

Circuit Court for Prince George's County
Case No. CAD15-24524

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1912

September Term, 2019

FARHANA BHUIYAN

v.

MOHAMMAD BHUIYAN

Graeff,
Wells,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 8, 2021

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.

This is the second appeal arising out of the divorce of Mohammad Bhuiyan and Farhana Bhuiyan in the Circuit Court for Prince George’s County. The circuit court’s original judgment of absolute divorce awarded Farhana,¹ use and possession of the parties’ home, indefinite alimony, a monetary award, and child support. We affirmed the use and possession order, but vacated and remanded so that the circuit court could re-evaluate the basis for its indefinite alimony award as well as the remaining monetary award and child support award.

On remand, the circuit court granted Farhana rehabilitative alimony for a fixed term and denied her requests for indefinite alimony, a monetary award, and child support. In this appeal, Farhana challenges the circuit court’s order denying indefinite alimony and a monetary award.

For the reasons set forth below, we shall affirm the judgments of the circuit court.

BACKGROUND

Mohammad and Farhana were married on November 28, 2005 in Bangladesh. Following their marriage, Farhana immigrated from Bangladesh to the United States. The parties had three children together. The parties divorced after eleven years of marriage.

In the judgment of absolute divorce, the circuit court awarded Farhana exclusive use and possession of the parties’ residence for a period of three (3) years, allocating financial responsibility for the mortgage and utility bills during that period to Mohammed.

¹ For ease of reference and meaning no disrespect, we shall refer to the parties by their first names in this appeal, consistent with our previous opinion in *Bhuiyan v. Bhuiyan*, No. 2426, Sept. Term, 2016 (filed April 17, 2018).

The court also entered a monetary award in favor of Farhana in the amount of \$129,039.50; awarded her indefinite alimony of \$600.00 per month during the use and possession period, and increased that award to \$2,400.00 following the expiration of the use and possession period, and awarded her child support in the monthly amount of \$835.00. The parties had agreed that Farhana would have primary custody of the children.

On April 17, 2018, we issued our opinion, affirming in part and vacating in part the judgment for absolute divorce. We affirmed the use and possession order, but vacated the alimony award because we could not determine the basis upon which the court had awarded indefinite alimony or calculated the amount of that award. We remanded the case for a determination as to whether an alimony award was appropriate for a fixed or indefinite term. Based on the interrelated nature of alimony, monetary awards and child support, we vacated and remanded the monetary award and child support award for re-evaluation, consistent with the court's determination of alimony.

On remand, the circuit court conducted a three-day trial. Both parties were present and represented by counsel. The court awarded alimony for a fixed term and determined that no further alimony was warranted. The court denied Farhana's request for a monetary award. In light of the Custody Order of May 15, 2019 awarding primary physical custody of the children to Mohammad, the court awarded no child support from Farhana to Mohammad effective May 15, 2019. Farhana noted a timely appeal.

DISCUSSION

I.

Alimony

In our April 2018 opinion, we remanded the case for a determination of whether an alimony award was appropriate for a fixed term under Md. Code (1984, 2012 Repl. Vol., 2017 Supp.), § 11-106(b) of the Family Law Article (“F.L.”), or an indefinite term under F.L. § 11-106(c)(1) or (2), and to make the necessary factual findings and explain its conclusion.

“[A] trial court has broad discretion in making an award of alimony[.]” *Ware v. Ware*, 131 Md. App. 207, 228-29 (2000) (citation and emphasis omitted). We “will not disturb an alimony award unless the trial court has arbitrarily exercised its discretion or its judgment was otherwise wrong.” *Doser v. Doser*, 106 Md. App. 329, 351-52 (1995) (citations omitted). We must review “the record for the presence of sufficient material evidence to support the [circuit court’s] findings,” and “all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (citation omitted). “If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous. *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002). We “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) (quotation marks and citations omitted), and “give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c).

A trial court must consider the factors set forth in F.L. § 11-106(b) when determining whether an award of alimony is appropriate. A court may only make an award of indefinite alimony if it finds that either: “(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.” F.L. § 11-106(c). The spouse seeking indefinite alimony bears the burden of satisfying the statutory requirements for such an award. *Francz v. Francz*, 157 Md. App. 676, 692 (2004).

Farhana contends that the circuit court erred in denying her request for indefinite alimony due to its erroneous findings relating to her health and sources of income and Mohammad’s annual salary and expenses. She asserts that because she is qualified only for low-skilled work earning minimum wage, the circuit court erred in finding that she could earn enough to be self-supporting.

Farhana testified at the second trial that she did not have any skills and that her English “is not that good.” She stated that she had enrolled in an English class in February of 2019 but that she was unable to complete the class due to her childcare obligations. She also testified that, since April of 2015, she had applied for approximately ten to fifteen jobs, but she was not hired because she could not find a work schedule that fit her schedule.

With respect to her health, Farhana testified that she had high blood pressure and diabetes, and that she had not fully recovered from gall bladder surgery. She provided no

evidence or medical documentation, however, demonstrating that her medical conditions limited her in any way or constituted a disability.

Farhana also challenges the circuit court’s findings as to Mohammad’s income and expenses, claiming that his income and financial statements were not credible and that certain of his expenses, including childcare and monthly payments to support his family in Bangladesh, lacked sufficient documentation. Farhana did not object, however, when Mohammad’s income and financial statements were introduced at trial.

After reviewing the evidence, listening to the testimony, and assessing the credibility of the witnesses, the circuit court determined that Farhana had failed to meet her burden of establishing that she was entitled to indefinite alimony. The circuit court found that Farhana’s income sources were alimony, child support, food stamps and a Social Security disability payment for the parties’ minor child, and that she had been gifted a car by her brother worth \$2,500.00. The court found that Farhana’s work history included working for two months as a part-time clerk at a 7-Eleven store earning \$7.15 per hour, and employment as a jewelry clerk, where her duties required her to speak fluent English.

The circuit court noted that in 2015, Farhana took English classes. She also passed the driver’s license test and the United States Citizenship test, both of which were administered in English. Farhana communicated in English with the children’s doctors and corresponded in English with the children’s school. Based on the evidence at trial, the court stated that it “[did] not find credible that Farhana cannot read or understand English.”

The court determined that Farhana had secured an apartment, researched classes at a community college, and had an employment history. On May 15, 2019, Mohammad had

been awarded primary physical custody of the parties’ three children. Because the children were residing with Mohammad, the court found that childcare obligations did not interfere with Farhana’s ability to obtain full-time employment. The court concluded that Farhana was “thirty-seven, in good health and has the ability to be self-supporting.”

With respect to Mohammad’s income and expenses, the court found that his sole source of income was his employment with the Maryland National Capital Park and Planning Commission, earning an annual salary of \$84,996.00. Mohammad’s expenses consisted of paying: rent of \$1,700.00 per month, \$203.70 per month for the minor children’s health insurance, and \$2,400 per month in garnishment from his paycheck. The court noted that Mohammad’s debt had “increased substantially since the parties’ divorce[,]” as he had “borrowed significant amounts of money from his friends and family in order to pay his monthly support obligations” and “the expenses associated with the former marital home.”

The court found that both parties were in good physical and mental condition. As to the parties’ standards of living, the court concluded:

There is no unconscionable difference in the standards of living after considering the relative income potentials of the parties, ages and health, the length of the marriage, [Mohammad’s] payments of health insurance for the family, the debt for family expenses, the loans [Mohammad] has had to obtain to meet his financial obligations, and his own taxes, housing, and other expenses.

The court determined that Mohammad “did not have the ability to meet his needs while simultaneously meeting the needs of [Farhana]” and he had “borrowed money to satisfy the original Court Order.”

An award of indefinite alimony under F.L. § 11-106(c) requires a finding, supported by the record, that a party is either not self-supporting (§ 11-106(c)(1)) or that there would be an unconscionable disparity (§ 11-106(c)(2)). *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 146 (1999). The circuit court did not credit Farhana’s testimony that she could not read or understand English. She had a history of employment as a store clerk and she presented no evidence that her health problems constituted a disability or interfered with her ability to work and support herself. Because the court’s determination that Farhana was in good health and had the ability to be self-supporting was supported by the record, § 11-106(c)(1) did not apply.

Nor was there evidence in the record to support a finding under § 11-106(c)(2) that the parties’ standards of living were disparate, and that any such disparity was unconscionable. Post-divorce, both parties resided in rented apartments and owned modest vehicles. Farhana offered no evidence that her standard of living was inferior. *See id.* (holding that indefinite alimony was not warranted under § 11-106(c)(2), where the evidence was insufficient to support a finding of significant disparity in the parties’ standards of living). Based on the evidence in the record, the circuit court did not err in determining that Farhana did not meet her burden of showing circumstances warranting an award of indefinite alimony under F.L. § 11-106 (c)(1) or (2).

The circuit court made an equitable judgment that Farhana was entitled to rehabilitative alimony for a fixed term. *See Boemio v. Boemio*, 414 Md. 118, 141 (2010) (noting that alimony awards “are founded upon notions of equity; equity requires sensitivity to the merits of each individual case without the imposition of bright-line tests”)

(quoting *Tracey v. Tracey*, 328 Md. 380, 393 (1992)). “In Maryland, the principal function of alimony is rehabilitation of the economically dependent spouse.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184 (2016) (quotation marks and citation omitted). Alimony “should reflect the desirability of each spouse becoming self-supporting and the undesirability of alimony as a lifetime pension.” *Roginsky*, 129 Md. App. at 142. Alimony is intended “to ease the transition for the parties from the joint married state to their new status as single people living apart and independently.” *Solomon v. Solomon*, 383 Md. 176, 195 (2004) (quotation marks and citation omitted). Awarding alimony for a definite term helps “to provide each party with an incentive to become fully self-supporting,” and “a bridge to self-sufficiency.” *Jensen v. Jensen*, 103 Md. App. 678, 693 (1995).

The circuit court determined that Farhana had been entitled to rehabilitative alimony for a term. She had received \$600.00 per month in alimony from April of 2015 to May of 2019. From May to December of 2019, she had received \$2,400.00 per month in alimony, pursuant to a garnishment of Mohammad’s wages. She had also secured an apartment, obtained a vehicle, and applied for a number of jobs. We find no error or abuse of discretion in the court’s award of rehabilitative alimony for a fixed term of four and one half years.

II.

Monetary Award

Farhana contends that the circuit court abused its discretion by “re-valuing” the marital property at the time of the second trial and denying her request for a monetary award. She argues that the circuit court was limited to conducting only “step three” on

remand, as “steps one and two” had been determined in the first trial and the circuit court’s determinations as to those issues were binding on remand. We disagree.

The trial court must follow a three-step process when deciding whether to make a monetary award. First, the court must decide whether the property is marital or non-marital. F.L. § 8-203. Second, the court must decide the value of the property. F.L. § 8-204. Third, the court must decide if the division of marital property according to title will be unfair and rectify any inequity with a reward. F.L. § 8-205; *Doser*, 106 Md. App. at 349-50. F.L. § 8-205(b) sets forth a number of factors the court must consider in its balancing of equities. *Id.* Pertinent to this case, F.L. § 8-205(b)(3) requires a court to consider the parties’ economic circumstances “at the time the award is to be made.”

We have recognized that F.L. § 8-205(b)(3) mandates consideration of the parties’ economic circumstances at the time the award is made, including the economic circumstances at the time of an award on remand:

The modification of an original monetary award on remand is still an “award,” triggering consideration of the section 8-205(b) factors.

It is logical that a trial court be required to reconsider the section 8-205(b) factors, even in a case such as this, where it essentially is revising an earlier monetary award. The weight that a court gives to the section 8-205(b) factors, and the size and nature of its ultimate award, may depend on the amount of marital property to be distributed.

When the extent of the marital property has changed due to an appellate decision, the trial court should rethink whether its original method of allocation is still “equitable” in light of new circumstances. Further, the court must carefully consider whether there have been any other changes in circumstance since its original award that may have caused the equities to shift, justifying a different allocation of the marital property.

Fuge, 146 Md. App. at 176-77 (footnote omitted).

During their marriage, the Bhuiyans owned four properties. At the first trial, the circuit court valued the properties as follows: 8005 Greenfield Drive, Lanham, valued at \$180,000.00, with an outstanding debt of \$236,000.00, resulting in a negative net worth of \$-46,287.00; 8701 Greenbelt Road, Greenbelt, valued at \$50,000.00; 7921 Mandan Road, #101, Greenbelt, valued at \$125,000.00; and 7718 Hanover Parkway, #303, Greenbelt, valued at \$124,000.00.

At the second trial, Mohammad presented evidence that the real properties previously owned by the parties had since been foreclosed upon and/or sold. Based on the evidence presented, the court found as follows:

- a. 8005 Greenfield Drive – Former marital home is now foreclosed.
- b. 8701 Greenbelt Road – This property has gone into foreclosure.
- c. 7921 Mandan Road, Apt. 101 – This unit was sold for \$93,000. [Mohammad] used the proceeds to pay off debt. He owed an \$80,000 debt to his sister for monies that she had lent the parties to purchase the former marital home located at 8805 Greenfield Drive. The original loan was for \$40,000 and with interest since 2003, it was at \$80,000. In Maryland, debt can only be a marital debt if the debt is directly traceable to the acquisition of marital property. *See Harper v. Harper*, 294 Md. App. 54 (1982). Here the debt was directly traceable to the acquisition of marital property.
- d. 7718 Hanover Parkway – The unit was also sold for \$76,000 with the proceeds being used to pay off debt associated with monies borrowed from friends to maintain the former marital home located at 8805 Greenfield Drive that eventually went into foreclosure.

Contrary to Farhana's contention, the circuit court was required on remand to consider the parties' economic circumstances, including the present values of their assets in making a determination as to the appropriateness of a monetary award. *See Fuge, supra*.

See also Doser, 106 Md. App. at 351 (ordering that, on remand, the trial court must “reconsider the amount of the monetary award in light of any new evidence concerning the value of [the parties’] asset and any modification to the awards of alimony and attorney’s fees.”).

After considering the evidence introduced regarding the change in circumstances regarding the parties’ previously owned properties, the circuit court determined that no monetary award was warranted under the facts. The court explained:

[T]he undisputed testimony at this trial was that [Mohammad] used the net proceeds from the sales of the two (2) properties to pay off debt that was incurred during the marriage to purchase the former marital home and to pay back debt incurred by [Mohammad] to pay the [c]ourt’s support order and to maintain the former marital home pursuant to the [c]ourt’s use and possession order.

In this case, the circuit court conducted the requisite analysis of the circumstances of the parties in determining whether a monetary award was warranted to equitably distribute the parties’ marital property. We see no error in the court’s denial of Farhana’s request for a monetary award where the parties no longer owned the properties that previously supported a monetary award, and the evidence, which the circuit court credited, indicated that the proceeds from the sales of property were used to pay off debt incurred for the support of Farhana and the children.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**