UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2279

September Term, 2015

MATTHEW PERE

v.

LORI PERE

Graeff,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: August 19, 2016

*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.

The Circuit Court for Anne Arundel County rejected a husband's challenges to the validity of a separation agreement. Later, the court entered a judgment of absolute divorce, in which it enforced certain provisions of the agreement, decided issues pertaining to child custody, and awarded some attorneys' fees to the wife. The husband appeals. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Matthew Pere ("Husband") and Lori Pere ("Wife") were married on September 8, 1990. Three children were born into the marriage. Two of the children, a son and a younger daughter, were still minors at the time of the divorce in 2015. The son has since turned 18.

In March 2013 Wife discovered that Husband was having an extramarital affair. Wife confronted Husband, who claimed that he had ended the affair. Husband and Wife continued living together and began marriage counseling. In early April 2013, however, Wife learned that Husband had not ended the affair. Husband moved out of the marital home, and Wife retained counsel.

Despite the separation, Husband and Wife continued to pursue marriage counseling. Meanwhile, Wife and her attorney negotiated a settlement agreement with Husband, who did not engage counsel.

On June 7, 2013, the parties signed and notarized the agreement, which is styled as a "Voluntary Separation and Property Settlement Agreement." The agreement asserted that the parties had agreed to end their marriage, live separate and apart from one another, and cease having a sexual relationship. In fact, Husband and Wife both testified that at

this point they still wanted to attempt to repair the marriage. According to Husband, Wife insisted that he sign the agreement as a precondition to attempt at reconciliation. Husband testified that he signed the agreement because "she'd feel more comfortable."

The agreement itself contained provisions granting Wife $2,800.00 per month in alimony until April 15, 2035,[1] principal custody of the children, and child support. It gave Wife exclusive use and possession of the marital home until the parties' youngest child graduated from high school in approximately 2021, but made her responsible for the mortgage, taxes, and insurance payments on the home. In addition, the agreement divided the parties' assets. Most notably, the agreement stated that Wife would be entitled to half of Husband's military retirement income, including any military disability income.

Husband and Wife took steps towards reconciling with one another, and Husband moved back into the marital home, with Wife's consent, in August 2013. In late December 2013, however, Wife discovered that Husband's paramour was pregnant and that she was seeking child support from him. Wife ended the trial reconciliation.

On December 28, 2013, Husband signed a letter that Wife had prepared. The letter stated that, while the parties had believed that their agreement had been voided or suspended when they began their trial reconciliation, the parties now intended to be bound by it. Husband moved out, found his own apartment, and began to perform under the agreement by paying alimony and child support.

[1] The duration of alimony corresponds with the duration of the marriage – 23 years.

In October 2014, Husband obtained counsel and reentered the marital home without Wife's permission. Wife attempted to have the police remove Husband, but because she had only a separation agreement and no court order for use and possession, Husband had a legal right to remain in the home. Wife briefly moved to a hotel, but after a few days she was forced by financial circumstances to return home. She promptly commenced this action for a divorce.

While the divorce action proceeded, Wife and Husband lived in the marital home in a state of détente. Husband and the parties' son lived in the basement, while Wife and the parties' daughter lived in the rest of the house. Husband stopped paying the child support and alimony that the agreement required him to pay, but he did pay some of the household expenses, including the mortgage.

In the divorce litigation, Husband challenged the enforceability of the agreement. He claimed that, without his knowledge, he had signed a different version of the agreement from the one that he had approved. He also claimed that he had signed the agreement under duress, because his wife made his signature a precondition to any attempt at reconciliation. He claimed that the agreement was unconscionable because it required him to pay more than any reasonable person would have agreed to pay, and more than he could afford. Finally, he claimed that the parties had rescinded the agreement during their 2013 reconciliation and, again, during the "reconciliation" after he unilaterally moved back into the marital home.

In April 2015 the circuit court held a hearing on the enforceability of the separation agreement. The court upheld the agreement against Husband's allegations of

fraud, duress, and unconscionability. The court found that Husband's testimony, that he did not read the agreement before signing, was not credible, and that, at any rate, nothing prevented him from re-reading the agreement on the day he signed it. In addition, the court found that, even if there was some defect in the formation of the agreement, or if the reconciliation in 2013 operated to suspend the agreement, Husband had later reaffirmed and ratified the agreement.

Although the court upheld the agreement, it did not enter an order or judgment, as the divorce proceedings had yet to conclude. Husband did not move out of the house.

In November and December 2015, the court held five days of hearings on the remaining issues, including "counsel fees, use and possession of the family home, family use personal property, custody, visitation[,] and child support." Husband and Wife both testified, as did their adult child. In addition, the court interviewed the two minor children.

On December 18, 2015, the court entered a judgment of absolute divorce. The court refused to revisit its prior ruling on the validity of the agreement, which it incorporated, but did not merge, into the divorce judgment. Most notably, the court upheld Husband's agreement to pay alimony until 2035; the parts of the agreement giving Wife the exclusive use and possession of the marital home, as well as responsibility for the mortgage, taxes, and insurance, until the parties' youngest child graduated high school in 2021; and the agreement to divide Husband's military pension, including his military disability benefits.

The court did make a few minor changes to the agreement, awarding primary physical custody of both minor children to Wife and slightly modifying the parties' custody allotments. The court also modified the agreed amount of child support, from $2,164.00 per month to $1,807.00 per month, and then to $1,231.00 per month once the parties' minor son was no longer dependent on their support.

The court found that Husband had violated the agreement by moving back into the marital home without Wife's consent and by not paying the agreed amounts of child support and alimony during that time. The court, however, offset Husband's liability for unpaid child support and alimony by the amount of the mortgage payments that he had made during that time, as the mortgage is Wife's responsibility under the agreement. The court found that Husband owed Wife a net amount of $32,456.09, which he was to pay at $150.00 per month.

Finally, the court awarded Wife $11,700.00 in attorneys' fees, out of the $65,810.88 billed by her attorneys.

Husband filed this timely appeal.

QUESTIONS PRESENTED

Husband presents seven questions:

1. Did the trial court err or abuse its discretion when it upheld the parties' Voluntary Separation and Property Settlement Agreement dated June 7, 2013?

2. Did the trial court err or abuse its discretion in awarding custody?

3. Did the trial court err and abuse its discretion in awarding child support, including child support arrears?

4. Did the trial court err or abuse its discretion in awarding alimony, including alimony arrears?

5. Did the trial court err or abuse its discretion in awarding use and possession of the marital home?

6. Did the trial court err or abuse its discretion in making a division of marital property, including [Husband's] [Veteran's Administration] Disability benefits?

7. Did the trial court err o[r] abuse its discretion in awarding counsel fees?

We perceive no error or abuse of discretion.

STANDARD OF REVIEW

"[W]e review the trial court's factual findings for clear error, while each ultimate award is reviewed for abuse[] of discretion." *Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014). An "abuse of discretion" "has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13 (1994) (citations and internal quotations omitted). "It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Id.* at 13-14 (citations and internal quotation marks omitted).

On the other hand, to the extent that the rulings in question involve pure issues of law, we conduct a de novo review. *See*, *e.g.*, *Wilson v. Wilson*, 223 Md. App. 599, 609, *cert. granted*, 445 Md. 19 (2015), *cert. dismissed*, 446 Md. 287 (2016).

DISCUSSION

I. The Circuit Court Did Not Err or Abuse its Discretion in Rejecting Husband's Claims of Fraud, Duress, or Unconscionability

Husband attacks the validity of the agreement itself on three grounds: fraud, duress, and unconscionability. The circuit court was well within its rights to reject each contention.

A. Fraud

Husband claims that Wife, "through her counsel's actions," falsely represented that the agreement contained only a single change from what the parties had previously discussed. He claims that she succeeded in slipping the other changes past him because he did not read the agreement before signing it. The court was not clearly erroneous in rejecting that claim.

The court was unpersuaded by Husband's testimony that he did not read the agreement before signing, finding it incredible. "Although it is not uncommon for a fact-finding judge to be clearly erroneous when he is affirmatively persuaded of something, it is, as in this case, almost impossible for a judge to be clearly erroneous when [s]he is simply not persuaded of something." *Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (emphasis removed).

Furthermore, the court found, contrary to Husband's assertions, that "the parties had many discussions" about the various terms of the agreement, including a written exchange in which Wife agreed to accept less in alimony than Husband had offered. Indeed, Wife testified that in late May 2013, two weeks before the parties signed the agreement, they reviewed it at the marital home. On this record, it is utterly unmeritorious to contend that Wife procured the agreement by fraud.

In any event, the circuit court was clearly correct, and by no means clearly erroneous, in finding that Husband ratified the agreement. Husband signed the letter of December 28, 2013, which stated that the parties intended to be bound by the agreement. In addition, at that time, Husband moved out, found his own apartment, and began to perform under the agreement by paying his alimony and child support obligations. A person can ratify an agreement that was procured by fraud (*see, e.g.*, *Doe Mountain Enters., Inc. v. Jaffe*, 171 Md. App. 1, 17 (2006)), and the facts amply support the finding of ratification in this case. *See Blum v. Blum*, 59 Md. App. 584, 594-95 (1984) (a party ratifies a contract by failing to "act to repudiate the agreement promptly," "by continuing to act in accordance with the contract, or by continuing to accept or claim benefits flowing from it").

Husband claims that he undid the effect of his ratification and re-voided the agreement when he "reconciled" with Wife by moving back into the marital home against her wishes. Husband, however, may not unilaterally "reconcile" with his wife. While a

spouse's unilateral return to the marital home might destroy the grounds for some divorces,[2] it has no effect on the validity of a separation agreement.

Separation agreements are governed by the law of contracts. *Blum*, 59 Md. App. at 593. When one party disavows a valid contract, the contract remains valid, and the party who disavowed it is in breach. Consequently, when Husband moved back in with Wife against her wishes and in violation of the agreement, he did not invalidate the agreement or undo his ratification of it: he breached the agreement. In these circumstances, the circuit court was not clearly erroneous in concluding that Husband and Wife had not demonstrated a mutual intent to set aside the agreement, which Husband had ratified by performing his obligations under it.

B. Duress

Husband contends that he signed the agreement under duress. Duress involves: "(1) A wrongful act or threat by the opposite party to the transaction or by a third party of which the opposite party is aware and takes advantage, and (2) a state of mind in which the complaining party was overwhelmed by fear and precluded from using free will or judgment." *Meredith v. Talbot Cty.*, 80 Md. App. 174, 183 (1989) (quoting *Food Fair Stores, Inc. v. Joy*, 283 Md. 205, 217 (1978)). The wrongful act done or threatened must be either violent, illegal, or legal but "so oppressively used as to constitute an abuse of

[2] See Maryland Code (1984, 2012 Repl. Vol.), § 7-103(a)(4) of the Family Law Article ("FL"), which allows for a divorce "when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce[.]" Wife did not need to rely on FL § 7-103(a)(4), because § 7-103(a)(1) allowed for an immediate divorce on the grounds of Husband's adultery.

legal remedies." *Meredith*, 80 Md. App. at 183-84 (citing *Food Fair Stores, Inc.*, 283 Md. at 217). A contract signed under duress is voidable so long as the party under duress acts reasonably quickly to void the agreement once the duress is removed.

"This Court will invalidate a separation agreement on the basis of duress in its formation, but only when 'the conclusion that the execution of the agreement was obtained by duress is inescapable.'" *McClellan v. McClellan*, 52 Md. App. 525, 530 (1982) (quoting *Eckstein v. Eckstein*, 38 Md. App. 506, 518 (1978)). "[W]hether a threat leaves the [party] bereft of the quality of mind essential to the making of a contract is a factual determination," which we will not reverse unless it is clearly erroneous. *Simko, Inc. v. Graymar Co.*, 55 Md. App. 561, 568 (1983).

In his effort to prove clear error, Husband argues that if he wanted to reconcile with Wife, he "essentially" had no other alternative but to sign the agreement. The equivocal adverb "essentially" gives away the game. Husband had an alternative – not to reconcile with Wife. He signed the agreement because it gave him something that he wanted – the opportunity to reconcile with her. He hoped or expected that the reconciliation would succeed and that the agreement would become moot. Indeed, the record establishes that Husband negotiated some of the terms of the agreement, even offering an alimony payment that was more generous to Wife than the provision in the final agreement. On this record, it would be an understatement to say that the court was not clearly erroneous in rejecting his claim of duress.

This case is markedly different from *Eckstein v. Eckstein*, 38 Md. App. 506 (1978), the only reported Maryland case that has ever voided a separation agreement on

grounds of duress. When the wife entered into the agreement in that case, she was unemployed and had no money and no ability to engage counsel. *Id.* at 517. In fact, she had no clothes other than the clothes she was wearing, and her husband had refused to give her any clothes, to give her access to their jointly-owned car (which he had seized and hidden), or to allow her to see or even communicate with her children unless she signed the agreement. *See id.* He and his attorney refused to answer her questions about the agreement. She had a history of mental illness, and the agreement was identical to one that had prompted her to attempt suicide several years before. *See id*. at 509, 517. On those compelling facts, which bear no resemblance at all to the facts in the record in this case, this Court concluded that the circuit court was clearly erroneous in not finding duress. *Id.* at 516.

Finally, just as a person can ratify a contract that was procured by fraud, so too can one can ratify a contract that was made under duress. Even assuming, therefore, that Husband could prove duress – which he plainly could not – the circuit court was not clearly erroneous in finding that Husband ratified the agreement by signing the letter of December 28, 2013, and by paying his child support and alimony obligations under the agreement at least for the next 10 months.

C. Unconscionability

In his final assault on the separation agreement, Husband contends that it is unconscionable. The circuit court disagreed. We review the circuit court's decision for clear error. *See Williams v. Williams*, 306 Md. 332, 338 (1986).

Husband's challenge appears to concern what the courts call "substantive" (as opposed to procedural) unconscionability. To determine whether Husband has satisfied his burden of showing substantive unconscionability (*Stewart v. Stewart*, 214 Md. App. 458, 478 (2013)), a court "'must consider whether the terms in the [contract] are so one-sided as to oppress or unfairly surprise an innocent party or whether there exists an egregious imbalance in the obligations and rights imposed by the [contract].'" *Li v. Lee*, 210 Md. App. 73, 99 (2013) (quoting *Walther v. Sovereign Bank*, 386 Md. 412, 431 (2005)), *aff'd*, 437 Md. 47 (2014). "[A]n exactly even exchange of identical rights and obligations between the two contracting parties before a contract" [is] not necessary before the contract "will be deemed valid." *Id.* (quoting *Walther*, 386 Md. at 433). "'[O]ne cannot be relieved of a contract merely because he may have made a bad bargain[.]'" *Williams*, 306 Md. at 340 (quoting *Straus v. Madden*, 219 Md. 535, 542 (1959)).

Husband relies principally on *Williams*, which bears a superficial similarity to this case because the husband signed a settlement agreement in the belief that it would "effectuate a reconciliation." *Williams*, 306 Md. at 333-34. In *Williams*, however, the agreement called for "'all of the assets of any consequence to go to the wife[.]'" *Id.* at 336 (quoting the circuit court). Even so, it called for "'the obligations of supporting those assets to continue to be that of the husband.'" *Id.* For example, the husband gave up his interest in the marital home and in a new car, but agreed "to pay indefinitely the mortgage on the marital home, the car loan, and all marital financial obligations." *Id.* at 334. Most egregiously, "the husband's total weekly financial obligations under the

agreement would exceed his weekly net salary." *Id.* On those facts, the Court of Appeals upheld the circuit court's finding of unconscionability.

Husband claims that "he executed an agreement which required him to pay more than he could afford, in hopes of the execution of same further a reconciliation with [Wife]." Other than this statement, however, Husband offers no basis to conclude that he obligated himself to pay more than he could afford. We cannot evaluate, let alone accept, an argument that Husband did not make. *See*, *e.g.*, *Blue v. Arrington*, 221 Md. App. 308, 321 (2015).[3]

Furthermore, the agreement in this case is far less onerous than the agreement in *Williams*. In this case, the parties agreed to a roughly equal division of marital assets. In *Williams*, by contrast, the wife "was to receive property valued at approximately $131,000[,]" but "[t]he husband . . . would retain property valued at about $1,100." *William*s, 306 Md. at 334. In addition, in this case, Husband retains an interest in the marital home, will share in the proceeds of its eventual sale, and has no obligation to pay the mortgage, taxes, or insurance while Wife has sole use and possession of it. In *Williams*, on the other hand, the husband conveyed his entire interest in the home to his wife, but obligated himself to pay the mortgage and, it appears, other household expenditures. *Id.* In view of these material distinctions, the circuit court was not clearly

[3] In his opening statement, Husband's attorney told the court that Husband would still earn about $93,000 after the payments that the agreement requires. Based on counsel's representation, it would not appear that Husband agreed to pay more than earned.

erroneous in finding itself unpersuaded by Husband's attempts to liken this case to *Williams*.

II. The Circuit Court Did Not Err or Abuse its Discretion in Judgment Granting a Final Divorce

Husband challenges several facets of the judgment of absolute divorce: the decision to award primary physical custody to Wife; the order requiring him to pay the agreed amounts of child support and alimony (less an offset for the mortgage payments that he made) during the time after he had unilaterally moved back into the marital home; the order enforcing the agreement that Wife would have use and possession of the marital home until approximately 2021; the order requiring Husband to comply with his agreement to pay a portion of his military disability benefits to Wife; and the order requiring him to pay a small portion of Wife's attorneys' fees. The circuit court was well within its rights to reject these contentions as well.

A. Custody

The court awarded primary physical custody of both of the minor children to Wife. Husband challenges the judgment as an abuse of discretion precipitated by unfair questioning. Additionally, Husband contends that the court ignored his son's preference.

As to the son, the issue of custody is moot. He is no longer a child, and even if we were inclined to reverse the court's exercise of discretion, we are left without any appropriate remedy. While no Maryland court has squarely decided that a child's eighteenth birthday moots custody determinations, "[w]e lack the power to reverse time in order to transfer the child's custody" before his eighteenth birthday to Husband.

Wagner v. Wagner, 109 Md. App. 1, 22-23 (1996). "In respect to this particular issue, no remedy is now possible. The issue has become, by passage of time . . . moot." *Id.* at 23.

When other state courts have faced this same issue, they have agreed that issues pertaining to children become moot when a child is no longer a child. In Rhode Island, when "[t]he older of the parties' two children turned eighteen years old while this appeal was pending," the issue of child support became "moot as it concerns her." *Chiappone v. Chiappone*, 984 A.2d 32, 37 n.6 (R.I. 2009). In Montana, when a minor turned 18 during an appeal involving a parenting plan, "[i]ssues related to the modification of the parenting plan [became] moot because [the child became] an adult." *Cook v. McClammy*, 350 Mont. 159, 161 (2009). We see no reason to deviate from this reasoning.

As to the minor daughter's custody arrangements, we do not reverse a decision "founded upon sound legal principles and based upon factual findings that are not clearly erroneous" absent "a clear abuse of discretion." *Petrini v. Petrini*, 336 Md. 453, 470 (1994) (citing *Davis v. Davis*, 280 Md. 119, 126 (1977)). We must defer to the "trial court's opportunity to observe the demeanor and the credibility of the parties and witnesses." *Id.*

Husband contends that the trial court's custody determination was an abuse of discretion because it rested, in part, on leading and improper questioning. Husband points to one line of questioning, where the judge asked the parties' daughter, "Do you like living with Mom?," and "Do you like seeing Dad?" Husband claims that the court "assumed facts which were not accurate, i.e., that the daughter was living with her mother and not her father, even though "the parties were both residing in the marital home with

the children." Husband suggests that other questions, involving which parent helped with which homework assignments, were inappropriate. As a threshold matter, however, Husband failed to object to any of these questions. Typically, we do not decide an issue, other than one pertaining to jurisdiction, unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a).

Even if we were to reach the merits, the testimony established that Husband lived in the basement with their son, and Wife lived in the upper floors with their daughter. Consequently, any supposition that the daughter lived with Wife was not "clearly erroneous." Additionally, even if we did believe that the question was at all inappropriate, we would not be inclined to reverse for such a minor misstatement when, as Husband has pointed out, the court was well informed that the daughter "love[d] both of her parents and fe[lt] that they both love[d] her." We have reviewed the allegedly objectionable questions and see nothing more than a conscientious judge making an admirable effort to put a child at ease in a trying situation.

B. Alimony and Child Support

After Husband moved back into the marital home without Wife's consent in October 2014, he ceased making the child support and alimony payments that he owed under the agreement. The court ordered Husband to make those payments, but gave him a credit for the mortgage payments that he had made during that time, as the agreement requires Wife to pay the mortgage.

Husband claims that the court erroneously assessed child support and alimony against him "in arrears" during the unilateral "reconciliation," when he and Wife were

living under the same roof. We disagree. The court enforced the parties' agreement. The agreement required categories of payments from Husband to Wife. Although the parties contractually allocated those payments to alimony and child support, the payments were not *court-ordered* alimony or child support. Hence, the court did not order Husband to pay "child support arrears" and "alimony arrears," as he claims; it ordered him to pay damages for a breach of contract. We see no error.

The parties clearly intended that the child support and alimony would begin before the divorce. The agreement specifies that Husband "shall pay" child support and alimony to Wife and that those payments should be made "until the parties are awarded a Judgment of Absolute Divorce." Because "separation agreements are contracts and are subject to the same general rules" as contracts (*Blum*, 59 Md. App. at 593), the court was empowered to enforce the agreement.

Husband complains, however, that he was obligated to make those payments only "so long as the parties live separate and apart from each other." He contends that, by unilaterally forcing his way back into the marital home in October 2014, he destroyed the condition for the payments, namely, that the parties be living separately. His argument is devoid of merit.

The circuit court determined that Husband had breached the agreement by moving back into the marital home in violation of the provisions that neither party shall "seek to compel the other to dwell with him/her by any proceedings for restoration of conjugal rights or otherwise, *or exert or demand any right to reside in the home of the other*." (Emphasis added.) The testimony clearly showed that, after Husband unilaterally

reinserted himself into the marital home, he and Wife lived parallel lives, with Husband residing in the basement and Wife residing upstairs. The record contains nothing to indicate that the parties were engaging in sexual intercourse or otherwise living as a married couple. On that basis, the court determined, as a factual matter, that Husband was not cohabitating with Wife, but rather had demanded, and then exerted, a "right to reside in the home of the other," in violation of the settlement agreement, which the court had held valid. The court's conclusion is galaxies away from being clearly erroneous.

C. Use and Possession

In the settlement agreement, Husband agreed that Wife should be allowed to remain in the marital home until approximately June 2021, when the parties' youngest child will graduate from high school. Husband argues, without a single citation, that the court abused its discretion by incorporating (but not merging) that portion of the settlement agreement into the judgment of divorce. We disagree.

Husband correctly observes that a use and possession order must terminate within three years of the divorce FL § 8-210(a)(1), but that the judgment grants Wife use and possession for more than six years. The parties, however, have the power to agree to conditions that the court could not order on its own. The court simply enforced the agreement that the parties had made, as it is empowered to do. FL § 8-105(a)(2).[4]

[4] Under FL § 8-103, a court may modify an agreement in certain circumstances, such as when it is in the best interests of a child to do so. In this case, however, that the court determined that it was unnecessary to do so.

Husband asks us to deviate from this scheme, but he cites no authority "to provide a framework for our consideration." *Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005). "Because we are unable to comprehend the legal theory [Husband] advance[s], we decline to address this assignment of error." *Id.* (citing Md. Rule 8-504(a)(5)).

D. Military Disability Income

In the agreement, the parties agreed that Wife was entitled to a portion of Husband's military pension, "including any future disability pay." The parties specifically agreed that, upon the entry of a judgment of absolute divorce, Wife would receive 50 percent of Husband's retirement benefits, "including future disability payments." In the judgment of absolute divorce, the court enforced that aspect of the agreement.

Husband argues that this aspect of the judgment violates federal law, which prohibits state courts from treating military disability payments as "community property." *See* 10 U.S.C. § 1408; *Mansell v. Mansell*, 490 U.S. 581 (1989). The short answer to Husband's contention is that, in incorporating but not merging the parties' agreement into its judgment, the court did not treat his disability payments as "community" (or, in Maryland, "marital") property. Rather, it enforced a private agreement whereby Husband undertook to pay Wife an amount of money equal to half of what he received by way of a military disability payment.

Maryland decisions have repeatedly affirmed that a spouse may validly agree to make payments, out of general assets, in an amount equal to some portion of his or her military disability benefit. *See Wilson v. Wilson*, 223 Md. App. 599, 629 (2015) (court

had authority to enforce parties' agreement to divide military pension, including military disability payments); *Allen v. Allen*, 178 Md. App. 145, 155 (2008) (agreement that wife would receive percentage of military retirement benefits meant that wife had contractual right to military disability payments that husband received in lieu of service retirement benefits); *Dexter v. Dexter*, 105 Md. App. 678, 683-84 (1995) (husband breached agreement to pay percentage of military retirement benefits to wife when he waived right to receive some benefits in favor of receiving military disability benefits; measure of damages was amount wife would have received but for breach).

In enforcing such an agreement, a court does not treat the disability benefit as marital property, divide it between the parties, and purport to require the federal government to pay a portion of it to the other spouse; the court simply requires the retired, disabled spouse to abide by a contractual obligation to pay a sum of money, equal to a portion of the disability benefit, to his or her ex-spouse. *See Allen v. Allen*, 178 Md. App. at 153-54 ("[t]he circuit court's ruling… does not require payment to [the wife] of any disability benefits").

In this case, the parties did not require the government to pay a portion of the benefits to Wife; they simply required that Husband and Wife receive the stipulated share. *Id.* at 155. Husband can satisfy the judgment out of any of his assets; he need not pay it out of his disability payments. *See id*. at 154. In enforcing such an agreement, therefore, a court does not run afoul of federal law.

E. Fees

Alleging an abuse of discretion, Husband challenges the appropriateness of the $11,700.00 in attorneys' fees the court awarded to Wife. Husband claims that the court awarded those fees despite "question[ing]" their "reasonableness." Husband further claims that the trial court was "bias[ed]" and "frustrate[ed]" by the end of the trial and that the award of attorneys' fees was "clearly erroneous." We disagree.

The court awarded Wife $11,700.00 out of the $65,810.88 in attorneys' fees that she had incurred (of which some $35,000.00 were unpaid at the time of the ruling). From the court's comments, it appears that Wife had incurred most of the fees while the parties were litigating the validity of the agreement.

In reaching its decision, the court chastised Husband for his "gamesmanship" and lack of "good faith" in trying to force a renegotiation of the agreement by moving back into the marital home in the face of his agreement that Wife alone would have use and possession of it. Nonetheless, the court found that Husband had the right to ask the court to set aside the agreement. Consequently, the court awarded fees only for the period after it had upheld the agreement.

Although the court did not expressly enunciate the authority for its award of fees, it appears to have relied on one or more of various fee-shifting provisions of the Family Law Article,[5] because it referred to the statutory factors concerning the parties' financial status, the parties' needs, and the presence of substantial justification to bring, maintain,

[5] In addition the court could have awarded fees under the agreement itself.

or defend the proceeding. The court found that the parties' incomes were relatively equal; that Husband had the wherewithal to pay the (considerably smaller bill) from his attorney; that Wife had a $15,000.00 tax refund, which would not defray the total amount due to her attorneys; and that Husband should have resolved the dispute after the court had declined to invalidate the agreement. In view of these findings, we have no basis to conclude that the court abused its discretion in awarding Ms. Pere the fees that she incurred after the court upheld the agreement. *See Walker v. Grow*, 170 Md. App. 255, 291-92 (2006).

The court found that Wife's attorney's rate was reasonable, but it did express concern that Wife's attorney had billed excessive amounts of time in connection with depositions. The depositions, however, appear to have occurred in connection with the challenge to the validity of the agreement, not in the period for which the court awarded fees. Consequently, the court's concerns do not in any way undermine the propriety of its decision to award Wife about one-sixth of the fees that she incurred in connection with these proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY ALL COSTS.