities:

- (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.

“In considering these factors, the trial court need not use formulaic language or articulate every reason for its decision with respect to each factor.” *Doser v. Dosier*, 106 Md. App. 329, 356 (1995); *Crabill v. Crabill*, 119 Md. App. 249, 261 (1998) (“Although the court is required to give consideration to each of the factors stated in the statute, it is not required to employ a formal checklist, mention specifically each factor, or announce each and every reason for its ultimate decision.”). Indeed, the court “may declare an award for alimony in any way that shows consideration of the necessary factors.” *Hollander v. Hollander*, 89 Md. App. 156, 176 (1991). “Where the trial court’s review of the factors is not clear, this Court may look to the record as a whole to determine whether the trial court’s findings were based on a review of the factors.” *Doser*, 106 Md. App. at 356.

The trial judge in this case considered the FL § 11-106(b) factors thoroughly before awarding alimony and made specific findings about each factor. The court referred to Wife as “saddled with significant credit card and personal debt” and to Wife’s “very limited liquid assets” when assessing her ability to be self-supporting. The court commented specifically about the parties’ “relatively high standard of living during the marriage,” their age, the fourteen-year duration of their marriage, the fact that their estrangement followed Wife’s allegations that Husband was physically abusive, and Husband’s capability “to support himself and pay alimony to Wife on a rehabilitative basis.”

Husband contends only that the court failed to consider the second enumerated factor: “the time necessary for the party seeking alimony to gain enough education or training to enable that party to find suitable employment.” FL § 11-106(b)(2). He emphasizes that the court stated that “[t]his factor is not particularly relevant to this case,” and asserts that the court’s remark “argues against an award for alimony in this case as ‘this element goes to the heart of Maryland’s alimony scheme.’”

The court’s statement that the second factor was not particularly relevant doesn’t mean that the court failed to consider this factor. To the contrary, in considering the time necessary for Wife to gain training to find suitable employment, the court found specifically that Wife would not need time to do so because at the time of trial she was “clearly capable of working as an executive assistant and should be able to earn between \$45,000 and \$65,000 based on her testimony.” But even when considering Wife’s earning potential, the court concluded that Wife would not be able to cover the costs of her monthly housing needs without assistance and would “need alimony for a defined period.” The court referred back to its discussion of the first factor, where it found that “Wife can be self-supporting, but given the circumstances surrounding the parties’ separation and the time Wife has been caring for her father, the Court finds Wife has a need for rehabilitative alimony.” And although Husband may not agree with the court’s conclusion that the time necessary for Wife to gain employment was “not particularly relevant” in this case, the court considered the factor appropriately.

Husband argues further that the court abused its discretion by awarding

rehabilitative alimony to Wife “without any explanation as to why it is necessary for 24 months . . . .” Husband relies on *Long v. Long*, 129 Md. App. 554 (2000), to argue that court was required to provide an explanation for the duration of the alimony award. In *Long*, we determined that the trial court did not consider the time required for the party seeking alimony to become self-supporting, and as a result, we could not ascertain how the court determined the duration of the alimony award. *Id.* at 582. We noted further that “[m]ost of the facts [the trial judge] cited seem[ed] to point in the opposite direction of his judgment.” *Id.* We concluded, therefore, that the trial court abused its discretion because the court “failed to draw a solid line between the facts and the remedy, explaining fully how the former justifies the latter . . . .” *Id.* at 582–83.

This case differs from *Long*, though, because the circuit court in fact considered the time Wife would need to become self-supporting when it awarded alimony. Moreover, the circuit court’s factual findings, such as Wife having “significant credit card and personal debt” and “very limited liquid assets,” support the two-year duration of the alimony award directly. To be sure, the court could have made a more concise and specific statement tying its findings to the duration of the alimony award. Nevertheless, and unlike *Long*, we can see the justification for the award in the court’s findings and discussion.

From there, Husband contends that the court erred when it awarded retroactive alimony because the court’s review of the statutory factors “made no reference” to retroactive alimony. Husband’s argument suggests that the court was required to make separate findings tied specifically to rehabilitative and retroactive alimony when

considering the enumerated factors. But § 11-106 requires no such thing. Instead, FL § 11-106(a) requires courts to “determine the amount of and the period for an award of alimony,” and provides that courts “may award alimony for a period beginning from the filing of the pleading that requests alimony.” Section 11-106(b) states that “[i]n making the determination, the court shall consider all the factors necessary for a fair and equitable award.” FL § 11-106(b). The statute doesn’t treat the award of rehabilitative and retroactive alimony as separate determinations that require separate references or findings regarding the statutory factors—it requires only that the court consider the enumerated factors before determining the amount and period of alimony, which may include alimony that is awarded retroactively. The court considered the statutory factors before awarding Wife rehabilitative and retroactive alimony, and we see no error in its analysis or determination.

**B. The Circuit Court Did Not Err By Including Husband’s Meal Expenses When Calculating His Income.**

*Second*, Husband contends that the court abused its discretion by including his meal expenses as part of his income. He quotes language in *Tracey v. Tracey*, 328 Md. 380, 381 (1991), and argues that income for alimony purposes includes only “the wages or salary from regular, full-time employment, *i.e.*, money earned during the normal work week as is appropriate to a given occupation.” “[B]y including 50% of Husband’s meal expense,” he says, the court “improperly inflated the Husband’s income as this was not wages or salary.”

Wife responds that FL § 11-106(b)(11) “requires that the trial court consider ‘all income’ of a party in determining an alimony award.” She contends that “Husband’s reliance on *Tracey* is misguided” because “[i]n *Tracey*, Husband was arguing that Wife’s

part[-]time employment income ought to have been used in calculating her income and reducing Husband’s alimony obligation.” Wife points out that in holding that “all income” under FL § 11-106(b)(11)(i) did not include Wife’s part-time earnings, the Court emphasized that the term “all income” should not be interpreted to “defeat the objectives of equity by distorting an assessment of the divorcing parties’ real financial condition.”

The circuit court in this case did not abuse its discretion by including in his income the value of half of Husband’s meals, which indisputably were paid for by his business. “[A] court considering alimony must factor in ‘all income and assets,’ FL § 11-106(b)(11)(i), which can include gifts.” *Reynolds v. Reynolds*, 216 Md. App. 205, 224 (2014) (citation omitted). “First-level facts” determined by trial courts, such as a party’s income, are purely factual findings that we review under the clearly erroneous standard. *Bryant v. Bryant*, 220 Md. App. 145, 160 (2014) (citing *Wenger v. Wegner*, 42 Md. App. 596, 607 (1979)).

Husband owns a roofing business for which he is the sole owner, and he has readily mingled the finances of this business (and its now-bankrupt predecessor) with his personal expenses. So this was not a situation where the court could look simply at wage statements. When determining Husband’s income, the court noted that “[i]t is clear from a review of the business and personal bank statements, and the testimony of [Wife] and [Husband], that a large majority of [Husband’s] personal expenses for dining out . . . are run through the business and must be considered in any determination of [Husband’s] income.” The court also noted that the estimated income when including Husband’s meal expenses “is

consistent with the income necessary for [Husband] to meet the expenses delineated in his Financial Statement.” The circuit court did not act “without reference to any guiding rules or principles” in counting the meal expenses as income, *North*, 102 Md. App. at 13 (cleaned up), and did not abuse its discretion in calculating Husband’s income as it did.

We disagree as well with Husband’s contention that *Tracey* required the court to disregard in-kind benefits that he received regularly, such as the payment of meal expenses, when calculating his income. *Tracey* highlighted that “the paramount goal of the legislature [when enacting FL § 11-106] was to create a statutory mechanism leading to equitably sound alimony determinations by judges.” 328 Md. at 388. Although the Court determined that the term “income” as used in FL § 11-106(b)(11)(i) includes “wages or salary from regular, full-time employment,” the Court cautioned that “inclusion of all income from part-time work held in addition to primary employment may well exaggerate the means available to one spouse, or the other, over the long term.” *Id.* 388–89. Read in context, *Tracey*’s holding does not restrict courts from including as income the value of personal expenses paid regularly by one’s employer merely because the value was not given in the form of “wages or salary.” To the contrary, *Tracey* emphasizes that “[t]he alimony statute in its entirety renounces an approach based on rote or formula” and that courts should aim to assess “the divorcing parties’ real financial condition.” *Id.*

The circuit court here found that Husband’s business paid, above and beyond his salary, for a large majority of his meal expenses. To fail to account for the fact that Husband’s business paid for his meal expenses would grant Husband “a huge advantage

over [spouses] who earn the same amount but receive the money as part of their base salary.” *Johnson v. Johnson*, 152 Md. App. 609, 620 (2003). Including the meal expenses paid for by the business in Husband’s income resulted in a more accurate assessment of Husband’s “real financial condition.” *Tracey*, 328 Md. at 388. The circuit court got it right and we affirm the alimony award *in toto*.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**