UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2531

September Term, 2014

MARK CHASE

v.

SHARI CHASE

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

JJ.

Opinion by Meredith, J.

Filed: February 21, 2017

This case arises from the dissolution of the marriage of Mark Chase ("Father"), appellant, and Shari Chase ("Mother"), appellee.[1] Father appeals monetary judgments entered in favor of Mother on December 9, 2014, by the Circuit Court for Howard County. Father requests that we reverse: (1) a judgment in the amount of $80,515.02 to enforce his obligations under the parties' Voluntary Separation and Property Settlement Agreement ("the Agreement"); (2) a $15,000 award of attorney's fees in favor of Mother; and (3) the court's determination of the parents' incomes.

QUESTIONS PRESENTED

Father presents the following three questions for our review:

I. Did the trial court err in determining the amount of money due from [Father] to [Mother] under the terms of the parties' Agreement?

II. Did the trial court err in awarding [Mother] counsel fees when both parties had failed to comply with the agreement, [Mother] had never provided [Father] an accounting of monies alleged due to her prior to litigation and [Mother] failed to request fees in her motion?

III. Did the trial court err in its determination of each party's respective income, resulting in a greater share of college expenses to be paid by [Father]?

For the reasons that follow, we shall affirm the trial court's judgment of attorney's fees in favor of Mother, and find no error with respect to the court's rulings on income, but

[1] In his brief, appellant uses the pronouns Husband and Wife to identify the parties. In the interest of consistency with the trial judge's opinion, however, we have used Father and Mother.

we will order that the monetary judgment entered in the amount of $80,515.02 be reduced to $68,244.02.

FACTUAL BACKGROUND

The parties were married in 1981. On March 1, 2007, they entered into the Agreement. Pursuant to the Agreement, the parties agreed to share legal custody of their two children.

In 2013, Father filed a Complaint for Absolute Divorce. The parties each filed motions seeking enforcement of provisions of the Agreement. Father claimed that Mother owed him the proceeds flowing from her purchase of his one-half interest in the family home. Mother responded that her monetary obligation was subject to an offset based upon Father's failure to reimburse her for expenses that she incurred on behalf of their children. On December 9, 2014, the trial court entered a Judgment of Absolute Divorce as well as the two money judgments challenged in this appeal.

Paragraph 7 of the Agreement addressed the disposition of the family home:

> **7. REAL PROPERTY; USE AND POSSESSION**
>
> The parties own jointly real property located at [] Towering Oak Path, Columbia, Maryland 21044, known as the "Family Home" which has an outstanding mortgage with Countrywide of Three Hundred Sixteen Thousand Two Hundred Ninety Four Dollars and Seventy Seven Cents ($316,294.77) as of September 15, 2006. **Wife shall have exclusive Use and Possession of the Family Home, except as otherwise designated herein, through the end of the Children's School Year in the year 2010 (June 2010). Unless Wife has previously purchased Husband's interest in the Family Home, the house shall be listed for sale by the end of June 2010. Wife shall continue to have the exclusive Use and Possession of the property until it is sold and settlement occurs.**

* * *

> Wife shall have the right to buy-out Husband's interest in the Family Home at or before the end of the expiration of the use and Possession period by giving Husband written notice of her intention to purchase his interest in the Home. Such notice shall be given no later than May 1, 2010, and settlement shall occur no later than ninety (90) days thereafter. The purchase price shall be determined by way of the parties hiring a jointly agreed upon appraiser who shall provide a written notice to both parties. The appraised fair market value set by the appraiser shall then be the purchase price.
>
> * * *
>
> Thereafter, Wife shall pay to Husband 50% of that net amount remaining to purchase Husband's interest in the Family Home. The parties shall pay equally all costs of settlement. Wife shall be entitled to retain any escrowed funds. The parties also agree that they shall each repay $8,000.00 plus six percent (6%) interest accrued since March 2004 from his and her respective share of the proceeds, representing one-half of the $16,000.00 plus interest which the parties borrowed from Alec's funds and which are due to be repaid. These funds shall be deposited into one of the custodial accounts identified above in Section 4A. Wife shall schedule settlement and make payment to Husband as described above no later than ninety days from the date that she provides notice of her intention to purchase the Home as described above.

Because Mother exercised her option to buy Father's interest in the house, but, as of January 2014, had not paid Father the amount required under the Agreement, Father filed a Motion to Enforce Settlement Agreement. In his Motion, Father requested that the court order Mother to pay Father $165,482 plus reasonable attorney's fees relative to Mother's purchase of Father's interest in the family home. The Motion was denied for failure to attach an affidavit as required by Maryland Rule 2-311, but the trial court granted Father leave to file an amended motion.

On February 12, 2014, Father filed an Amended Motion to Enforce the Settlement Agreement. Mother filed a Response and her own Motion to Enforce the Agreement. She responded that "[t]he refinance process was prolonged due to various issues with underwriting the loan, but [Father] agreed it was better to give it more time then (sic) to try to sell the home. However, [Father] admits that the delay in the house buyout was the basis for his withholding of alimony and child support." Mother acknowledged that Father had requested payment for the purchase of the house, but she argued:

> [A]n initial accounting was done and discussed via email at the time of settlement for funds owed to [Mother] from [Father] for past due alimony ($2,300 per month), child support ($1,328 per month), unpaid out-of-pocket medical bills, and funds owed to the parties' son Alec. In fact, in an email, [Father] admits that at the time of settlement in August 2011 he owed [Mother] $37,480 in combined unpaid alimony and child support, $12,029 for Alec, that [Mother] had paid him $5,000 and that he owed $5,360 in FSA reimbursement, for a total credit toward the house funds owed of $59,869 . . . .

As Father notes in his brief, many of the issues regarding the sale of the house were resolved before trial, and the parties were able to stipulate to several items of agreement:

> Trial was held on October 14, 2014, November 14th and 17th, 2014. The issues before the Court included the uncontested divorce, child support accounting from November 1, 2014, and enforcement of the [A]greement. At the time of trial, the parties stipulated to the resolution of certain issues, including a resolution of Father's Amended Motion to Enforce Settlement Agreement (E-36). Specifically, the parties stipulated that Husband was deemed to have fully satisfied his alimony obligation and he was deemed current on his child support, through agreed upon reductions of monies owed to Husband by Wife for his interest in the marital home. (E-36). The parties further stipulated and agreed that the remaining amount due and owing to Husband from Wife to satisfy the buyout provision in the Agreement was $22,858.44. (E-36)
>
> * * *

> At the time of trial, the parties stipulated to the resolution of certain issues, including a resolution of Father's Amended Motion to Enforce Settlement Agreement. (E-36). Paragraph 7 of the parties' Agreement set forth the terms for Wife's buyout of Husband's interest in the marital home. (E-175-176). Pursuant to the terms of the Agreement, Wife's payment to Husband for his interest in the Home was to occur on or before August 1, 2010 or the Home was to be sold and the proceeds divided equally. (E-174-175). At the time of trial in 2014, Wife had still not satisfied her obligation to Husband for his interest in the Home.
>
> Specifically, the parties stipulated that Husband was deemed to have fully satisfied his alimony obligation and he was deemed current on his child support, through agreed upon reductions of monies owed to Husband by Wife for his interest in the marital home. (E.36). The parties further stipulated and agreed that the remaining amount due and owing to Husband from Wife to satisfy the buyout provision in the Agreement was $22,858.44. (E-36)

In its written Opinion, the trial judge summarized the disputes between the parties and made factual findings regarding amounts paid and owed. The trial judge created a spreadsheet to aid in explaining its calculation of the final balance. The court made the following findings regarding the points of controversy:

> The parties made numerous provisions for the division of property and support of Mother and the two (2) boys. Mother was to purchase Father's interest in the family home and although she eventually refinanced the house, it was not within the time frame called for in the agreement. Father stopped paying alimony and child support under the agreement in 2011, telling Mother to apply it against his interest in the house. He also stopped reimbursing her for things he owed her under the agreement, again saying to apply it against his interest in the house. The parties never did sit down and do an accounting of the various sums due back and forth and as a result, Mother was forced to present voluminous receipts over a period of three (3) days. The parties now look to the Court to figure out what sums are due and to whom under the various provisions of their agreement.

During the course of the trial, counsel reached several stipulations, which greatly assisted the court. Nonetheless, the sheer volume of documents is daunting.

A. **Medical Bills**

* * *

"Father further gets credit for certain medical expenses he has advanced (Plaintiff's Exhibit No. 11) in the amount of $2,628.00. Accordingly, $876 should be deducted from what Father owes Mother. **The net amount Father owes Mother for medical bills is $28,524.21**."

* * *

B. **Health Insurance**

The agreement provides that Father will maintain insurance coverage for the family and will reimburse Mother if she pays for coverage. There have been various configurations of insurance coverage over the years. The Court has determined that **Father owes Mother the following amounts** for reimbursement [:]

* * *

[Table omitted]

Total: **$43,633.00**

C. **Childcare**

The Court finds that Defendant's No. 58 is covered by Paragraph 8, Page 5 and that **Father owes $5,941.00**. Although it is true that Mother was not working full-time during the years these costs were incurred, she was attempting to develop her income by consulting on college scholarships and her experience helping their son Brent obtain thousands of dollars in scholarships saved the parties almost $80,000 and helped develop her business.

In addition, the Court notes that Mother has borne the entire burden of physically caring for Alec since 2013 when Father sent Mother an e-mail (Defendant's No. 2), indicating that he would no longer be exercising his

right to see Alec. Alec cannot be left alone for more than 30 minutes and Mother's alimony has terminated. Therefore in order for her to do anything to support herself and find a source of income, she needs to pay for coverage for Alec. She has taken to great lengths to get aid to help these costs and it is only the portion she has paid out of pocket which she seeks reimbursement for.

* * *

D. **Bar Mitzvah**

The parties have stipulated that **Father owes $3,531.00**.

E. **Camps**

[Therapeutic horseback riding] is not exactly a camp, nor is it medical. Father took Alec approximately half of the time. He is willing to pay 50% of this bill and the Court agrees that 50% is appropriate. Accordingly, **Father owes $4,044 for the riding program**.[2]

F. **College Expenses**

The Court has determined that the following expenses are subject to being shared under the Agreement . . . . Since he has paid $4,510, **he owes Mother $18,785.75**.

G. **Current Income for Each Party**

* * *

Father is an electro-mechanical engineer and is working for himself hoping to develop a very lucrative patent and is not currently applying for full-time work. He testified that he receives a draw of $40,000 per year. At the time the agreement was signed, he was earning approximately $70,000 per year. He testified that if he were to seek full-time employment currently he could earn $60,000 per year. The Court finds that he is voluntarily impoverished and attributes income to him of $70,000 per year.

[2] The court included only $2,958.50 in its computation relative to the amount owed for camps. But, as we will discuss in more detail below, the court did not include any amount for therapeutic horseback riding in the judgment entered against Father.

H. **Summary**

Father owes Mother the following sums as reimbursement for expenses for the children advanced by her:

* * *

Total: $103,373.46

Under the terms of the attached stipulation, Mother owes Father a balance of $22,858.44. Accordingly, the net amount due from Father to Mother under the Agreement is $80,515.02.

I. **Child Support**

* * *

By stipulation, Father's child support obligation is to be computed retroactive to November 1, 2014.

J. **Attorney's Fees**

Although each parties' position has certain merit in this litigation, Mother is clearly the privileged suitor. She has only disability income and has used up all of her resources, advancing the expenses of the parties' two (2) children in addition to providing for 100% of Alec's physical needs, which are significant. In addition to not paying child support since 2011, Father admitted that he stopped helping with Alec in order to put pressure on Mother to settle the case. He may be shocked at the amount he now owes her, but he sat back and left her to make the bulk of the appointments, transport to the doctors, pay the bills, etc. He did not seek an accounting all this time and no wonder, because he owes his children's Mother substantial funds.

Mother is entitled to a substantial contribution to her attorney's fees in the amount of $15,000 [toward the total claim of $25,000].

(Emphasis added.)

On December 9, 2014, the trial court entered judgment in favor of Mother against Father for $80,515.02, and for $15,000 in attorney's fees. Father noted this timely appeal.

STANDARD OF REVIEW

Because this was an action tried without a jury, our review is conducted pursuant to Maryland Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

As this Court observed in *Mayor and Council of Rockville v. Walker*, 100 Md. App. 240, 256 (1994):

> It is hornbook law, memorialized in Md. Rule 8-131(c), that "[w]hen an action has been tried without a jury, the appellate court . . . will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of witnesses." This means that if, considering "the evidence produced at trial in a light most favorable to the prevailing party . . .," there is evidence to support the trial court's determination, it will not be disturbed on appeal. *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 41, 382 A.2d 564 (1978). Moreover, "[i]f there is any competent, material evidence to support the factual findings below, we cannot hold those findings to be clearly erroneous." *Staley v. Staley*, 25 Md. App. 99, 110, 335 A.2d 114, cert. denied, 275 Md. 755 (1975).

DISCUSSION

I. The $80,515.02 Judgment Entered Against Father

Father contends that the trial judge made several clearly erroneous factual findings, resulting in the entry of an excessive monetary award in favor of Mother. At the outset, we agree with Father regarding his assignment of error to the trial judge's calculation of medical expenses and work-related child care expenses, but we detect no error with respect to the trial judge's other findings.

A. Medical Expenses for the Children

With respect to the amount the trial court awarded for medical expenses, Father contends that the court made a mathematical error, which resulted in him being assessed $7,000 instead of $700. He asks that we reduce the judgment against him by $6,300 to rectify this error. Mother concedes that the $7,000 finding was clearly erroneous. We agree that the total amount owed to Mother should be reduced based on this computational error. The spreadsheet prepared by the trial judge shows that a $1,000 medical expense was advanced by Mother. Father was obligated to reimburse Mother for 70% of this expense. The line item should therefore have listed $700, not $7,000, as the amount owed by Father.[3] The judgment against Father must be reduced by $6,300 to adjust for this error.

B. Health Insurance.

Father contends that the trial court erred by determining that he owed Mother $43,633.00 for health insurance coverage.

The Agreement includes this provision regarding health insurance:

> Husband shall maintain his existing health insurance coverage, or equivalent coverage available to him, for the benefit of the Children so long as the coverage is available to him . . . If Wife has comparable health insurance coverage available for the children through her employment at a cost less than Husband's coverage, Wife shall cover the children thereon and Husband shall reimburse Wife for the amount of out-of-pocket premiums paid by her for the health care insurance for the Children. Husband shall continue to cover Wife under his medical insurance plan until the parties are granted an absolute divorce.

[3] It appears that in its spreadsheet, the trial court erroneously multiplied $1,000 by 7 rather than by 0.70.

In Paragraph 9(b) of Mother's Motion to Enforce Agreement, Mother stated that she incurred $7,949 in health insurance costs in 2007 and $8,671 in 2008 on behalf of Father and the children. She alleged that she deducted these amounts from the amount that she owed to Father from the sale of his interest in the family home. She alleged in her Motion that the parties discussed the matter, that she obtained health insurance through her employment at Paychex, and that Father agreed to reimburse her.

But, at trial, Mother did not limit her claim to those two years. She testified that she paid for the children's health insurance between June 2007 and December 2014 because Father was unable to do so. At trial, Mother testified that, at the time the Agreement was entered into by the parties, Father was working and providing health insurance coverage for Mother and the children. She further testified that, when she started working at Paychex in June of 2007, Father stopped paying for health insurance on behalf of her and the children. Mother also testified that she paid health insurance premiums between 2007 and 2014. The court received into evidence Mother's Exhibit Number 59, labelled "Health Insurance Reimbursement." Father did not object to this evidence being admitted, and did not argue at trial that the evidence was not properly within the scope of Mother's Motion to Enforce. The trial judge ordered Father to pay $43,633.00 to Mother to reimburse her for these costs.

Father argues on appeal: "Despite Wife's request for reimbursement of $16,620.00 for the years 2007 and 2008 in her Motion, the Court determined that Husband owed the sum of $43,633.00 to Wife."

Maryland Rule 5-103 (a) provides:

> **(a) Effect of Erroneous Ruling**. Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and
>
> (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was required by the court or required by rule; . . . .

Because Father failed to timely object to Mother's evidence reflecting the amounts she had paid for health insurance for the entire period of June 2007 through December 2014, it was appropriate for the trial court to consider all of those payments when the court endeavored to conduct a comprehensive accounting as to amounts owed under the Agreement. The inclusion of this amount in the judgment against Father was not clearly erroneous.

C. Camps

Mother contends in her brief that the trial judge made a second computational error which weighs in favor of Mother and mitigates the relief that we should afford to Father based on a clearly erroneous calculation relative to medical expenses discussed above. We do not agree that any revision is required relative to the horseback riding therapy.

In the section of the trial judge's Opinion addressing the children's camp expenses, the trial court stated: "The net amount Father owes Mother is $2,958.50."

But, in the next paragraph of the Opinion, the judge stated that Father is also obligated to pay Mother for 50% of the $8,088 that Mother advanced for Alec's therapeutic riding program --- *i.e.*, $4,044.00. Nevertheless, in the final Summary section of the trial

judge's Opinion, the table does not include an additional $4,044.00; rather, it includes only $2,958.50 for camps.

With respect to the horseback riding program, the court expressly found: "This is not exactly a camp, nor is it medical." We see no error in that finding, and, as a consequence, even though Mother claims that the $4,044 claim was "inadvertently left out of the court's final calculation," we conclude the court did not err in failing to require Father to pay for half of the amount Mother spent on this activity. No adjustment to the judgment is required relative to the horseback riding expenses.

D. Work-Related Child Care

The trial judge ordered Father to pay $5,941.00 to Mother pursuant to the provision of the Agreement governing childcare expenses. Paragraph 8 of the Agreement provides:

> If neither party is available to care for the Children and alternate childcare is necessary, the parties agree that the cost of said childcare shall be shared equally with each parent to pay fifty percent (50%) of total childcare costs **in the event that childcare is necessary due to a work obligation.**

(Emphasis added.)

At trial, the court received into evidence Mother's Exhibit 58. Exhibit 58 was a document entitled "Care Providers." Mother testified that this document was "a recap of the payments I made to caregivers, but the ones that have not been reimbursed." She testified on direct and re-direct examination that she worked for Paychex, a human resources and payroll services provider until she injured her shoulder in an automobile accident. She returned to work but was subsequently released from employment at Paychex. On cross-examination, counsel for Father elicited testimony that Mother had not

been employed full-time in several years. But, on re-direct, Mother testified that she worked "basically close to a full-time job" securing scholarship money for their younger son and assisting other parents in securing scholarship money for their college-bound children, a service for which she would bill those parents. She testified that she was requesting reimbursement for childcare that she incurred due to her work obligations, and that the request was therefore within the scope of Paragraph 8 of the Agreement. Husband responded that Mother had made "no attempt to correlate any work hours with the times [she claimed] she paid for childcare."

The trial judge agreed with Mother, and found:

> Although it is true that Mother was not working full-time during the years these costs were incurred, she was attempting to develop her income by consulting on college scholarships and her experience helping their [younger son] obtain thousands of dollars in scholarships [that] saved the parties almost $80,000 and helped her develop her business.

We agree with Father's assertion that the trial court erred in finding that the childcare expenses Mother incurred relative to her efforts to secure scholarships were "necessary due to a work obligation," as the Agreement requires in order to qualify for joint payment. In *Lorincz v. Lorincz,* 183 Md. App. 312 (2008), we considered whether a parent was entitled to recover as "work-related child care expenses" the costs she incurred for daycare for her children while she attended law school. Although the child support at issue in *Lorincz* was sought pursuant to the Family Law Article, not a private contract between the parties as in the present case, our analysis in *Lorincz* guides us in our

interpretation of what constitutes a child care expense that is "necessary due to a work obligation" under the Agreement. In *Lorincz*, we explained:

> We turn first to the Mother's contention that the circuit court erred in denying her exception to the master's ruling that her $1,100 per month expense for child care during the school year at Virginia was not a cognizable "child care expense" within the contemplation of Family Law Article, § 12-204(g)(1). We repeat the definition.
>
> (g) Child care expenses. ---
>
> (1) Subject to paragraphs (2) and (3) of this subsection, actual child *care expenses* incurred on behalf of a child *due to employment or job search* of either parent shall be added to the basic obligation and shall be divided between the parents in proportion to their adjusted actual incomes.
>
> Quite obviously, that provision does not cover all "actual child care expenses incurred on behalf of a child" but only those particular child care expenses incurred "due to employment or job search." The General Assembly could, of course, have been more generous in its coverage, but it was not. It is not for judges, of course, to improve upon what the legislature did or did not do. **No matter how commendable the reason for incurring child care expenses, those expenses are not covered unless they are "due to employment or job search**." The child care expenses incurred by the Mother during her 12 weeks as a summer associate in New York are, for instance, a textbook example of what is meant by the phrase "due to employment." She needed to hire a babysitter so she could go to work. **The clear meaning of "due to employment" means due to actual current employment, not long range preparation for potential employment.** We deem the phrase "due to job search" to be similarly limited to a direct and immediate relationship between the child care and the job search and not to embrace some more distant and attenuated philosophical association between the two.

Lorincz, *supra*, 183 Md. App. at 322-23 (emphasis added).

Here, as in *Lorincz*, the child care costs claimed by Mother for the time she spent pursuing scholarships for her son were not "necessary due to a work obligation," regardless

of how laudable Mother's efforts were. Accordingly, we reverse that portion of the trial judge's opinion awarding Mother $5,941.00 for work-related child care expenses, and shall order that the judgment against Father be reduced by that amount.

E. College Expenses

Father contends that the trial court was overly inclusive as to what it considered "college expenses" requiring reimbursement by Father. Paragraph 4(B) of the Agreement provided that the parties would pay proportionate shares of certain college expenses:

> The parties agree that the cost of the Children's college education shall be divided on a pro rata basis, in the same percentage that each of their respective gross monthly income is to the total of both their gross monthly incomes with Wife's portion to be at least twenty-five percent (25%). The education costs shall be no more than four consecutive years at an accredited university or college. The parties' total obligation pursuant to this paragraph shall not exceed the costs for tuition, room and board, books and any other necessary fees billed directly by the college or university for a full-time in-state resident for four years at the University of Maryland.

Father contends the trial court erred in finding him responsible to reimburse Mother for some expenditures she claimed pursuant to Paragraph 4(B) of the Agreement. He maintains:

> [Mother's claim for] college expenses included many expenses that would have been incurred by Brent, or on his behalf, whether he attended college or not. The "college expenses" included attorney's fees for a possible guardianship and similar expenses that had no relationship to college. . . . There was no evidence supporting the trial court's broad interpretation of the parties' provision for payment of college expenses and the trial court abused its discretion in interpreting the college provision. Rather, [Father's] analysis of the college expenses presented a realistic picture of the actual college costs incurred and the obligation of each party for college expenses.

Mother responds that the court properly based its award on Defendant's Exhibits 60, 61, 62, and 66, which, she contends, represent "college related expenses to be shared by the parties." She maintains that, as to each of these exhibits, the trial court discounted thousands of dollars in the itemized expenses, and that the trial judge's findings as to reimbursable amounts were supported by evidence in the record, and therefore, not clearly erroneous.

As an example that supports Mother's argument on this point, Exhibit 60 is a spreadsheet that lists costs incurred by Mother by date, reason, amount, and what portion of that amount she claimed should be allocated to each parent based on the Agreement. The expenses itemized in Exhibit 60 total $34,550, but the trial court determined that, of this $34,550, the amount "subject to being shared under the Agreement" was just $19,591.00. Father's brief provides no detailed analysis of the trial court's award pursuant to the college expense provision in the Agreement. Although he asserts in his brief that the expenses awarded by the court "included attorney's fees for a possible guardianship," Mother points out that the court's award did not include reimbursement for the fees she paid a special needs trust attorney.

Mother argues in her brief:

> Although the Court did not set forth in its Opinion each and every line item that it included or excluded as a shareable college expense, the court's analysis and findings make clear that the Court did not allocate every single one of Wife's expenses to be shared and took the effort to discount unreasonable or inappropriate expenses from the total. It would be unreasonable to expect the trial court's opinion to set forth each and every expense it discounted or included in its analysis of several years' worth of data.

Under the "clearly erroneous" standard of appellate review applicable to these findings, we review the findings of the trial judge in the light most favorable to the prevailing party. Viewed in that light, we are not persuaded that the trial judge required Father to compensate Mother for expenses falling outside the category of "college expenses."

F. Recap

In summary, we conclude that the judgment that was entered against Father on December 9, 2014, in the original amount of $80,515.02 must be reduced by $12,271.00 to $68,244.02. This revised judgment will account for the arithmetical error of $6,300.00 discussed in Part I.A., and the erroneous award of $5,971.00 in non-work required childcare expenses discussed in Part I.D.

II. The Trial Judge's Award of Attorney's Fees to Mother

Father raises several issues regarding the trial court's award of attorney's fees, noting first that Mother failed to plead that she was seeking attorney's fees, and second, that Mother herself also breached the Agreement with respect to paying for the family home. Moreover, he argues, he was the party who first sought relief from the court by filing the Complaint for Absolute Divorce and the subsequent Motion to Enforce Settlement Agreement, and he alone expressly claimed attorney's fees.

With respect to Father's argument that Mother waived any claim for attorney's fees by failing to specifically plead it, we observe that Mother included a general prayer for relief in both her opposition to Father's Motion to Enforce and her own Motion to Enforce

the Agreement, asking the court to grant "such other and further relief as this court deems necessary and proper."

In *Terry v. Terry*, 50 Md. App. 53, 61 (1981), we discussed the adequacy of notice provided by a general prayer for relief. We explained:

> The relief given under such a prayer must be "warranted by the bill"; the bill, in other words, must contain such averments as fairly to apprise the respondent that the particular form of relief fashioned by the court is within the range of reasonable possibility if the complainant proves those averments.

(Emphasis added.)

In *Terry*, *supra*, we cited *McKeever v. Washington Heights Realty Corp.*, 183 Md. 216, 224 (1944), in which the Court of Appeals said: "While a complainant is not entitled to relief beyond the general scope and object of the bill or inconsistent with it, the court is left free to adopt any mode by which it can most readily and effectually administer that relief which the equity of the case may require."

Additionally, in the present case, Father failed to object when Mother introduced her counsel's invoices into evidence at trial.

Decisions concerning awards of counsel fees are committed to the discretion of the trial judge. *Petrini* v. *Petrini*, 336 Md. 453, 468 (1994) (citing *Jackson* v. *Jackson*, 272 Md. 107, 111-12 (1974)). "[T]he trial court 'is vested with wide discretion' in deciding whether to award counsel fees and, if so, in what amount." *Walker* v. *Grow*, 170 Md. App. 255 (2006) (citing *Malin* v. *Mininberg*, 153 Md. App. 358,435-36 (2003)).

The parties included in the Agreement a provision that permitted a court to award attorney's fees "as permitted by law," and also to award attorney's fees to a party "seeking to enforce th[e] Agreement":

> **14. COUNSEL FEES; COURT COSTS**
>
> Each party shall pay his or her own counsel fees incurred thus far in their litigation proceeding in the Circuit Court for Howard County, Case No. 13-C-06-64666 and any subsequent uncontested divorce proceedings. Each party hereby waives the right to assert any claim against the other party for counsel fees for legal services rendered to him or her at any time in the past, present, or future, except as permitted by law and except that if either party breaches any provision of this Agreement, or is in default thereof, said party shall be responsible for any reasonable legal fees incurred by the other party in seeking to enforce this Agreement which shall be awarded by a court of competent jurisdiction. The parties shall divide all courts costs for any future uncontested divorce proceeding, including any Master's fee, equally between them.

Here, Mother was seeking to enforce the Agreement, and the trial judge found that Father breached the Agreement by failing to pay substantial amounts. Moreover, part of the dispute between the parties related to child support, and the trial court was "permitted by law" to consider an award of counsel fees pursuant to Maryland Code (1984, 2012 Repl. Vol.), Family Law Article, § 12-103. Pursuant to § 12-103, the court may award fees "to either party" provided that it has "consider[ed]" the factors outlined in § 12-103(b).

Father further contends that he should not be required to pay attorney's fees because Mother also breached the Agreement by failing to tender the full amount due to Father for his interest in the home. Father argues: "[A]t least part of [Mother's] fees were incurred solely due to her breach of the agreement relating to the buyout. The Court's award ignores [Father's] fees incurred as a result of [Mother's] breach." Although Mother did breach the

Agreement by failing to timely pay the purchase price for buying out Father's interest in the jointly owned marital home, that aspect of the dispute was generally resolved by stipulation prior to the trial on Mother's motion. And the court awarded Mother only a portion of the $25,000 she claimed for attorney's fees. Under the circumstances, it was not an abuse of discretion for the trial court to award attorney's fees to Mother pursuant to her prayer for such other relief as the court deemed necessary and proper.

The court weighed the financial needs of the parties, Mother's role as sole caretaker of the parties' autistic son, and her reduced earning capacity due to an injury that made it difficult for her to continue to work at her previous employment. The trial judge wrote: "Mother is clearly the privileged suitor. She has only disability income and has used up all of her resources, advancing the expenses of the parties' two (2) children in addition to providing for 100% of Alec's physical needs, which are significant." Because the trial court made these express findings based on the record before it, we are satisfied that the trial judge did not abuse her discretion in entering an award for counsel fees. *Broseus v. Broseus*, 82 Md. App. 183, 200 (1990).

III. The Trial Court's Determination of the Parties' Incomes

Father contends that the trial court erred by finding him voluntarily impoverished and imputing to him a potential annual income of $70,000. In *John O.* v. *Jane O.*, 90 Md. App. 406, 423 (1992), we said: "Before an award may be based on potential income, the court must hear evidence and make a specific finding that the party is voluntarily impoverished."

In *Durkee* v. *Durkee*, 144 Md. App. 161, 182-83 (2002), we explained:

> A parent is voluntarily impoverished "'whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources.'" *Digges*, 126 Md. App. at 381, 730 A.2d 202 (quoting *Goldberger*, 96 Md. App. at 327,624 A.2d 1328). In *Wills* v. *Jones*, 340 Md. 480, 494, 667 A.2d 331 (1995), the Court of Appeals said that "voluntary" means that "the action [must] be both an exercise of unconstrained free will and that the act be intentional." A parent is not excused from support because of a tolerance of or a desire for a frugal lifestyle. *Moore* v. *Tseronis*, 106 Md. App. 275, 282, 664 A.2d 427 (1995). Indeed, if need be, the parent must alter his or her previously chosen lifestyle to satisfy a support obligation. *Sczudlo*, 129 Md. App. at 542, 743 A.2d 268.

"Two things are . . . required for a determination of voluntary impoverishment to withstand appellate scrutiny: a *voluntary* 'free and conscious' choice to be without sufficient resources *and* a *specific finding* of that 'free and conscious' choice." CYNTHIA CALLAHAN & THOMAS C. RIES, FADER'S MARYLAND FAMILY LAW (6th ed. 2016) § 6-12[a] (emphasis in original). Under the first step of the analysis, the court must conclude whether the parent is voluntarily impoverished. As we explained in *Jane O.*, *supra*, 90 Md. App. at 422:

> Some of the factors to be considered in determining whether a party is voluntarily impoverished include: (1) his or her current physical condition; (2) his or her respective level of education; (3) the timing of any change in employment or other financial circumstances relative to the divorce proceedings; (4) the relationship between the parties prior to the initiation of divorce proceedings; (5) his or her efforts to find and retain employment; (6) his or her efforts to secure retraining if that is needed; (7) whether he or she has ever withheld support; (8) his or her past work history; (9) the area in which the parties live and the status of the job market there; and (10) any other considerations presented by either party.

In *Durkee*, we explained the analysis a trial judge must conduct to determine how much income to impute to a party:

> Once a court determines that a parent has become voluntarily impoverished, the court must determine the amount of "potential income" to attribute to that parent, in order to calculate support under F. L. § 12-204 . . . Under F. L. § 12-201 (b) "income" is defined as:
>
> > (1) actual income of a parent, if the parent is employed to full capacity; or
> >
> > *(2) potential income of a parent*, if the parent is voluntarily impoverished.
>
> F. L. § 12-201(f) defines potential income as follows:
>
> *Potential income.* "Potential income" means income attributed to a parent determined by the parent's employment potential and probable earnings level based on, but not limited to, recent work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community.
>
> In determining a parent's potential income, the trial court must consider the following factors:
>
> 1. age
> 2. mental and physical condition
> 3. assets
> 4. educational background, special training or skills
> 5. prior earnings
> 6. efforts to find and retain employment
> 7. the status of the job market in the area where the parent lives
> 8. actual income from any source
> 9. any other factor bearing on the parent's ability to obtain funds for children.

Durkee, 144 Md. App. at 184-85 (emphasis in original) (citations omitted).

We are satisfied that the trial judge considered the relevant factors. *See Durkee, supra,* 144 Md. App. at 185 (The court "does not have to follow a script."). In the case at bar, the trial court stated:

> Father is an electro-mechanical engineer and is working for himself hoping to develop a very lucrative patent and is not currently applying for full-time work. He testified that he receives a draw of $40,000 per year. At the time the agreement was signed, he was earning approximately $70,000 per year. He testified that if he were to seek full-time employment currently he could earn $60,000. The Court finds that he is voluntarily impoverished and attributes income to him of $70,000 per year.

Father contends that the evidence before the trial court was insufficient to support imputing $70,000 in potential income to him. Noting the factors discussed above, Father argues:

> Other than the testimony of Husband that he was earning $70,000 at the time of the Agreement, there was not a shred of evidence that he had the ability to currently earn that income. Neither party presented any evidence as to the job market or job opportunities for Husband, No evidence was presented as to his assets. Based on the evidence adduced, the most the Court could have reasonably imputed, based on Husband's testimony as to what he could earn, was $60,000.

As we explained in *Durkee:*

> To be sure, "any determination of 'potential income' must necessarily involve a degree of speculation." *Reuter,* 102 Md. App. at 223, 649 A.2d 24. A parent's potential income "is not the type of fact which is capable of being 'verified,' through documentation or otherwise." *Id.* at 224, 649 A.2d 24. But, so long as the factual findings are not clearly erroneous, "the amount calculated is 'realistic', and the figure is not so unreasonably high or low as to amount to abuse of discretion, the court's ruling may not be disturbed." *Id.* at 223, 649 A.2d 24 (internal citation omitted); . . .

144 Md. App. at 187.

In the instant case, the trial court found that Father had previously been employed as an electro-mechanical engineer, but that he chose to pursue a patent rather than to apply for full-time employment. The court found that Father's pre-Agreement salary was approximately $70,000, whereas, at the time of trial, he took a draw of only $40,000 in order to devote his energies to the development of a patent that had the potential to be highly lucrative, but which had not yet become so at the time of trial. There was evidence that he had previously earned as much as $97,000, and he admitted he could earn $60,000 if he pursued other employment. As in *Durkee*, this evidence was sufficient to support the trial judge's finding that Father was voluntarily impoverished and could earn $70,000. Imputing $70,000 in potential income to Father was not an abuse of discretion because the trial judge took into consideration the following enumerated factors: Father's "educational background, special training or skills," "prior earnings," "efforts to find and retain employment," and his "actual income from any source." Accordingly, the trial judge did not err.

Father also contends that the trial court underestimated Mother's income because the court did not include pass-through income of $24,704 shown on her K-1. Although F.L. § 12-201(b)(1) defines actual income to include "income from any source," we observed in *Walker v. Grow*, 170 Md. App. 255, 278 (2006), that "the income reported on the shareholder's tax returns does not necessarily reflect what the individual actually receives." In other words, there is a distinction between taxable income and disposable income, and a court considering child support need not view all taxable income as "actual

income." The court "can consider whether" the taxable income shown on a tax return "was actually received by the parent" or was "not available for child support." *Id*. at 281.

Here, the court was persuaded that the taxable amount shown on Mother's K-1 was not actually available for financial support of the children. That finding was not clearly erroneous.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED IN PART AND REVERSED IN PART; JUDGMENT THAT WAS ENTERED IN FAVOR OF APPELLEE ON DECEMBER 9, 2014, REDUCED FROM $80,515.02 TO $68,244.02. ALL JUDGMENTS OTHERWISE AFFIRMED.

COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY APPELLEE.