UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 464

September Term, 2015

DAVID I. KNABLE

v.

PAMELA J. KNABLE

Eyler, Deborah S.,
Leahy,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 19, 2016

In the Circuit Court for Washington County, David Knable ("David"), the appellant, and Pamela Knable, n/k/a Pamela Burger ("Pamela"), the appellee, were divorced. In the divorce judgment, as amended, the circuit court set aside a marital settlement agreement ("MSA") entered into by the parties shortly before they separated; granted Pamela a monetary award; denied David's request for alimony; ordered David to pay child support; and ordered David to contribute toward Pamela's attorneys' fees.

David appeals, presenting eight questions,[1] which we have combined and rephrased as six:

[1] The questions as posed by David are:

1. Did the Trial Court err when it set aside and refused to follow or enforce the Marital Settlement Agreement?
2. Assuming that the Trial Court did not err when it set aside the Marital Settlement Agreement and/or did not revise its Order, did the Trial Court err when it failed to restore the parties to their respective positions as they were or would have been had they not entered into the Marital Settlement Agreement prior to making any further analysis regarding monetary award, alimony, or attorney's fees?
3. Assuming that the Trial Court did not err when it set aside the Marital Settlement Agreement and/or did not revise its Order, did the Trial Court erroneously order a monetary award to Appellee without making the required findings and considerations about Appellant's financial obligations and ability to pay?
4. Assuming that the Trial Court did not err when it set aside the Marital Settlement Agreement and/or did not revise its Order, did the Trial Court erroneously make improper findings of fact for its decision not to award Appellant alimony, rehabilitative or otherwise?
5. Assuming that the Trial Court did not err when it set aside the Marital Settlement Agreement and/or did not revise its Order, did the Trial Court err when it failed to find certain debts directly traceable to marital assets marital debt?
6. Assuming that the Trial Court did not err when it set aside the Marital Settlement Agreement and/or did not revise its Order, did the Trial Court err when it failed to consider awarding Crawford Credits to Appellant?

(Continued…)

I. Did the trial court err by setting aside the MSA?

II. Did the trial court err by failing to properly account for marital debt in determining the amount of the monetary award?

III. Did the trial court err in denying David's request for alimony?

IV. Did the trial court err by denying David's request for Crawford Credits?[2]

V. Did the trial court err by ordering David to contribute to Pamela's attorneys' fees?

VI. Did the trial court abuse its discretion by denying David's motion to alter or amend and his request to reopen the record to hear additional evidence?

For the following reasons, we answer the first question in the negative, and the second question in the affirmative. We shall vacate the provisions of the amended judgment of absolute divorce pertaining to the monetary award, alimony, and attorneys' fees, and remand for further proceedings. As a result, we need not address the remaining issues.

FACTS AND PROCEEDINGS

(…continued)

7. Assuming that the Trial Court did not err when it set aside the Marital Settlement Agreement and/or did not revise its Order, did the trial Court err when it awarded Appellee attorney's fees?
8. Did the Trial Court err when it denied Appellant's Motion to Alter or Amend and Amended Motion to Alter or Amend and refused to re-open the case to hear additional evidence?

[2] *Crawford v. Crawford*, 293 Md. 307, 311 (1982) (holding that "a co-tenant in a tenancy by the entireties is entitled, to the same extent as a co-tenant in a tenancy in common or joint tenancy is entitled, to contribution for that spouse's payment of the carrying charges which preserve the property").

David and Pamela married on October 2, 1992. In 2002, they adopted their son, who is now 13 years old. At the time of the divorce hearing, David was 58 and Pamela was 53.

Pamela is a registered nurse and has worked for the Department of Public Safety and Correctional Services for the last fifteen years. She earns $65,754 annually. David works for Western Maryland Hospital.[3] He earns $37,700 annually.

At the time of their marriage, David owned a home at 12051 Cove Road, in Clear Spring, Maryland ("the marital home"). In 1991, when David and his first wife divorced, she conveyed her interest in the home to him. On June 28, 1994, David conveyed the marital home to himself and Pamela, as tenants by the entireties. At that time, there was no debt encumbering the marital home.

During their marriage, the parties borrowed against the equity in the marital home on four occasions. On May 17, 1996, they obtained a home equity loan in the amount of $30,787.15. On June 5, 2001, they obtained a home equity line of credit loan ("2001 HELOC") in the amount of $82,000. On February 21, 2003, they refinanced the 1996 home equity loan and the 2001 HELOC. That transaction resulted in the 1996 home equity loan being paid off, the 2001 HELOC being refinanced at a more favorable interest rate, and a new home equity loan in the amount of $60,240.28. We shall discuss the fourth home equity loan transaction *infra*.

[3] The precise nature of David's job is not reflected in the record.

In October 2011, after nearly nineteen years of marriage, Pamela told David she wanted a divorce. David begged her to stay, and for a few months they reconciled. By January 2012, however, Pamela had decided she was leaving David. They agreed that she should look for a new home.

On January 16, 2012, Pamela and David toured a house in Boonsboro that was being sold "as-is" in a short-sale. Pamela liked the house, but it needed significant renovations and she did not think she could afford the mortgage payments. According to Pamela, David told her he would help her fix the house up and he would give her financial assistance to help with the mortgage. She submitted an offer to purchase the house for $263,000 and made a $1,000 earnest money deposit.

Four days later, on January 20, 2012, while the parties continued to live together in the marital home, they executed the MSA, a deed ("the 2012 Deed"), and a refinance loan agreement and associated deed of trust. We shall discuss their conflicting accounts of the circumstances surrounding the execution of these documents, *infra*.

The pertinent provisions of the MSA are as follows. In a series of "Whereas" clauses, the parties stated that they had agreed to dissolve their marriage; that they had fairly, accurately, and completely disclosed to each other any financial information relevant to the division of marital property; that they intended the MSA to be "a final disposition regarding the marital issues addressed herein"; and that the MSA would be "incorporated into any subsequent DECREE OF DIVORCE."

In section 1, they agreed to share joint legal and physical custody of their son and to work out an agreed schedule for visitation.

Section 2 pertains to "REAL ESTATE." Section 2.A provides that David will continue to live in the marital home and that Pamela can live there until she is "able to obtain her own place of residence." Section 2.B, titled "HOMESTEAD," states that the only real property owned by the parties is the marital home and reiterates that David has the right to continue to live there. In subsection 2.B.1, Pamela agrees to convey her interest in the marital home to David by "sign[ing] any and all necessary papers and Deeds conveying all of her right, title and interest." At subsection 2.B.2, David agrees that he will be responsible for the outstanding mortgage payments, other expenses, and maintenance on the marital home, and that he will "sign all necessary documents to assume the mortgage owed on said residence in his name only."

In Section 2.C., titled "OTHER REAL ESTATE," the parties agreed that if either of them acquired any interest in real property after the execution of the MSA, that that interest would be "the sole ownership and responsibility" of that party.

In sections 3.A and 3.C, the parties agreed that they already had "divided among themselves" all of their household goods and other personal property At section 3.B, they agreed that David would keep a 2004 Ford pickup truck and a 2002 Harley-Davidson motorcycle and that Pamela would keep a 2005 GMC Envoy SUV.

In section 4, the parties agreed they already had divided their bank accounts.

In section 5, "DEBTS," David agreed to assume responsibility for three "jointly held" credit card accounts totaling $14,350.

In section 6, the parties agreed that they would alternate the right to claim their son as a dependent on their tax returns.

In section 7, they agreed that Pamela would obtain health insurance through her employer effective July 1, 2012, and that, until that time, she would remain on David's policy.

In section 8.B, David agreed to continue to maintain their son on his health insurance policy until July 1, 2012, when Pamela would obtain health insurance for him through her employer.

In section 8.A, they agreed that neither party would pay child support.

In section 10, the parties stated that the MSA was the "entire agreement and understanding" and in section 11 they stated that they had entered into the MSA "in good faith [and] without any duress or undue influence."

David's and Pamela's signatures appear on the last page of the MSA. Their signatures were witnessed by two people and acknowledged by a notary.

That same day, Pamela executed the 2012 Deed conveying her interest in the marital home to David for no monetary consideration. The 2012 Deed was acknowledged by a notary. Pamela retained the original of the 2012 Deed and David retained a copy. According to David, Pamela agreed to record the 2012 Deed in the Land

Records for Washington County. She never recorded it, however, and by the time of the merits trial, she claimed to have lost it.

Also on January 20, 2012, Pamela and David refinanced the mortgages on the marital home. As joint "Grantors," they executed a deed of trust against the marital home to Manufacturers and Traders Trust Company ("M&T") securing a $100,000 HELOC ("2012 HELOC"). David alone was the "Borrower" on the 2012 HELOC. At settlement on the refinance transaction, $64,762.56 was drawn on the 2012 HELOC to pay off the outstanding balances on the 2001 HELOC and the 2003 home equity loan. According to Pamela, another $10,179.44 in loan proceeds were applied to pay off some of the credit card accounts referenced in the MSA and David received $5,000 in cash at settlement. David denied that he received cash at settlement and claimed that he paid off all of the credit card accounts with the proceeds at settlement. By the time of the divorce hearing, he had maxed out the 2012 HELOC by using it to pay his living expenses and his attorneys' fees.

After the parties entered into the January 20, 2012 transactions, Pamela learned that her offer on the house in Boonsboro had been rejected. On February 15, 2012, she moved out of the marital home and into an apartment in Hagerstown. She was still living there at the time of the divorce hearing.

In July 2012, Pamela's adult niece, Robin Donaldson, traveled from her home in Canada to Maryland for a visit.[4] Donaldson was married with two children, but she recently had separated from her husband. She and her children stayed with David in the marital home. In August 2012, Donaldson returned to Maryland without her children and moved into the marital home. She continued to live there, sometimes with and sometimes without her children, until the time of the divorce trial. She paid David $200 per month in rent. She and David also shared numerous household expenses. He added her to his automobile insurance policy and named her as his life insurance beneficiary. David and Donaldson denied that they were romantically involved.

On September 20, 2012, David filed a complaint for limited divorce in the circuit court. He alleged that the parties had "resolved all of the outstanding issues in connection with their marriage, pursuant to [the MSA] . . . with the exception of spousal support." He sought an award of alimony, both *pendente lite* and permanent. He attached a copy of the MSA.

On November 21, 2012, Pamela filed an answer and a counter-complaint for absolute divorce on the grounds of adultery and voluntary separation. She asked the court to declare the MSA "null and void." She further asked the court to grant her sole legal and physical custody of their son, to order David to pay child support, to grant her a

[4] More than 15 years earlier, Donaldson had lived with Pamela and David for a short time.

monetary award and an interest in David's retirement accounts, and to award her attorneys' fees.

On September 11, 2013, following a three-day hearing, the circuit court entered a *pendente lite* order awarding Pamela sole legal and primary physical custody of the minor child and ordering David to pay $510 in child support per month.

On December 19 and 20, 2013, the merits trial was held. By then, the parties had reached an agreement about custody and visitation, which they placed on the record. They also had agreed that their retirement accounts would not be subject to equitable distribution.

In his case, David testified and called Donaldson. In her case, Pamela testified and called Michael Bowers, a real estate valuation expert. David and Pamela each testified a second time in rebuttal and sur-rebuttal, respectively. The testimony and evidence pertained largely to the circumstances surrounding the drafting and execution of the MSA, the valuation of items of marital property, and the parties' financial circumstances.

David testified that the home equity loans were used to pay for Pamela to get her Master's degree in nursing; for fees associated with the adoption of the parties' son; for a New Holland brand tractor purchased for $13,500 in 2002; and for a Harley-Davidson motorcycle purchased for $11,500 in 2002. Pamela disputed that the loans were used to pay for her to obtain her Master's degree, testifying that her schooling was paid for by grants and by the State as her employer. She testified that the home equity loans had

largely financed improvements to the marital home, including replacement of a bay window and a sliding patio door, an addition on the home, and a total renovation of the kitchen.

Bowers opined that the fair market value of the marital home was $205,000. David did not offer any opinion as to the value of the marital home.

During closing argument, David asked the court to transfer title to the marital home to him and to award Pamela a share of the equity in the home, which he calculated to be $105,000 ($205,000 less the $100,000 outstanding on the 2012 HELOC). Pamela was in agreement with David's taking sole title to the marital home, but she argued that $50,500 of the 2012 HELOC should not be treated as marital debt because it was not directly traceable to the acquisition of the marital home or to improvements made to it. Pamela agreed that David could keep the Ford truck, the Harley-Davidson motorcycle, a Gravely riding mower, and a golf cart, even though they were jointly titled.

On February 11, 2014, the court issued its memorandum opinion and judgment of absolute divorce, both of which were entered on February 21, 2014. As a "threshold issue," it found that the MSA was void and unenforceable because it was procured by fraud and was unconscionable, and that David violated a confidential relationship with Pamela when he induced her to enter into it.

The court accepted Bowers's $205,000 valuation of the marital home. It also adopted Pamela's argument that the 2012 HELOC, which, as noted above, was maxed out, was comprised of marital debt *and* non-marital debt. The court found that $51,500

of the 2012 HELOC was non-marital debt: $13,000 used to buy the New Holland tractor; $11,500 used to buy the Harley-Davidson; and $25,000 in cash drawn on the HELOC to pay David's living expenses and attorneys' fees after the separation.[5] It found that the remaining $48,500 of the 2012 HELOC was marital debt encumbering the marital home. The court deducted that amount from the value of the marital home, to arrive at an equity figure of $156,500. The court exercised its discretion to order that title to the marital home be transferred to David and awarded Pamela one-half of what it calculated the marital equity in the home to be ($78,250).

The court found that the total value of the other marital property was $58,980. Of that amount, $38,625 was jointly titled, $7,955 was titled in Pamela's name, and $12,400 was titled in David's name.[6] As mentioned, however, the parties had agreed that David would keep certain jointly titled property: the Ford truck (valued at $10,332); the Harley-Davidson motorcycle (valued at $12,000); the riding mower (valued at $800); and the golf cart (valued at $2,000). With these items transferred to David, the value of marital property titled in his name was $37,532, which was $29,577 more than the marital property titled in Pamela's name.

The court ordered all jointly titled property to be sold with the proceeds split evenly without accounting for the parties' agreement that David would retain title to the

[5] As we shall discuss, the court made a mathematical error in calculating the non-marital portion. It actually amounted to $49,500, not $51,500.

[6] The court found that $2,420 worth of personal property in the parties' residences was owned by their son. Neither party contests this finding.

four items, however, and decided to award Pamela an additional $22,000 to adjust the equities, for a total monetary award of $100,500.

The court denied David's request for alimony, concluding that he was wholly self-supporting and that an award of alimony would not be equitable. David was ordered to pay $568.23 per month in child support, plus $140 per month towards arrears. The court found that Pamela was entitled to a contribution toward her attorneys' fees in the amount of $18,000.

Within ten days David filed a motion to alter or amend the judgment, which he later amended.[7] He argued that the court had erred by setting aside the MSA; ordering him to contribute to Pamela's attorneys' fees; calculating the monetary award; and denying him alimony.[8] He asked the court to reopen the record to permit him to present additional evidence bearing on the enforceability of the MSA, the amount of marital debt, the amount of the monetary award, and his request for alimony.

Pamela filed an answer opposing most of the relief requested by David. She alerted the court that it had made a mathematical error in calculating the non-marital debt and marital debt portions of the 2012 HELOC as to the value of the marital home. She argued that the correct amount of marital debt attributable to the marital home was $50,500, so the equity in the marital home should have been valued at $154,500

[7] In between the filing of his motion to alter or amend and the filing of his amended motion, David's trial counsel withdrew and he hired new counsel.

[8] He also argued that the court erred in calculating child support.

($205,000 - $50,500). Thus, one-half of the marital equity in the home was $77,250 ($154,500/2), a difference of $1,000. Pamela also asked the court to amend the judgment to order that title to the New Holland tractor, the Harley-Davidson motorcycle, the riding mower, and the golf cart be transferred to David and to make certain other modifications not relevant to the issues on appeal.

On July 9, 2014, the court held a hearing on the motion to alter or amend and, on March 11, 2015, entered an amended judgment of absolute divorce. The court decreased the monetary award, from $100,500 to $92,538.50;[9] ordered David to "refinance or otherwise show that [Pamela] [was] not liable on the current mortgage on the marital home within 120 days after the date of the Amended Judgment"; and ordered that David could keep the four items of jointly titled marital property as agreed by the parties, rather than sell them.

This timely appeal followed.[10] We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

Validity of the MSA

[9] The court also decreased the child support award (from $568.23 per month to $502.16 per month).

[10] Within thirty days of entry of the February 21, 2014, memorandum opinion and judgment, David noted an appeal to this Court. On December 21, 2014, a panel of this Court filed an unreported opinion remanding the case to the circuit court without affirmance or reversal for the court to issue its amended judgment of absolute divorce.

David contends the circuit court erred by ruling that the MSA was unconscionable and was procured by fraud and by finding that it was the product of an abuse of a confidential relationship.

Pamela and David agree that the MSA was drafted sometime between January 16, 2012, the date they toured the house in Boonsboro, and January 20, 2012, the date it was executed.

David testified that Pamela "sat at the computer for a couple of days and she typed [the MSA] on the computer." He believed that she "read it on line someplace" and she also "referred to [his] old divorce and separation papers" which were stored in his gun safe. According to David, the parties did not discuss the terms before Pamela drafted the MSA. She told him she wanted to be "debt free and gone."

Donaldson testified that when she came to Maryland in July 2012, she and Pamela got together to talk. During their conversation, Pamela said that she and David "had an agreement but [that] [Pamela] wasn't going to stick to that" because "she wanted to rake [David] over the coals." According to Donaldson, Pamela told her that she (Pamela) had drafted the MSA, but that she had since changed her mind because she wanted to take David "for everything he had."

Pamela testified that David drafted the MSA using a form he "pulled . . . off the Internet." She introduced into evidence an M&T Bank statement for their joint checking account that reflected a transaction on January 19, 2012, for $9.99 paid to "Public Legal"

from a Paypal account. She testified that David had asked her to look for his divorce and separation papers from his first marriage, but she had been unable to locate them.

Pamela stated that there were "a lot of things" that weren't included in the MSA because David did not want them in writing. For instance, although David continued to promise to help her finance the purchase of her own home, he did not wish to include this in the MSA. Pamela trusted that David would keep his promise and that he could come up with the "extra money" to help her, however, because he told her that he planned to get a second job at a funeral home. But for this promise, she would not have agreed to convey to David her interest in the marital home. She felt "that [she] was tricked into . . . signing something based on verbal, ah, statements and promises that were made to [her]."

On rebuttal, David testified that he had not had an e-mail account in January 2012, and therefore he could not have linked his e-mail to a Paypal account at that time. He had since opened an email account and linked it to a Paypal account, however. A copy of his Paypal account statement was introduced into evidence.

In sur-rebuttal, Pamela testified that she and David had shared an email address in January 2012, and that they had linked their email account to a Paypal account. She explained that they both had access to the Paypal account and used it to pay for items purchased online.

In the court's memorandum opinion, it credited Pamela's testimony on this issue, and found David's and Donaldson's testimony to be not credible. It found that David had drafted the MSA using a form he purchased on the internet. It further found that David

had fraudulently induced Pamela to sign the MSA by promising her that if she agreed to convey her interest in the marital home to him, he would "help her finance a house in her own name"; and that Pamela had relied on this promise to her detriment.

Alternatively, the court found that the terms of the MSA were unconscionable. It observed that if it upheld the MSA, Pamela would "walk away from a twenty year marriage with virtually nothing when she was the primary bread winner in this family." Finally, it found that David had violated a confidential relationship with Pamela in procuring her signature on the MSA.

Because this matter was tried to the court, we "review the case on both the law and the evidence." Md. Rule 8-131(c). We review the court's findings of fact for clear error, "giv[ing] due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. We review the court's legal conclusions *de novo*. *Li v. Lee*, 210 Md. App. 73, 96 (2013), *aff'd*, 437 Md. 47 (2014).

It is well-established that spouses may enter into a valid and enforceable separation agreement resolving disputes over marital property and alimony. *See* Md. Code (1984, 2012 Repl. Vol.), section 8-101 of the Family Law Article ("FL"). A separation agreement is "subject to interpretation in light of the settled and oft-repeated principles of objective construction." *Goldberg v. Goldberg,* 290 Md. 204, 211 (1981). A separation agreement may be set aside upon a finding that the terms of the agreement are so unconscionable as to shock the conscience of the court. *Williams v. Williams*, 306 Md. 332, 340-41 (1986). A separation agreement also may be set aside upon a finding

that it was procured by fraud. *See Cannon v. Cannon*, 156 Md. App. 387, 421 (2004), *aff'd*, 384 Md. 537 (2005). If the party seeking to set aside the agreement was the dependent party in a confidential relationship, the burden shifts to the dominant party to show that the agreement was not procured by fraud. *See Lasater v. Guttman*, 194 Md. App. 431, 458 (2010).

The court's finding that the terms of the MSA were unconscionable was amply supported by the evidence. As we shall discuss, at the time the MSA was entered into, the parties owned the marital home as tenants by the entireties, and the equity in the marital home was approximately $150,000. The GMC Envoy, which Pamela would receive, had a value of approximately $6,000, and the motorcycle and Ford pickup that David would receive had a combined value of $17,500. The $14,350 in credit card debt was a *joint* obligation, and therefore David's paying it off was at most a $7,175 value to Pamela. (The MSA did not accurately address any remaining assets, because it stated that they already had been divided by the parties, when that could not have happened, as the parties had not yet separated.)

So, under the terms of the MSA, Pamela would receive her car (roughly $6,000) and the benefit of $7,175 in paid credit card debt, for a total of $13,175. David would receive the approximately $150,000 in equity in the marital home and $17,500 in other assets, for a total of $167,500. Thus, David would end up with more than ninety percent of the marital assets.

Contrary to the argument advanced by David, in these circumstances, in which he would be receiving sole title to the marital home and all the equity in it, it was not a benefit to Pamela to be relieved of the debt on the home, as she would no longer have any ownership interest in it. Likewise, there is no merit in David's argument that because he waived any right to alimony in the MSA, the agreement was not unconscionable. First, there was no alimony waiver in the MSA. Indeed, when David filed suit for divorce, relying upon the MSA, he included claims for *pendente lite* and permanent alimony. Second, even if there had been an alimony waiver, which there was not, it would not ameliorate the gross disparity in allocation of marital property in the MSA.

An unconscionable contract is "one characterized by 'extreme unfairness,' which is made evident by '(1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party.'" *Walther v. Sovereign Bank*, 386 Md. 412, 426 (2005) (quoting Black's Law Dictionary 1560 (8th ed. 2004)). "Thus, unconscionability can be classified as 'procedural' when there is a lack of meaningful choice in the formation of the contract, or 'substantive' when the terms are so one-sided as to 'shock the conscience' of the court." *Li*, 210 Md. App. at 112 (citing *Walther*, 386 Md. at 426 and *Blum v. Blum*, 59 Md. App. 584, 591 (1984)); *see also Williams*, 306 Md. at 333-36 (holding that a separation agreement was void when it was so "oppressive on the husband that it shocked the conscience of the court" because "it call[ed] for all of the assets of any consequence to go to the wife").

In the instant case, the court found the MSA void for procedural *and* substantive unconscionability. Because the court's ruling setting aside the MSA on the ground that it was unconscionable was based on non-clearly erroneous factual findings and was supported by the law, we need not consider whether the court also was correct in setting aside the MSA based on fraud.

II.

David contends the trial court erred by setting aside the terms of the MSA that favored him, but not the ones that benefited Pamela. Specifically, he points to the fact that he "assumed $79,000 of debt to refinance the existing mortgages [on the marital home] and to pay off the parties' credit card debt." In a related argument, he asserts that the 2012 HELOC was entirely marital debt and should have been deducted as part of the valuation of the marital property.

Pamela responds that the court correctly assessed the amounts of non-marital and marital debt and did not err in its equitable distribution of the marital property by means of the $92,538.50 monetary award.

As an initial matter, we note that the circuit court was not empowered to set aside the 2012 deed of trust or to grant David any relief from the terms of the 2012 HELOC. The court only could consider in its valuation and equitable distribution of marital property that David used the HELOC to pay off certain debts.

Equitable distribution of marital property is a three-step process. *Alston v. Alston*, 331 Md. 496, 512 (1993). First, the court must determine which property is marital

property; second, it must value the marital property; and third, it must decide whether to grant a monetary award to adjust the equities. *Id*. "[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." *Kline v. Kline*, 85 Md. App. 28, 45 (1990).

Marital debt is not all debt acquired during a marriage, however. *Id*. Rather, it is debt that is "directly traceable to the acquisition of marital property." *Schweizer,* 301 Md. at 636. If the court finds that debt was incurred in acquiring an item of marital property, it must deduct that debt from the value of that marital property *even if the debt is not a lien on the property acquired*. *Kline*, 85 Md. App. at 45. "If the marital debt exceeds the value of the marital property acquired as a result of incurring the debt, the result is a zero value for the marital property so acquired; marital property cannot have a negative value." *Id*.

A "non-marital" debt, on the other hand, "may not serve to reduce the value of marital property." *Schweizer*, 301 Md. at 637. The court still may consider the amount of non-marital debt during the third step of the equitable distribution process in assessing whether to grant a monetary award and, if so, in what amount. *Id*.

We return to the case at bar. The 2012 HELOC refinanced the 2001 and 2003 home equity loans, which had in turn refinanced a 1996 home equity loan. None of these

loans were purchase money loans used to acquire the marital home. The parties agreed, however, and in ruling on the motion to alter or amend the court found, based on that agreement, that at least $50,500 of the 2012 HELOC was marital debt encumbering the marital home. This amount, according to Pamela's counsel, was conceded to have been used to make improvements to the marital home.[11] "Marital debt" includes "monies borrowed to make improvements to marital property – whether the borrowed funds that were utilized ultimately enhances the value of the marital property or not." *Lee v. Andochick*, 182 Md. App. 268, 299 (2008).

The court found that $25,000 of the HELOC was non-marital debt because David had used those funds ($5,000 in cash at settlement and an additional $20,000 withdrawn in the months thereafter) to pay for his living expenses and attorneys' fees. Because David did not present evidence showing that those funds could be directly traced to the acquisition of marital property, the court did not err by treating that amount as non-marital debt that did not serve to reduce the value of the marital property.

The court also found that $13,000 of the 2012 HELOC had been used to pay off portions of the debt against the marital home that had been incurred to finance the purchase of the New Holland tractor, marital property that was titled in David's name,

[11] This amount also necessarily included the amount spent by David to pay down the parties' credit card accounts as those funds were not otherwise accounted for. While it is unclear whether the credit card debt was marital or non-marital debt, Pamela conceded that the remaining $50,500 was marital debt encumbering the home, and therefore the court did not err in treating it as such. Thus, David's payment of the parties' credit card debt was accounted for in valuing the parties' marital property.

and $11,500 had been used to purchase the Harley-Davidson motorcycle, marital property that was jointly titled, but, by agreement, was being transferred by Pamela to David. The court treated these amounts of the 2012 HELOC as non-marital debt. It is plain from this Court's decision in *Kline* that the court erred in doing so. The funds were directly traced to the acquisition of marital property and should have been deducted from the value of those items of marital property during the second step in the equitable distribution process. Had this been done, the New Holland tractor's value would have been zero ($5,500 – $13,000) and the Harley-Davidson's value would have been $500 ($12,000 - $11,500). Thus, the value of the parties' total marital property would have decreased by $17,000 ($5,500 + $11,500).

The court attached to its Amended Judgment of Absolute Divorce a worksheet that shows how it arrived at its $92,538.50 monetary award figure. The court calculated the total value of the parties' marital property to be $200,987. The court determined that $193,032 of that property was titled to David (either because of actual title or because the parties agreed that it would be) and $7,955 was titled to Pamela.[12] Having decided that the marital property should be equally distributed, the court granted Pamela a monetary award of $92,538.50, which, using its calculations, resulted in each party having $100,493.50 (one-half) of the marital property value.

[12] The court did not include jointly titled marital property in its calculations because it had ordered that property to be sold and the proceeds divided equally.

The court's calculations were incorrect, beginning with its finding that the total value of the marital property was $200,987. This figure is wrong for two reasons. First, as explained, after proper subtraction of marital debt, the tractor should have been assigned a value of zero (instead of $5,500) and the motorcycle should have been assigned a value of $500 (instead of $12,000). Second, although the parties conceded in the motion for reconsideration hearing, and the court accepted, that $50,500 was the correct amount of marital debt to be subtracted from the $205,000 fair market value of the marital home based on improvements made to the home, the court mistakenly subtracted $49,500. Thus, the equity value in the marital home was $154,500, not $155,500.

If the court had used the correct figures, the total value of the parties' marital property would have been $182,987, of which $175,032 was in David's title column and $7,955 was in Pamela's title column. An $83,538.50 monetary award to Pamela would have resulted in each party having $91,493.50 in marital assets, which was one-half of the total value of the marital assets.

Because the court erred in assigning marital debt and calculating the total marital property value, and therefore in calculating the monetary award, we shall vacate the monetary award and remand for further proceedings not inconsistent with this opinion. Moreover, because "[t]he factors underlying alimony, a monetary award, and counsel fees are so interrelated," when we vacate any one of these aspects of a divorce judgment,

we also "vacate the remaining awards for re-evaluation." *Turner v. Turner*, 147 Md. App. 350, 400 (2002).

We make the following observations for guidance. Unless the court concludes otherwise, it need not take additional evidence or hold a hearing on remand. Contrary to David's argument on appeal, the court did not deny Crawford Credits on the ground that they had not been sought in the pleadings. It only mentioned that after noting that the evidence did not support an award of Crawford Credits. Moreover, because a monetary award was sought, the court was required to engage in the three-step equitable distribution process, and the discretionary decision whether to award Crawford Credits is part of that process. Finally, express findings on the statutory factors underlying decisions on alimony and attorneys' fees should be made.[13]

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY VACATED AS TO MONETARY AWARD/MARITAL PROPERTY, ALIMONY, AND ATTORNEYS' FEES. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEE.

[13] Our remand should not be understood as an implicit finding that the alimony and attorneys' fees awards were improper; we only are saying that express findings on the statutory factors are required.