UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0583

September Term, 2015

JOSEPH LO GRASSO

v.

MARITZA LOPEZ
f/k/a MARITZA LO GRASSO

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 5, 2016

On June 30, 1990, Joseph Lo Grasso, appellant, and Maritza Lo Grasso, appellee, were married.[1] On February 24, 2015, the Circuit Court for Charles County granted Mr. Lo Grasso a Judgment of Absolute Divorce.

On appeal, Mr. Lo Grasso presents several questions for our review, which we have consolidated and rephrased, as follows:

(1) Did the circuit court abuse its discretion in awarding Mr. Lo Grasso an indefinite alimony award of $1,500 per month?

(2) Did the circuit court abuse its discretion in not awarding retroactive alimony to Mr. Lo Grasso?

(3) Did the circuit court abuse its discretion in not awarding attorney's fees to Mr. Lo Grasso?

For the reasons set forth below, we shall vacate the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On June 30, 1990, Mr. and Mrs. Lo Grasso were married in Ohio. At that time, both Mr. and Mrs. Lo Grasso were Captains in the United States Air Force. Mrs. Lo Grasso was stationed in Colorado at some point during their marriage.[2] Shortly thereafter,

[1] On April 22, 2015, the parties filed in the Circuit Court for Charles County the Judgment of Absolute Divorce, which, *inter alia*, restored Maritza Lo Grasso's former surname, "Ramos Lopez." We will refer to her as "Mrs. Lo Grasso" in this opinion because it is the name used in these proceedings.

[2] The parties provided conflicting testimony regarding the timing of Mrs. Lo Grasso's military assignment. Mr. Lo Grasso testified that, at the time they were married, they were both stationed in Ohio at Wright-Patterson Air Force Base, and in January 1991, Mrs. Lo Grasso was reassigned to Colorado. Mrs. Lo Grasso testified that she was already stationed in Colorado before they were married, and she had to travel to Ohio for their wedding.

Mr. Lo Grasso was "processed out" of the Air Force because of his inability to conform to physical fitness requirements and his commander's refusal to issue him a waiver. In October 1991, Mr. Lo Grasso moved to Colorado to live with his wife and her son, whom he adopted later that year.

Mr. Lo Grasso believed that Mrs. Lo Grasso's assignment in Colorado would last for only one year, and he did not look for employment because he did not want to start a career only to have to move again. After discovering that Mrs. Lo Grasso's assignment in Colorado would last longer than one year, which also coincided with their son starting school, Mr. Lo Grasso began to consider seeking employment.

Mrs. Lo Grasso testified that, although she intended to stay in Colorado for several years, Mr. Lo Grasso disliked living there, and he expressed his desire to move back to the Washington D.C., area. She stated that he was "very unhappy" in Colorado and thought that D.C. "would be a great opportunity for him to get a job." Mr. Lo Grasso recalled wanting to move to the D.C. area because he had been stationed there in the past, he liked the area, there were "numerous opportunities" for Mrs. Lo Grasso's Air Force career, and he thought that it "would make for a total family package."

Mr. Lo Grasso traveled to Maryland to find a new home, and he selected a house in Waldorf for the family. Mrs. Lo Grasso testified that he chose the house because its location provided him access to the major cities in the area where he could potentially find a job.

In 1993, the Lo Grassos moved to Waldorf. The Lo Grassos subsequently moved as Mrs. Lo Grasso's job demanded, renting out their home each time and then returning to Waldorf after Mrs. Lo Grasso's assignment was completed. In September 1994, the Lo Grasso's second child was born.

After his separation from the military, Mr. Lo Grasso took several "short-lived" part-time jobs to make some extra money for his family and "to relieve the boredom," but he felt that it was important to have at least one parent at home with their children. Mr. Lo Grasso testified that the issue "was discussed," and "it was decided" that, because he had the lesser opportunities in the Air Force, he would be the one to stay home. Mrs. Lo Grasso testified that she never had a discussion with Mr. Lo Grasso about the issue.

As the stay-at-home parent, Mr. Lo Grasso cooked, cleaned, maintained the house and yard, took their children to appointments and school activities, cared for them when they were sick, and made lunches for them, while Mrs. Lo Grasso, as the primary breadwinner, worked long hours in the Air Force. He would take care of the children when Mrs. Lo Grasso traveled for work.

Mrs. Lo Grasso testified that it would not have impacted her ability to raise her children if Mr. Lo Grasso had a job. She had been a single mother before she married Mr. Lo Grasso, and she "was still a very effective parent, and very effective in [her] career." Moreover, when their son was in high school, he would have been able to look after their daughter, who was seven years younger, when she came home from school.

In 1998, Mrs. Lo Grasso was reassigned to Dover Air Force Base in Delaware. Mr. Lo Grasso decided not to move to Delaware with her, and instead, he moved back into their Waldorf home with their two children. Mr. Lo Grasso testified that this arrangement was made, at least in part, because of the problems they had renting their Waldorf home. Mrs. Lo Grasso testified that Mr. Lo Grasso told her that he would not move to Delaware "fairly late in the game," and therefore, she did not "have a choice but to say, okay." The two-household arrangement ended up costing the family more than if they had moved together. While Mrs. Lo Grasso was in Delaware, Mr. Lo Grasso and their children periodically traveled to visit her, and vice versa.

In 2005, Mrs. Lo Grasso retired from the Air Force at the rank of lieutenant colonel. At the time of the trial, she received approximately $4,663 per month in retirement pay from the Military. After retiring from the Air Force, Mrs. Lo Grasso worked for a private company for several months before returning to the Air Force to work as a civilian employee. At the time of the trial, Mrs. Lo Grasso was employed by the Air Force at the GS-15 Step 9 pay grade, earning a base salary of $157,100 annually before taxes.

Both parties agreed that they experienced marital problems early on in their marriage. Mr. Lo Grasso stated that their issues began as early as their wedding reception. Their problems initially were "peripheral" and mostly involved "family strains," particularly with Mrs. Lo Grasso's family. In 1993, around the time that Mrs. Lo Grasso became pregnant with their second child, they ceased having marital relations. Mr. Lo Grasso stated that their sexual inactivity "was kind of [a] shared feeling," but

Mrs. Lo Grasso stated that all Mr. Lo Grasso wanted was a child, and "as soon as [Mrs. Lo Grasso] got pregnant, he didn't have to make any other pretenses." After Mrs. Lo Grasso returned from Delaware, they had a discussion about the sleeping arrangements, and from that point forward, they slept in separate rooms.

There was tension regarding Mrs. Lo Grasso's employment in the Air Force. Mr. Lo Grasso was bitter about the circumstances of his separation from the military, and he did not want Mrs. Lo Grasso to continue to work for the Air Force. He testified that he made clear before they got married that he would not attend any military social functions. Consequently, he did not attend Mrs. Lo Grasso's promotion and retirement ceremonies.

Mr. Lo Grasso testified that the "subject of divorce came up on a number of occasions, usually along with the suggestion of counseling," but his suggestions of counseling were "not well received." Mrs. Lo Grasso testified that Mr. Lo Grasso "always threatened [her] with divorce." She considered filing for divorce herself, but she decided to stay "with the status quo" because she was afraid of what would happen to their children.

In August 2012, Mr. Lo Grasso moved to Fayetteville, North Carolina, to be closer to their daughter at college. He originally proposed that he and their daughter move down to North Carolina during the school year and then return to Waldorf "during the summer months." He explained, however, that "things had been kind of strained, and it ended up evolving into, well, I'll just go down there permanently because she wasn't satisfied with that." At the time of the trial, the parties' daughter lived with Mr. Lo Grasso in North Carolina, and their son lived with Mrs. Lo Grasso in Waldorf.

Mr. Lo Grasso described the quality of his North Carolina home as a "6.5 to a 7" on a ten-point scale, not "anywhere near" the quality of his former home in Waldorf. He noted various problems with the house, including rotting wood on the exterior, worn carpeting, and old cabinetry and appliances. He stated that the house was located in a neighborhood with a high crime rate.

Mr. Lo Grasso also testified that, after moving to North Carolina, he had to resort to credit cards to make ends meet. A financial statement, dated March 27, 2014, indicated that Mr. Lo Grasso had accumulated $30,470 in credit card debt,[3] and he was experiencing a monthly deficit of $2,831.65.

On March 31, 2014, Mr. Lo Grasso filed for absolute divorce. On August 26, 2014, the circuit court approved a Consent *Pendente Lite* Order. In that order, the parties agreed that Mrs. Lo Grasso would continue to pay to Mr. Lo Grasso $1,600 per month as his marital share of her military retirement. In addition, the order provided that Mrs. Lo Grasso would pay to Mr. Lo Grasso 50% of the balances of their marital bank accounts. The order also included the following provisions:

> f. Any retroactive alimony award order from the Defendant to the Plaintiff shall be deducted from the remaining marital property amounts in the Defendant's name at the time of the divorce prior to the marital property award calculation.
>
> g. The Plaintiff having had this partial division of marital property from August 15, 2014, to the date of divorce shall NOT be considered in

[3] In a footnote attached to Mr. Lo Grasso's March 27, 2014, financial statement, Mr. Lo Grasso provided a list of credit cards debts and a statement explaining that he "was forced to spend a significant amount of money on credit cards to set up his residence in North Carolina."

> any computation or consideration of the retroactivity of any alimony award.

On February 11, 2015, the circuit court approved a Consent Order Partially Resolving Property Issues. The agreement provided that Mrs. Lo Grasso would transfer to Mr. Lo Grasso (1) $140,000 as a marital property award; (2) 50% of the marital portion of Mrs. Lo Grasso's Military Retirement Annuity (which was set at $1,600 per month until the Defense Finance and Accounting Service (DFAS) accepted a Qualifying Order and began to pay Mr. Lo Grasso directly); and (3) 50% of the marital portion of Mrs. Lo Grasso's Federal Employee's Retirement System (FERS) Retirement Annuity. The agreement also provided, *inter alia*, that Mrs. Lo Grasso's three Defined Contribution Retirement Plans would be divided equally, Mr. Lo Grasso would forfeit all interest in their Waldorf home, Mrs. Lo Grasso's Ford Ranger and Ford Taurus, and Mrs. Lo Grasso would forfeit interest in Mr. Lo Grasso's Hyundai Entourage. Finally, the agreement provided that the parties could not resolve the following issues:

> a. The Plaintiff's alimony claim against Defendant.
>
> b. The Plaintiff's request for attorney's fees from the Defendant[.]
>
> c. Who will take the tax deductions for [the parties' daughter] for 2014 and 2015, and any later years in which she can be claimed as a dependent as one or both of the parties.
>
> d. Whether the Plaintiff's share of the Defendant's military retirement will include any increases in her VA benefit, due to increases, after this time, in her disability percentage.

On February 24, 2015, the parties proceeded to trial on the remaining issues. The circuit court issued its findings shortly after the close of evidence. After finding that

Mr. Lo Grasso was entitled to an absolute divorce, the court awarded Mr. Lo Grasso indefinite alimony in the amount of $1,500 per month, to commence on February 1, 2015. The court explained its alimony award by referencing the factors set forth in in Maryland Code (2012 Repl. Vol.) § 11-106(b) of the Family Law Article ("FL").

With respect to the first factor, "the ability of the party seeking alimony to be wholly or partially self-supporting," the court stated:

> Mr. Lo Grasso, is partially self-supporting, but he will never be more than partially self-supporting. You know, some of these factors interrelate to one another, but the reason that I determined that he will never be wholly self-supporting is his age. He is looking at sixty-nine, and I don't believe that anyone at that age is expected, or required, to work.
>
> So I do not feel that he will ever be wholly self-supporting, but with his passive income, his Social Security and his portion of Ms. Lo Grasso's military pension, he is partially self-supporting. So I believe, and not to jump ahead of myself, that if we take his income and put another $1,500 a month into it, that gets him up to $50,000 a year, which I think, again, not to jump ahead, maintains his standard of living, but at the same [time it] is hopefully fair to the defendant, Ms. Lo Grasso. She has the ability, certainly, to pay it, but the Court, again, is trying to balance this notion of equity and fairness to both sides.
>
> But that first factor . . . and obviously they are all important, "Can the petitioner be wholly or partially self-supporting?" So he is partially, so this will supplement that.

The court stated, with respect to the second factor, "the time necessary for the party seeking alimony to gain sufficient education to find suitable employment," that this was not really a factor, given Mr. Lo Grasso's age. With respect to the third factor, "the standard of living that the parties established during their marriage," the court stated:

> I would characterize it as modest for the majority of the time. . . . But for the majority of the time, they were basically a one-income family based on the

> salary of an officer in the military. And I believe that for four people to live the majority of their marriage based on that income, it's modest.
>
> And I think that what Mr. Lo Grasso makes, minus the alimony that I have awarded, really doesn't keep him in that standard of living, but I do believe this supplemental money, this alimony money that we have ordered, will enable him to maintain that standard of living. Some months he may pocket a little bit that isn't needed, but then he may have expenses that he will have to tap into this for. So again, it's . . . we do the best we can to try to get the precise, fairest number, this is what I think.
>
> But I think, certainly, this number gets him to that area where he can maintain his standard of living. It's certainly not going to be exorbitant on $50,000 a year, but it's not going to be meager, either. And I also think that, clearly, [Mrs. Lo Grasso] now can also maintain her standard of living based on this.

With respect to the fourth factor, "the duration of the marriage," the court noted that nearly twenty-five years was "a lengthy marriage. Not the longest marriage, but certainly lengthy to justify the indefinite award" that it made.

With respect to the fifth factor, "the contributions, monetary and nonmonetary, of each party to the well-being of the family," the court stated:

> [T]he parties reached some sort of an accord. You know, . . . they reached an accord, they accepted it. Quite frankly, Mr. Lo Grasso's view that, "I'm raising the kids," fine, but when they get a certain age you could try a little harder, so to speak. But that's the way they lived, they both made contributions.
>
> You know, when you mention these topics, it's interesting. You know, you say, "Well, did they each make a contribution?" Yes, but is that the end of the discussion? No. I think you can look a little bit beyond that. And certainly when the kids are small they require a lot of day to day work, but you know, just to put on this notion, "Well, I'm taking care of the kids. I'm not doing anything else."
>
> It's . . . it's not, certainly, making a contribution of really going above and beyond, putting your best faith and your best efforts into it. But that's

> the way they decided to live. I don't really find that too significant either way, but I did struggle with that in this particular case, a little bit.

With respect to the sixth factor, the "circumstances that contributed to the estrangement of the parties," the court stated:

> [I]n this case, they had this arrangement, it was working, and Mr. Lo Grasso decided it was time to move on, and he left. So, you know, the termination, or terminating event that broke their arrangement was Mr. Lo Grasso's decision to leave his wife, which he did, and that's something to be considered, too. You know, he has decided this is where he wants to live, and she has to deal with it, and, you know, she's dealing with it. But certainly, it creates burdens for her, his decision, but she is dealing with it.

With respect to the seventh and eighth factors, "the age of each party" and "the physical and mental condition of each party," the court found the 14-year age difference between Mr. Lo Grasso and Mrs. Lo Grasso to be a "significant gap." It found that, "given Mr. Lo Grasso's age and his physical condition," it was not "realistic to expect him to work significantly at all."

With respect to factor nine, "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," the court stated:

> [T]he divorced spouse can't expect to bear the fruits of the other spouse's labor once they go on, and that type of thing.
>
> And that's true, however it's also true that in this case, Ms. Lo Grasso can certainly meet her own needs and contribute to the needs of her ex-spouse, at this point, with the amount that I have awarded here. It's not going to crimp her lifestyle, although nobody wants to pay, you know, at least $18,000 a year alimony, but it's a doable number.

The court found the tenth factor, "any agreement between the parties," inapplicable. With respect to the eleventh factor, "the financial needs and financial resources of each party," the court stated that, with respect to assets, Mr. Lo Grasso had received $140,000 as a marital property award, $85,000 from one of the retirement accounts and "$105,000 or 110,000 for the other." The court stated that "[t]he financial wellbeing that you have outside the alimony is a factor to consider, and that could, if it wishes to be structured, generates some additional income." With respect to "the financial obligations of each party," the court noted that "Mr. Lo Grasso has rent, he has paid off his credit card bills, but they seem to be creeping up a little bit. Ms. Lo Grasso, Ms. Lopez, has the family home that she has to pay for."

Finally, with respect to the twelfth and final factor, "the right of each party receiving retirement benefits," the court stated that this factor was "critical." It explained that "$1,600 a month is calculated in Mr. Lo Grasso's monthly income, based on the pension from [Mrs. Lo Grasso's] military service."

The circuit court then addressed the duration of the alimony award, concluding that Mr. Lo Grasso was entitled alimony for an indefinite period. The court found that, due to Mr. Lo Grasso's age, 68 at the time of the trial, he could not be expected to make "substantial progress toward becoming self-supporting." The court noted, however, that it did not find that the parties' incomes would be "unconscionably disparate," stating:

> [T]here is a significant gap in the income, but [] . . . my sense of it is that [Mrs. Lo Grasso] has more hard expenses, if you will, than Mr. Lo Grasso, and I feel his standard of living is going to be really consistent with what he has had over the course of his life. But I think because of his age, he will

> never get wholly self-supporting, so I think that's why . . . that's the most dispositive fact I can see here.
>
> Again, I think that the $1,500 a month, to some extent, balances out their income. There's still a big gap in it, if you will, but I don't believe it's unconscionably desperate [sic].

The court's award brought Mr. Lo Grasso's total gross income to $4,241 per month, or $50,892 annually.[4] Mrs. Lo Grasso's post-alimony gross income was $14,926.67 per month, or $179,120.04 annually.[5]

Finally, the circuit court denied Mr. Lo Grasso's request for attorney's fees. It found that both parties had a "substantial basis" for litigating the case, and they had "hundreds of thousands of dollars of martial property that could be used to pay their attorney's fees."

On April 17, 2015, Mr. Lo Grasso filed a Motion to Alter, Amend, or Revise Judgment of Absolute Divorce, and Memorandum in Support of Plaintiff's Motion to Alter, Amend, or Revise Judgment of Absolute Divorce. On April 22, 2015, the circuit court denied Mr. Lo Grasso's motion without explanation.

[4] Mr. Lo Grasso's post-alimony monthly income is derived from the following sources: $1,141 in social security benefits, $1,600 in Mr. Lo Grasso's share of Mrs. Lo Grasso's military retirement, and $1,500 in monthly alimony.

[5] Mrs. Lo Grasso's post-alimony monthly income is derived from the following sources: $13,091.67 in Air Force salary, $3,076.17 in her share of the military retirement ($4,676.17 minus $1,600), $258.83 in "VA benefits," minus $1,500 in monthly alimony.

DISCUSSION

I.

Alimony

Mr. Lo Grasso's first contention involves the award of $1,500 a month for indefinite alimony. He states that, "[a]s can be expected, [he] agrees that the duration of the alimony should be indefinite, given his advanced age of sixty-nine (69) years, and his numerous medical conditions." He challenges, however, the amount of the award, asserting that the court erred in considering "some of the [FL § 11-106(b)] factors in a legally erroneous manner, and in a manner that persuaded the [c]ircuit [c]ourt to award . . . a clearly erroneously low amount of alimony." He contends that the result of the court's ruling was an unconscionable disparity in the parties' gross incomes.

Mrs. Lo Grasso disagrees. She argues that the circuit court "properly exercised its discretion in awarding indefinite alimony." She contends that the court's decision "is supported by the evidence presented by the [p]arties," and it neither "shocks" the conscience, nor is "morally unacceptable."

We begin by noting that "appellate courts [] accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003) (quoting *Tracey v. Tracey*, 328 Md. 380, 385, (1992)). We review the award of alimony under an abuse of discretion standard and uphold the factual findings of the trial court unless clearly erroneous. *Solomon v. Solomon*, 383 Md. 176, 197 (2004). Accordingly, "'we may not

substitute our judgment for that of the fact finder, even if we might have reached a different result,' absent an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (citation omitted).

When faced with a request for alimony, the trial court must consider "'all of the factors necessary for a fair and equitable award.'" *Solomon*, 383 Md. at 195 (quoting FL § 11-106(b)). These factors are set forth in FL § 11-106(b), as follows:

> (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.

"[T]he law does not make any of the factors listed in section 11-106(b) determinative or mandate that they be given special weight" because the "decision whether to award alimony and, if so, for what period of time, is fact-intensive and not subject to a formulaic resolution." *Whittington v. Whittington*, 172 Md. App. 317, 341 (2007).

Although alimony initially was intended to allow a dependent spouse to maintain the same standard of living enjoyed during the marriage, after the adoption of the Maryland Alimony Act in 1980 (the "Act"), the function of alimony was "rehabilitation of the economically dependent spouse," providing "'an opportunity for the recipient party to become self-supporting.'" *Karmand v. Karmand*, 145 Md. App. 317, 327 (2002) (quoting *Turrisi v. Sanzaro*, 308 Md. 515, 524 (1987)). There are two situations, however, in which indefinite alimony may be appropriate: (1) where, "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." FL § 11-106(c)(1).

Here, the circuit court found that Mr. Lo Grasso qualified for indefinite alimony under the age/infirmity exception, and Mrs. Lo Grasso does not dispute that finding. Mr. Lo Grasso, however, contends that the amount of the alimony was too low. He contends that the circuit court improperly applied the requisite factors.

1.

Factor 3 – "Standard of Living"

Mr. Lo Grasso first contends that the circuit court erred in considering the factor set forth in FL § 11-106(b)(3), "the standard of living that the parties established during their marriage." He asserts that the circuit court erroneously interpreted that factor as the standard of living "for the majority of the time" of the marriage, as opposed to the standard of living established at the time of separation and/or divorce. He points specifically to the court's statement that Mr. and Mrs. Lo Grasso "were basically a one income family on the salary of an officer in the military," which he asserts was not the appropriate standard because, at the time of separation and divorce, Mrs. Lo Grasso had "retired and began drawing retirement and a much higher civilian salary."

Mrs. Lo Grasso argues that the circuit court "properly considered the entire marriage in determining the 'standard of living,'" stating that the court considered how its award would put Mr. Lo Grasso in a position "really consistent with what he has had over his life." She contends that the "only evidence about how life changed during the marriage comes from [Mr. Lo Grasso] himself regarding 'reasonable cars,' 'TVs' and 'video games," and that there was "no evidence that [Mr. Lo Grasso] will not be able to maintain that life style with the projected income." Here, the circuit court, in considering the standard of living that the parties established during the marriage, did state that "for the majority of their marriage based on that income, it's modest."

We agree with Mr. Lo Grasso that, in assessing the factor set forth in FL § 11-106(b)(3), the standard of living that the parties established during the marriage, the court should consider, not the majority of time in the marriage, but rather, the parties' standard of living at the end of their marriage, if that standard would reflect the lifestyle they would have enjoyed had the separation not occurred. *See Quinn v. Quinn*, 11 Md. App. 638, 651 (1971) ("We think the award of alimony should secure to the [dependent spouse] the same social standing, comforts, and luxuries of life as she [or he] would probably have enjoyed had it not been for the enforced separation."); *see also J.D.A. v. A.B.A.*, 142 So. 3d 603, 620 (Ala. Civ. App. 2013) ("In assessing the marital standard of living, a trial court should consider the period leading up to the divorce if that period accurately reflects the manner in which the parties would have been expected to live had they continued to be married."); *Goldman v. Goldman*, 554 N.E.2d 860, 864 (Mass. App. Ct. 1990) ("That the marriage began to deteriorate before the parties' life-style escalated is also no reason to limit alimony to the parties' earlier station."); *McReath v. McReath*, 800 N.W.2d 399, 413 (Wis. 2011) ("[M]aintenance should support the payee spouse at the pre-divorce standard. This standard should be measured by 'the lifestyle that the parties enjoyed in the years immediately before the divorce and could anticipate enjoying if they were to stay married.'").

Here, the circuit court characterized the Lo Grassos' lifestyle as "modest for the majority of the time . . . basically a one-income family based on the salary of an officer in the military." Although this may be true, the Lo Grassos' income significantly increased

in 2005, approximately seven years prior to their separation. Had the parties not separated, they would have enjoyed a significant increase in income due to Mrs. Lo Grasso's civilian career in the Air Force, *in addition to* her military retirement income and Mr. Lo Grasso's social security income. The circuit court erred in not considering the standard of living at the time the marriage ended, and therefore, it erred in its consideration of this factor. Accordingly, the award of alimony based on the erroneous interpretation of this factor constituted an abuse of discretion, and we will vacate and remand for further proceedings. *See Alston v. Alston*, 331 Md. 496, 504 (1993) ("[E]ven with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards."); *Goshorn v. Goshorn*, 154 Md. App. 194, 212 (2003) (concluding that the court erred in applying alimony factor eleven and remanding the "matter to the circuit court to reconsider its alimony award in light of this error"), *cert. denied*, 380 Md. 618 (2004).

2.

Factor 6 – "Circumstances that Led to the Estrangement"

Although we have already determined that the alimony award will be vacated and the case remanded for further proceedings, we will address briefly a couple of Mr. Lo Grasso's other contentions regarding the alimony award. Mr. Lo Grasso argues that the circuit court erred in applying FL § 11-106(b)(6), the "circumstances that led to the estrangement of the parties." He asserts that the court erred in considering his "breaking of the arrangement," i.e., leaving Mrs. Lo Grasso and relocating, as opposed to the circumstances that led to the "*estrangement*" of the parties. Mr. Lo Grasso contends that

there was "ample testimony on the record that these parties were very estranged long prior to Mr. Lo Grasso leaving his wife."

Mrs. Lo Grasso argues that Mr. Lo Grasso failed to demonstrate how the estrangement occurred beyond his assertions that he had some difficulty with family members. She contends that the evidence showed that Mr. Lo Grasso "changed the family plan after the birth of their daughter," refused to support her career, and he refused to accompany her to Delaware, "costing the family extra expenses for two households." She concludes that the court "properly noted that it was indeed [Mr. Lo Grasso] who, for whatever reason, broke up the agreed upon arrangement."

Although the parties appeared to have marital problems early on, the circuit court found that the parties had an "arrangement," and it was Mr. Lo Grasso who ended it. The court found that to be "something to be considered." We perceive no clear error in that regard.

3.

Unconscionable Disparity

With respect to Mr. Lo Grass's argument that the ultimate alimony award resulted in an unconscionable disparity in the parties' income, we need not decide that issue because we are vacating the award. We note, however, that

> [t]here are several cases in which Maryland appellate courts found unconscionable disparity based on the relative percentage the dependent spouse's income was of the other spouse's income. *See Tracey*, 328 Md. at 393, 614 A.2d at 597 (28 percent); *Caldwell v. Caldwell*, 103 Md. App. 452, 464, 653 A.2d 994, 999 (1995) (43 percent); *Blaine v. Blaine*, 97 Md. App. 689, 708, 632 A.2d 191, 201 (1993), *aff'd on other grounds*, 336 Md. 49, 646

> A.2d 413 (1994) (23 percent); *Rock v. Rock*, 86 Md. App. 598, 613, 587 A.2d 1133, 1140 (1991) (20-30 percent); *Broseus v. Broseus*, 82 Md. App. 183, 186, 570 A.2d 874, 880 (1990) (46 percent); *Bricker v. Bricker*, 78 Md. App. 570, 577, 554 A.2d 444, 447 (1989) (35 percent); *Benkin v. Benkin*, 71 Md. App. 191, 199, 524 A.2d 789, 793 (1987) (16 percent); *Zorich v. Zorich*, 63 Md. App. 710, 717, 493 A.2d 1096, 1099 (1985) (20 percent); *Kennedy v. Kennedy*, 55 Md. App. 299, 307, 462 A.2d 1208, 1214 (1983) (33 percent).

Boemio v. Boemio, 414 Md. 118, 144-45 (quoting Solomon, 383 Md. at 198). As the Court of Appeals explained:

> "Although we do not adopt a standard that unconscionable disparity exists based on a particular percentage comparison of gross or net income, the relative percentages in these cases offer some guidance here in assessing whether the amount of the indefinite alimony award alleviated adequately the unconscionably disparate situation found to exist in the present case."

Id. at 145 n.19 (quoting *Solomon*, 383 Md. at 198). We suggest that the circuit court keep these cases in mind when reconsidering the alimony award.

II.

Attorney's Fees

Because we vacate the alimony award, we will also vacate the circuit court's ruling on attorney's fees, which must be reconsidered in light of the court's analysis of the alimony award on remand. *See Murray v. Murray*, 190 Md. App. 553, 572 (2010). *See Turner v. Turner*, 147 Md. App. 350, 400 (2002) ("The factors underlying alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a

claim for any one of them, it must weigh the award of any other."). The court can reconsider this issue on remand.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.