Circuit Court for Montgomery County
Case No. 128701FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1536

September Term, 2016

PAMELA SUMMERS

v.

CHARLES HARMEL

Reed,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: January 5, 2018

Pamela Summers, Appellant, filed a complaint, in the Circuit Court for Montgomery County, seeking an absolute divorce from her then-husband, Charles Harmel, Appellee and Cross-Appellant. Judge Gary Bair of the Circuit Court for Montgomery County granted the parties an absolute divorce and awarded Ms. Summers rehabilitative alimony as well as a monetary award, but he denied her request for indefinite alimony. Ms. Summers noted an appeal, raising three questions for our review, which we have re-ordered for ease of exposition:

> I. Did the trial court err or commit an abuse of discretion in finding that Appellant was voluntarily impoverished and attributing income to her when she lacked a permanent residence and had not found any jobs to apply for?
>
> II. Did the trial court err or commit an abuse of discretion in awarding term alimony to Appellant based on the mere speculation that Appellee would retire within the next five years and without any evidence of what Appellee's income might be if and when he retires?
>
> III. Did the trial court err or commit an abuse of discretion in awarding Appellant alimony in the amount of $5,000.00 per month when such an award did little to alleviate the unconscionable disparity in the incomes and lifestyles of the parties?

Mr. Harmel filed a cross-appeal, raising four additional questions, which he asks us to address if we remand the case for reconsideration of the issue of alimony:

> I. Whether the trial court's finding that Turning Leaf, LLC and/or the Cabin Run Road property is marital property was clearly erroneous?
>
> II. Whether the trial court's finding that Appellee failed to meet his burden in demonstrating the use of non-marital funds for the purchase of the marital home was clearly erroneous?

> III. Whether the trial court erred and/or abused its discretion in ignoring the debt associated with the acquisition of Appellee's EMI stock?
>
> IV. Whether the trial court erred and/or abused its discretion in awarding Appellant a monetary award calculated as fifty percent of the marital property and a fifty percent interest in Appellee's deferred compensation assets, if as and when he receives such assets?

We shall affirm the award of rehabilitative alimony in this case and, as a result, need not and shall not reach the issues raised in the cross-appeal.

BACKGROUND

During the course of their marriage and at all times relevant to these proceedings, Mr. Harmel had been employed as Dealer Principal and President of Euro Motorcars, Inc. ("EMI"), in Bethesda and, at the time of trial, earned approximately $1.2 million per year, whereas Ms. Summers had been unemployed, having last worked as a pre-school teacher in 2013. Her highest annual income from employment was $28,943.00 in 2012, and her annual earnings exceeded $20,000 only three times between 1971 and 2013.

In 1998, shortly after the parties married, they purchased a home in Bethesda as tenants by the entirety and lived there until this action commenced. At the time of the divorce, that marital home was valued at approximately $1.4 million. In addition to the marital home (which was encumbered by a home equity line of credit of $231,725), Mr. Harmel (or, in one instance, a limited liability company, Turning Leaf, LLC, which he solely owned) owned additional assets, which Judge Bair determined to be marital

property[1]: a home in West Virginia, worth approximately $137,000; a 401(k) account worth nearly $650,000[2]; and stock in EMI and a related company, Euro Motorcars Collision Center ("EMCC"), valued at $2,050,000 and $83,000 respectively, which the court deemed to be deferred compensation.

Mr. Harmel had suffered from diabetes for nearly two decades, with its attendant complications, but, as he testified, he had been working a busy schedule, which included five ten-hour days from Monday to Friday, as well as every Saturday, and one Sunday, each month. He testified that he planned to retire in 2020, when his current employment contract terminates.

Following a three-day bench trial in the Circuit Court for Montgomery County, Judge Bair, upon finding that the parties had lived apart for the statutory period and that there was no hope of reconciliation, granted them an absolute divorce. He further granted Ms. Summers a monetary award of $969,935.50 (which she has received in full), as well as one-half of the total post-tax proceeds from the sale of Mr. Harmel's stock in EMI and EMCC and any future Stock Appreciation Rights ("SARS") payments, to be distributed on an "if, as, and when" basis. Judge Bair further ordered that Ms. Summers was entitled

[1] Under Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 8-201(e), "marital property" means "the property, however titled, acquired by 1 or both parties during the marriage" and includes "any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement."

[2] Judge Bair determined that approximately $450,000 of the 401(k) account constituted marital property.

to one half of the marital portion of Mr. Harmel's 401(k) account, in the amount of $224,591.

Judge Bair denied Ms. Summers's request for indefinite alimony, ruling instead that she would receive rehabilitative alimony of $5,000 per month from September 1, 2016 to April 30, 2021. In reaching that decision, Judge Bair credited Mr. Harmel's testimony that he would retire in 2020, considered the parties' exhibits and financial statements (discrediting in part Ms. Summers's statement of her monthly living expenses), and determined that Ms. Summers had voluntarily impoverished herself, imputing to her $20,000 in annual income.

Dissatisfied with both the duration and the amount of alimony she was awarded, as well as with the court's finding that she had voluntarily impoverished herself, Ms. Summers noted this appeal.

DISCUSSION

I. Motion to Dismiss

In his brief, Mr. Harmel has also filed a motion to dismiss the appeal, contending that, under the doctrine of acquiescence, Ms. Summers, having received in full a nearly one-million-dollar monetary award, "has waived the right to challenge the finding of involuntary impoverishment and/or the duration of the alimony awarded to her." We disagree.

Under the doctrine of acquiescence, "[t]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the

appeal is taken or by otherwise taking a position which is inconsistent with the right to appeal." *Dietz v. Dietz,* 351 Md. 683, 689 (1998) (quoting *Rocks v. Brosius,* 241 Md. 612, 630 (1966)). If that doctrine applies, we may dismiss the appeal, either on motion by a party or on our own initiative. Md. Rule 8-602;[3] *Chimes v. Michael*, 131 Md. App. 271, 287 (2000). As we see it, four decisions provide the framework for resolving this motion to dismiss. They are: *Lewis v. Lewis*, 219 Md. 313 (1959), *Dietz*, and *Turner v. Turner*, 147 Md. App. 350 (2002), in which the motions to dismiss were denied; and *Chimes*, in which the motion to dismiss was granted. We shall address these cases *seriatim*.

In *Lewis*, Mr. Lewis sued his wife for divorce *a vinculo* on the ground of voluntary separation; Mrs. Lewis answered that the separation was not voluntary because he had deserted her, and she prayed for alimony.[4] 219 Md. at 315. The chancellor issued an order awarding alimony *pendente lite* of $250 per month.[5] *Id.* Nearly two years later,

[3] Rule 8-602(a)(1) provides that, "[o]n motion or on its own initiative, the Court may dismiss an appeal" if it "is not allowed by these rules or other law[.]"

[4] A "divorce *a vinculo*," also known as a "divorce *a vinculo matrimonii*," is now known as an absolute divorce. *Black's Law Dictionary* 583 (10th ed. 2014). In contrast, a "divorce *a mensa*," also known as a "divorce *a mensa et thoro*," was a "partial or qualified divorce by which the parties were separated and allowed or ordered to live apart, but remained technically married," *id.* at 582-83; its closest modern counterpart is a limited divorce. *Id.* at 583.

[5] At the time the proceedings in *Lewis* took place, Maryland still maintained separate courts of law and equity. *See generally* Md. Rules of Procedure (1958) (subdividing rules into rules at law and rules in equity). Divorce was an equitable (continued)

Mrs. Lewis filed a cross-bill seeking a divorce *a mensa* on the ground of desertion and prayed for alimony. *Id.* Following a hearing, the chancellor dismissed the original bill and granted Mrs. Lewis a divorce *a mensa*, as well as permanent alimony of $500 per month and counsel fees. *Id.* Mr. Lewis noted an appeal, and Mrs. Lewis noted a cross-appeal, challenging the amount of alimony awarded. *Id.*

Mr. Lewis moved to dismiss the cross-appeal, on the ground that, in accepting the alimony payments, Mrs. Lewis was barred either "by estoppel or waiver from claiming an amount larger than that awarded." *Id.* at 316. The Court of Appeals, observing that the bar invoked by the husband was "a severe one [that] should not be extended," held that, if it were "applicable at all in a divorce case," it could not "be raised where the benefits accruing to the wife, by reason of the award, provide necessary support until the final adjudication of the case." *Id.* at 317. Accordingly, the Court denied Mr. Lewis's motion to dismiss. *Id.*

In *Dietz*, 351 Md. 683, the Court of Appeals applied the rule, articulated in *Lewis*, to a motion to dismiss an appeal challenging a monetary award. In 1979, shortly after the Dietzes' wedding, Mr. Dietz, his father, and his brother purchased a farm as joint tenants, with the father providing the down payment. *Dietz v. Dietz* ("*Dietz I*"), 117 Md. App. 724, 727 (1997), *rev'd*, 351 Md. 683 ("*Dietz II*"). The Dietz family then moved to the farm and lived there until 1990. *Id.* at 727-28. From 1979 to 1984, the father made the

(continued)
proceeding, and the judicial officer who presided over such a proceeding was known as a chancellor. *Black's Law Dictionary* 280.

mortgage payments from the proceeds of the family farming business, but, upon his retirement, the two brothers formed a partnership to operate that farm, and, thereafter, the partnership made the mortgage payments. *Id.* at 728. In 1990, the Dietz family moved to another residence, and, several years later, Ms. Dietz filed a divorce action. *Id.* She claimed, among other things, that both the farm and the partnership were marital property and that she was entitled to a share of both assets. *Dietz II*, 351 Md. at 686.

Following a "number of evidentiary hearings," the circuit court determined that the partnership was marital property and granted Ms. Dietz a monetary award of $245,000, but it denied her claim that Mr. Dietz's interest in the farm was also marital property. *Id.* The court further ordered that Mr. Dietz pay $20,000 within thirty days of the entry of judgment and the remainder of the award in monthly installments. *Id.* Ms. Dietz accepted the $20,000 payment several days prior to filing her appeal, and she thereafter continued to accept the ensuing monthly installments. *Id.* at 686-87. This Court, relying upon a narrow reading of *Lewis*, subsequently granted Mr. Dietz's motion to dismiss her appeal on the ground that, in accepting those payments, Ms. Dietz had waived the right to challenge the underlying judgment. *Dietz I*, 117 Md. App. at 740-41.

The Court of Appeals reversed and repeated its observation, that "the acquiescence doctrine 'is a severe one and should not be extended[.]'" *Dietz II*, 351 Md. at 695 (quoting *Lewis*, 219 Md. at 317). The Court reasoned that Mr. Dietz had not filed a cross-appeal and "[did] not contest the monetary award that was made" for his share in the partnership; consequently, "[t]here [was] nothing inconsistent between Mrs. Dietz's

acceptance of the monetary award that was made because of Mr. Dietz's Partnership interest and her request for an increase in the monetary award because of Mr. Dietz's interest in different property." *Dietz II*, 351 Md. 696.

In *Turner*, 147 Md. App. 350, the divorcing parties had been owners of Baltimore Stage Lighting, Inc. ("BSL"), a "very profitable" close corporation. *Id.* at 360-61. Their divorce case was intertwined with a parallel case involving the unwinding of their business interests, in which Ms. Turner, "a minority shareholder of BSL, sought equal ownership and control of the Company." *Id.* at 361. Ultimately, the circuit court granted Ms. Turner a monetary award of approximately $500,000 and indefinite alimony of $2,000 per month in the divorce case, and it further decreed that the monetary award was payable in two installments, the latter due within six months after the entry of judgment. *Id.* at 372-75. Ms. Turner thereafter appealed, challenging various rulings in the parallel corporate case as well as the amount of the alimony award. *Id.* at 362. During the pendency of that appeal, Ms. Turner obtained a writ of garnishment against Mr. Turner because he had failed to pay the court-ordered installments of the monetary award, which he did not satisfy until seven months after the filing of the notice of appeal. *Id.* at 378.

Mr. Turner filed a motion to dismiss Ms. Turner's appeal, contending that, as she had "'pursued' and 'collected by judicial enforcement' a monetary award in excess of $500,000," she "[could not] now attack any element of the judgment." *Id.* at 379. We denied that motion, reasoning that Mr. Turner "suggested that the alimony award was adequate precisely because of the income that the monetary award was expected to

produce," thereby conceding that Ms. Turner needed the monetary award "as a component of her support"; that Mr. Turner had not filed a cross-appeal; and that Ms. Turner had not acquiesced in the judgment because she sought only an increase in alimony, not a change in the monetary award. *Id.* at 383-84.

In *Chimes v. Michael*, 131 Md. App. 271, another divorce case, the wife, Ms. Michael, had been an employee of America Online from its infancy and owned stock options "worth more than $10 million before taxes." *Id.* at 274. In granting the parties an absolute divorce, the circuit court awarded the husband, Mr. Chimes, "the use and possession of the family home and car, child support, a monetary award of $1,493,423.20, and an 'if, as and when' order directing the future distribution of stock options that were not yet fully vested." *Id.* at 274-75. "The court divided equally between the parties the marital property other than the stock options, including monetary proceeds resulting from the exercise of more than $1 million in options." *Id.* at 275. The division of the remaining stock options depended upon whether they had vested: "the court divided vested but unexercised options 75 percent to Michael and 25 percent to Chimes" and rolled the value of the vested options into Chimes's monetary award. *Id.* The non-vested options were to be divided similarly, but subject to a formula that excluded "from division a portion of the options that increase[d] with time" so that the longer Michael waited to exercise her options, the less money Chimes would receive. *Id.* "Michael fully satisfied the monetary award judgment, and Chimes accepted a sum representing the entire award," but he nonetheless appealed, challenging the circuit

court's division of the stock options, as well as the amount of child support the court ordered Michael to pay. *Id.*

Michael filed a motion to dismiss "based on the fact that Chimes had been paid and accepted the monetary award before he filed a notice of appeal." *Id.* at 276. We granted that motion in part, concluding that Chimes could not, on appeal, challenge the division of the stock options. We noted that the Maryland equitable distribution scheme encompasses a "unitary plan for the distribution of assets" and that the distinction Chimes sought to draw between vested and non-vested option was an "artificial" one. *Id.* at 283-84. Moreover, we reasoned, *Chimes* was distinguishable from *Dietz* because Ms. Dietz had received only a small fraction of the total award at the time of her appeal, and "the scheme of monthly payments" in that case could be analogized to alimony, whereas Chimes, in contrast, had already received a "large lump sum award," which lacked the "support-like effect of the payments made in *Dietz*." *Chimes*, 131 Md. App. at 286 (footnote omitted). We therefore held that Chimes's challenges to the circuit court's rulings on equitable distribution and the adequacy of the monetary award were barred by the acquiescence doctrine. *Id.* at 287.

Applying the teachings of these decisions to the matter before us, we conclude that Ms. Summers has waived neither the right to challenge the finding of involuntary impoverishment nor the duration and amount of the alimony awarded to her. In her appeal, Ms. Summers is not challenging the amount of the monetary award, and it is immaterial that Mr. Harmel has filed a cross-appeal. As in *Turner*, Ms. Summers did not

acquiesce in the amount and duration of alimony; indeed, she seeks only an increase in alimony, not a change in the monetary award. *Turner*, 147 Md. App. at 383-84. We know of no reported decision in Maryland which holds that a party is precluded from appealing an award of alimony by that party's acceptance of a monetary award; *Chimes* did not so hold. Accordingly, we deny Mr. Harmel's motion to dismiss the appeal, and we now turn to the merits of Ms. Summers's appeal.

II.

Maryland Rule 8-131(c) governs our standard of review:

> **(c) Action Tried Without a Jury.** 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.

Thus, we accept the circuit court's factual findings unless they are clearly erroneous. "A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it." *Anderson v. Joseph*, 200 Md. App. 240, 249 (2011) (citations and quotations omitted).

The clearly erroneous standard does not, however, "apply to a trial court's determinations of legal questions or conclusions of law based upon findings of fact." *Elderkin v. Carroll*, 403 Md. 343, 353 (2008) (citation and quotation omitted). We review such determinations *de novo*. *Id.*

As for those matters left to the circuit court's discretion, we observe the following standard:

> [An abuse of discretion occurs] 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.
>
> * * *
>
> The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

Sumpter v. Sumpter, 436 Md. 74, 85 (2013) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994) (en banc)) (internal citations omitted).

III.

Ms. Summers contends that the circuit court erred in finding that she was voluntarily impoverished. This contention has no merit.

There is no statutory definition of "voluntary impoverishment," but "the courts have held," in the child support context, "that a parent is 'considered "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[.]'" *St. Cyr v. St. Cyr*, 228 Md. App. 163, 179 (2016) (quoting *Wills v. Jones*, 340 Md. 480, 490 (1995)). Although the "Family Law Article does not expressly require a trial court to consider a spouse's voluntary impoverishment or potential income for alimony purposes," instead setting forth, in "more general terms," the factors a court must consider in arriving at a "fair and equitable award,"[6] the court

[6] *See* FL § 11-106(b).

nonetheless "may consider the potential income of a voluntarily impoverished spouse when it considers an alimony request." *St. Cyr*, 228 Md. App. at 179-80 (citations and quotations omitted). "The trial court's factual findings on the issue of voluntary impoverishment are reviewed under a clearly erroneous standard, and the court's ultimate rulings under an abuse of discretion standard." *Long v. Long*, 141 Md. App. 341, 352 (2001).

This Court has set forth a multi-factor test to determine whether a party is voluntarily impoverished:

> (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.

John O. v. Jane O., 90 Md. App. 406, 422 (1992), *disapproved on other grounds by Wills*, 340 Md. at 493-94.

In determining that Ms. Summers was voluntarily impoverished, thereby imputing $20,000 per year income, Judge Bair made the following findings:

> Based on [the factors in *John O. v. Jane O.,* 90 Md. App. 406], the Court finds that Plaintiff-Wife has voluntarily impoverished herself. Although Plaintiff-Wife's work history is somewhat limited, she does have a bachelor's degree and certification to teach pre-school, as well as experience performing faux interior painting. However, since the start of these proceedings, Plaintiff-Wife has not updated her resume, applied to any job, or taken any meaningful steps toward finding gainful employment. Relying on the report of the Plaintiff-Wife's vocational rehabilitation expert, which finds that Plaintiff-Wife could potentially earn roughly $20,000 to $28,000 per year, the Court shall impute a yearly income of $20,000 to Plaintiff-Wife.

Ms. Summers has failed to demonstrate that those factual findings were clearly erroneous. *Long*, 141 Md. App. at 352. Indeed, they were based, in significant part, upon the testimony of her own vocational rehabilitation expert. Moreover, Ms. Summers admitted that she had not updated her resume, sent her resume to prospective employers, sought any job interviews, or done any networking to secure employment after the parties' separated. There was evidence that Ms. Summers was capable of earning $20,000 to $28,000 annually, although Ms. Summers had not availed herself of the opportunity.

Nor has Ms. Summers demonstrated that Judge Bair's ultimate ruling was tainted by an abuse of discretion. *Id.* Indeed, the modest amount of income imputed to her, $20,000 per year, corresponds to full-time employment at $10 per hour, an amount

commensurate with an entry-level job,[7] hardly an impossible or unrealistic burden. We can hardly say that Judge Bair's ruling was "beyond the fringe of what [this Court] deems minimally acceptable" or that "no reasonable person would take the view adopted by the [trial] court[.]" *Sumpter*, supra, 436 Md. at 85.

IV.

Ms. Summers contends that the circuit court erred and abused its discretion in not awarding indefinite alimony. This contention is without merit.[8]

[7] Our reasoning is as follows: Assuming 40 hours per week employment and 2 weeks of vacation per year, 40 hours per week times 50 weeks worked per year equals 2,000 hours worked per year; 2,000 hours worked per year times $10 per hour equals $20,000 per year. We further note that, currently, the minimum wage in Montgomery County is $11.50 per hour. *See* Md. Rule 5-201 (governing judicial notice of facts "not subject to reasonable dispute").
See also Maryland Minimum Wage and Overtime Law Montgomery County (available at https://www.dllr.state.md.us/labor/wages/minimumwagelawmont.pdf) (last visited Dec. 21, 2017).

[8] Although we do not rely on the case to support our holding, we note that there is jurisprudence for the proposition that a finding of voluntary impoverishment may preclude an award of indefinite alimony. *See Fichtel v. Fichtel*, 141 So. 3d 593, 594-95 (Fla. Dist. Ct. App. 2014). We think it is noteworthy that, under Florida law, upon dissolution of a "long-term marriage," that is, a "marriage lasting more than seventeen years," there is a rebuttable presumption in favor of "permanent" alimony. *Id.* at 595. Notwithstanding that presumption, the *Fichtel* court held that the trial court had not abused its discretion in refusing to award permanent alimony where it had "questioned Former Wife's claim that she was unable to work due to illness and believed that her voluntary unemployment negated her need for support on a permanent basis." *Id.* *Compare id.* (stating that, under Florida law, there is a rebuttable presumption in favor of an award of permanent alimony following the dissolution of a "long-term marriage") with *Karmand v. Karmand*, 145 Md. App. 317, 330 (2002) (observing that, under Maryland law, "indefinite alimony should be awarded only in exceptional circumstances") (citation and quotation omitted).

We begin with the observation that the entire section of Ms. Summers's brief, raising the contention that she should have been awarded indefinite alimony, does not contain a single citation of legal authority, whether case, statute, or rule. As we observed in *Collins v. Collins*, 144 Md. App. 395 (2002), it "is not our function to seek out the law in support of a party's appellate contentions." *Id.* at 438 (citation and quotation omitted). Although "we are not obliged to consider [Ms. Summers's] arguments," we shall exercise our discretion to address them briefly. *Benway v. Maryland Port Admin.*, 191 Md. App. 22, 32 (2010).

Because "the objective of alimony is to assist spouses in becoming self-supporting and not to provide a lifetime pension, indefinite alimony should be awarded 'only in exceptional circumstances.'" *Karmand v. Karmand*, 145 Md. App. 317, 330 (2002) (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 142 (1999), *cert. denied*, 358 Md. 164 (2000)). There are "two exceptions to the guiding principle that alimony be temporary and rehabilitative," which are set forth in Family Law Article ("FL"), § 11-106(c). *Karmand*, 145 Md. App. at 328. Under the first exception, indefinite alimony may be awarded "if the court finds that . . . due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting[.]" FL § 11-106(c)(1). And under the second exception, indefinite alimony may be awarded "if the court finds that . . . 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." *Id.* § (c)(2).

A trial court's factual findings under FL § 11-106(c) (*i.e.*, whether "the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting" or whether "the respective standards of living of the parties will be unconscionably disparate") are questions of fact, subject to review under the clearly erroneous standard. *Turner*, *supra*, 147 Md. App. at 390 (citation omitted). The court's ultimate decision whether to grant indefinite alimony is reviewed for abuse of discretion. *Karmand*, 145 Md. App. at 336.

As for the first ground for awarding indefinite alimony, Ms. Summers does not expressly argue that she qualifies under the statutory exception, that is, that "due to age, illness, infirmity, or disability, [she] cannot reasonably be expected to make substantial progress toward becoming self-supporting[.]" FL § 11-106(c)(1). Instead, she relies on the testimony of her vocational rehabilitation expert that she lacks "the teaching certification to be a preschool teacher in the public school system," does not have "any significant computer skills," and faces "issues of potential age discrimination." Given her failure to develop this argument, we shall not further address it. *See* Md. Rule 8-504(a)(6) (providing that an appellate brief shall include "[a]rgument in support of the party's position on each issue").

With respect to the second ground for awarding indefinite alimony, that "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)(2), Ms. Summers complains that Judge Bair apparently relied upon Mr. Harmel's testimony that he planned to retire within five years. According to Ms. Summers, Judge Bair "had no way [of] knowing that" Mr. Harmel would, in fact, do so and that it was "sheer speculation" for him to so conclude.

Her argument ignores, however, the evidence in the record concerning Mr. Harmel's poor health, including the fact that he suffered from diabetes, neuropathy of the feet, hypertension, and "Charcot foot," which, his endocrinologist testified, is "a bowling ball at the bottom of a foot." Indeed, as Judge Bair observed, Michael Dempsey, M.D., an expert in the treatment of diabetes who treated Mr. Harmel, testified that Mr. Harmel had failed to follow his recommendation to change his lifestyle and work habits and further opined that most people in Mr. Harmel's condition do not work. Judge Bair was obviously permitted to credit Dr. Dempsey's testimony and to conclude, apparently, that Mr. Harmel would, within the next five years, take Dr. Dempsey's advice and curtail his work schedule. *See Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (stating that, "[i]n its assessment of the credibility of witnesses, the Circuit Court was entitled to accept—or reject—*all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence").

Ms. Summers further ignores the evidence that Mr. Harmel's current employment contract expires on April 9, 2020 and there is no indication that it will be extended.

Judge Bair could properly credit this evidence and conclude that Mr. Harmel would follow through with his stated intention to retire within the next five years, notwithstanding Ms. Summers's disparagement of that testimony as Mr. Harmel's "self-serving statement . . . of an intent to retire someday[.]"

There was substantial evidence in the record to support Judge Bair's findings that Mr. Harmel would retire within five years and that, consequently, the parties' standards of living would not be unconscionably disparate after Mr. Harmel's anticipated retirement; therefore, these findings were not clearly erroneous. *Anderson*, *supra*, 200 Md. App. at 249. Nor can we say, given the statutory preference for rehabilitative rather than indefinite alimony, *Karmand*, 145 Md. App. at 330, that Judge Bair's ultimate decision not to award indefinite alimony was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable," *Sumpter*, *supra*, 436 Md. at 85, and therefore, there was no abuse of discretion.

V.

Finally, Ms. Summers challenges the amount of alimony awarded. She complains that, although Judge Bair found that Mr. Harmel "had the ability to pay substantial alimony," he "did not award [her] alimony sufficient to meet her reasonable monthly needs, much less to alleviate any unconscionable disparity in the parties' incomes and lifestyles." According to Ms. Summers, the alimony award was less than the amounts

Mr. Harmel disburses each month as "gifts" and for "dining out [and] unreimbursed business expenses."

In determining the amount and duration of an alimony award, "a trial court must consider the twelve factors enumerated in" FL § 11-106(b).[9] *Boemio v. Boemio*, 414 Md.

[9] FL § 11-106(b) provides:

> In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:
>
> (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;
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> (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;

(continued)

118, 125 (2010). The court's determination "will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong." *Id.* at 124 (citations and quotations omitted).

Judge Bair made the following factual findings under FL § 11-106(b):

> *1. The ability of the party seeking alimony to be wholly or partly self-supporting.*
>
> It is unlikely that Plaintiff-Wife will be able to become wholly self-supporting without an award of alimony. Plaintiff-Wife is 63 years old and suffers from various minor health problems. She has a bachelor's degree in fine arts and a Child Development Associate certificate, but her work history is quite limited and she never earned more than $28,000 in one year. Additionally, as Kathleen Sampeck [a vocational rehabilitation specialist] testified, Plaintiff-Wife is not eligible to teach in public school because she lacks an undergraduate degree in education and would likely be unable to find work as an administrative assistant or receptionist due

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(continued)

> (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.

to a lack of computer skills. While Plaintiff-Wife could find employment as a preschool teacher or nanny, her income would likely be limited to a range of $20,000 to $28,000.

In approximately two years, when Defendant-Husband has reached full retirement age, Plaintiff-Wife will also be eligible to receive one half of Defendant-Husband's social security benefits, which would provide an additional $1,360.50 in monthly income. Based on the potential income from employment as a nanny or preschool teacher in addition to social security benefits, it is likely that Plaintiff-Wife will be able to make significant progress toward becoming self-supporting in the next few years. Additionally, Plaintiff-Wife will be receiving a large monetary award that will not only provide a significant nest egg but also potential investment income. Plaintiff-Wife will also receive one half of the marital portion of Defendant-Husband's 401k when he retires, which is currently valued at $449,182. Upon Defendant-Husband's retirement, Plaintiff-Wife will also receive one half of the proceeds from the sale of the EMCC and EMI stock, which are currently valued at $1,672,112. Given Plaintiff-Wife's ability to receive Social Security benefits, her ability to find employment earning approximately $20,000 per year, the substantial monetary award to be made, and significant future income from Defendant's 401k and the sale of the EMCC and EMI stock, Plaintiff-Wife does have the ability to become wholly self-supporting in the future.

2. The time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment.

It is unlikely that Plaintiff-Wife will require additional education or training to work as a nanny or preschool teacher. However, her Child Development Associate certificate would need to be renewed.

3. The standard of living established during their marriage.

The parties enjoyed a very high standard of living during their marriage. The parties lived in a home valued at roughly 1.4 million dollars, took frequent vacations, and regularly purchased new vehicles.

[*4. The duration of the marriage.*

The parties were married on June 7, 1998, and, thus, have been married for approximately eighteen years.

5. The contributions, monetary and nonmonetary, of each party to the well-being of the family.

The parties were married on June 7, 1998 and have both made significant contributions to the well-being of the family. While Defendant-Husband was the primary source of income for the family, Plaintiff-Wife managed the household. Due to these roles, Defendant-Husband has accrued significantly more assets than Plaintiff-Wife, despite both parties contributing to the well-being of the family.

6. The circumstances that contributed to the estrangement of the parties.

The estrangement of the parties was the result of a mutual growing apart due to continued conflict over the course of the marriage. Plaintiff-Wife testified extensively regarding alleged verbal and emotional abuse on the part of Defendant-Husband. However, Defendant-Husband denied any such abuse and maintained that Plaintiff-Wife was unhappy with the marriage very early on, as evidenced by her contacting a divorce attorney a few years into the marriage. Despite these competing perspectives, it is clear that both parties were engaged in regular and continued conflict over the course of the marriage, which resulted in the current proceedings.

In addition to the conflict between the parties, the Court also notes that Defendant-Husband's affair with Ms. Lee contributed to the breakdown of the marriage. Although divorce proceedings had already been initiated when Plaintiff-Wife learned that Defendant-Husband had been providing financial support to Ms. Lee, there can be little doubt that Defendant-Husband's actions contributed to the irreconcilable nature of the parties' current dispute. Although Defendant-Husband claims that his relationship with Ms. Lee was purely platonic prior to the initiation of these divorce proceedings and that she has been staying overnight in the marital home to "cook breakfast," the Court finds that those claims are not credible.

7. The age of each party.

Plaintiff-Wife is currently 63 years old. Defendant-Husband is currently 64 years old.

8. The physical and mental condition of each party.

Plaintiff-Wife has various health problems, including migraines, asthma, and arthritis. She has undergone surgery for a shoulder replacement and has had a hysterectomy. Defendant-Husband has somewhat more severe health issues primarily surrounding diabetes, including suffering from "Charcot foot."]

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.

Defendant-Husband is fully capable of meeting both his own and the Plaintiff-Wife's needs through an award of alimony. Excluding the one-time SARS payment made in 2015, Defendant-Husband's average yearly income over the last five years was $1,228,139.38. Furthermore, Defendant-Husband lists his monthly expenses as totaling $39,000 per month. Given a monthly surplus of roughly $62,844, Defendant-Husband is capable of meeting Plaintiff-Wife's needs as well as his own.

However, Defendant-Husband's current employment contract is set to expire on April 9, 2020. Given Defendant-Husband's age and significant health problems, there is a strong possibility that his employment will terminate in 2020, or potentially even earlier. Furthermore, Defendant-Husband testified that he has no intention of working beyond the end of his contract, and the new owners have expressed no intention of retaining him. Based on these circumstances, while Defendant-Husband is currently able to meet both Plaintiff-Wife's needs as well as his own, it is unlikely that he will continue to be able to provide substantial support upon his retirement.

10. Any agreement between the parties.

N/A

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.*
> . . . Briefly, the M-NMP Chart details what each party has by way of assets, including retirement benefits; the Court has considered the awards made pursuant to § 8-205 [monetary award]; and the parties' incomes and obligations are detailed on their financial statements.
>
> *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.*
> N/A

Moreover, Judge Bair made findings regarding Ms. Summers's financial statement and her claimed monthly living expenses of $17,581.13, apparently discrediting that evidence and concluding that that amount was overstated:

> [M]any of these expenses are estimates of future costs. Plaintiff-Wife testified that she has recently been living with friends and is not currently paying the $2,300 per month listed in her financial statement. Furthermore, Plaintiff-Wife lists an expense of $1,075 per month for a housekeeper that she is not currently employing. The financial statement also contains a $3,333 monthly expense for travel, but Plaintiff-Wife testified that she had only taken one vacation since the parties separat[ed], which cost approximately $2,000. Finally, Plaintiff-Wife lists $2,000 per month in credit card payments, however, her total credit card debt is only $28,062.95, and Plaintiff-Wife admitted that the minimum payment was well below the $2,000 figure listed on her financial statement.

Judge Bair, based upon his analysis of the statutory factors, the monetary award of $969,935.50 to Ms. Summers, her monthly living expenses, his finding that she had "the

ability to earn approximately $3,000 per month through social security and employment," and the "transfer [to her] of 50% of the marital portion of [Mr. Harmel's] pension," amounting to an additional $224,591, concluded that she "can be reasonably expected to become self-supporting" by the time of Mr. Harmel's anticipated retirement and that, in the meantime, an alimony award of $5,000 per month, through April 2021, "is appropriate."

None of the factual findings made by Judge Bair, in his assessment of either the FL § 11-106(b) factors, Ms. Summers's monthly living expenses, or her other financial resources, was clearly erroneous. *Omayaka*, *supra*, 417 Md. at 659 (discussing a trial judge's wide latitude in crediting "*all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence"). Although Ms. Summers complains that the amount of the award is "little more than loose change," she makes no showing that Judge Bair's determination of the amount of alimony "was clearly wrong" or that he exercised his discretion "arbitrarily." *Boemio*, 414 Md. at 124.

MOTION TO DISMISS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.