Circuit Court for Prince George's County
Case No. CAD-19-39619

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2062

September Term, 2021

REGINALD TURNER

v.

BEVERLY A. JONES

Leahy,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 19, 2022

This case presents for our review the circuit court's grant of a monetary award in the amount of $105,712 to the Appellee, Beverly Jones ("Ms. Jones"), from the Appellant, Reginald Turner ("Mr. Turner"), which represented Ms. Jones's interest in one of the two properties owned by the parties during their marriage. In addition to granting Ms. Jones a monetary award, the circuit court also granted Ms. Jones's motion for specific performance of a contract, which consisted of three notarized documents, and ordered Mr. Turner to execute a quit claim deed to Ms. Jones for the parties' former marital home. In doing so, the circuit court excluded the former marital home and other assets from its analysis when considering a monetary award.

Mr. Turner filed a timely appeal from the circuit court's order and submitted three questions for our review, which we consolidate and reword as follows:[1]

[1] Mr. Turner presents the following questions in his brief:

I. "Did the trial court abuse its discretion when it granted Wife's Motion for Specific Performance absent a hearing on the merits because a genuine dispute of material fact existed[?]"

II. "Did the trial court abuse its discretion in finding that a contract existed between the parties for which a Motion for Specific Performance could be granted because the alleged contract lacked consideration[?]"

III. "Did the trial court abuse its discretion and fail to follow proper statutory procedure in ordering Husband to pay Wife a marital award from the equity in Husband's Cheltenham property because the findings are not supported by substantial evidence due to:

a. The court having omitted an analysis of Md. Code Family Law, Section 8-205 Factors at the time of making the marital award;

b. The court having mischaracterized the parties' assets;

(Continued)

I. Did the circuit court err when it found the existence of an enforceable agreement between the parties and granted Ms. Jones's motion for specific performance without a hearing on the merits?

II. Did the circuit court abuse its discretion when it ordered Mr. Turner to pay Ms. Jones a monetary award of $105,712, without first conducting an analysis of the eleven factors set forth in Section 8-205(b) of the Family Law Article of the Maryland Code?

For the reasons explained below, we affirm the circuit court's grant of Ms. Jones's motion for specific performance upon a finding that there existed an enforceable agreement between the parties. We conclude that the circuit court abused its discretion, however, in granting a monetary award to Ms. Jones without conducting the requisite analysis of the factors listed under the Family Law Article of the Maryland Code (1984, 2019 Repl.) ("FL"), section 8-205(b). Accordingly, we vacate the judgment of the monetary award and remand the case to the circuit court for analysis under the FL § 8-205(b) factors. In all other judgments, we affirm.

BACKGROUND

The Parties' Marriage

The parties married in 1988, in Prince George's County, Maryland. Two months after they were married, the couple purchased a home located on Edison Lane in Clinton, Maryland ("Clinton property"), which remained their primary residence until February

c. The court having ignored Wife's counsel's proffer about Wife waiving any interest in Husband's home;

d. The court having failed to permit testimony regarding the parties' split of their Ally Certificate of Deposit ("CD"); and

e. The court having failed to balance the equities in ordering Husband to pay Wife a marital award[?]".

2013.he mortgage on the Clinton Property was paid off in 1997. No children were born to the couple or adopted by them during the marriage.

2005 Oral Agreement to Waive Retirement Benefits

Ms. Jones worked at Pepco, now Exelon, for 33 years from 1972 until she retired in 2005.Mr. Turner worked as the Director of Administration in the District of Columbia Courts system from 1977 until he retired in 2019.During the initial hearing on the motion for specific performance on March 17, 2021, Mr. Turner testified that when Ms. Jones retired in 2005, he agreed to waive "[his] rights to [Ms. Jones's] retirement when she retired, with the understanding that when [he] retired, she would waive [her] [sic] rights to retirement. "Mr. Turner signed a waiver to that effect in 2005. Upon retiring, Ms. Jones began receiving the full portion of her pension benefits. No formalized writing was executed, however, memorializing Ms. Jones's commitment to waive her rights to Mr. Turner's pension benefits when he retired

2013 Separation

On or about February 2, 2013, after 25 years of marriage, Mr. Turner informed Ms. Jones that he wanted to separate and move into his own home**.** Ms. Jones testified that she believed Mr. Turner "just need[ed] to get [his] head clear, because he had been going through some issues, and . . . he needed some space." Ms. Jones offered to let Mr. Turner utilize her parents' vacant home. Mr. Turner wanted to live in his own home.

The disputes giving rise to the instant appeal were queued up by a series of events that began later that same month. Mr. Turner approached Ms. Jones regarding a house he

wished to purchase located on Marlboro Woods Drive, in Cheltenham, Maryland. ("Cheltenham property"). The parties then exchanged three documents.

The Contract Documents

On February 20, 2013, the parties, individually, signed three documents that were also notarized. First, Ms. Jones signed her name on a document that contained the following statement:

> Please be advised I[,] Beverly Jones[,] relinquish all rights to Reginald Turner's retirement annuity.

In a second document, Ms. Jones affirmed, by her signature, that:

> As Reginald Turner proceeds to purchase the property for settlement on February 28, 2013, please be advised that I, Beverly Jones, do have ownership interest and financial obligation on property located at [] Edison Lane, Clinton, MD. There will be no monthly financial support needed from Reginald Turner to maintain the Edison Lane home after his property settlement on February 28, 2013.

Mr. Turner signed his name under the following statement on the third document:

> Upon successful settlement on February 28, 2013, I, Reginald Turner, relinquish all rights and ownership to the property located at [] Edison Lane, Clinton, MD. I will also sign the Quick [sic] Claim Deed form at that time.

Ms. Jones signed only the first two documents and Mr. Turner signed only the third document. All three documents were notarized on the same day by the same notary. The circuit court found that collectively, the documents operated to form a valid agreement.

Mr. Turner successfully closed on the Cheltenham property on or about February 28, 2013, and the parties have lived separately ever since. Mr. Turner, however, never fulfilled his promise to execute the quit claim deed.

The Parties' Divorce Proceedings

In 2019, Mr. Turner filed a complaint for absolute divorce in the Circuit Court for Prince George's County, Maryland. The divorce proceeding was postponed three times because of the COVID-19 pandemic.

February 18 Hearing

The first hearing in the divorce case was held virtually on February 18, 2021. After the parties testified, it was evident that the chief contentions in the divorce were centered on the two homes acquired during the marriage, for which the parties failed to obtain any appraisals. To wit, appraisals were required for: (1) the Clinton property, titled as tenants by the entirety and served as the marital home from 1997 until Mr. Turner moved out in 2013; and (2) the Cheltenham property, titled only in Mr. Turner's name, but which was purchased, in part, using marital funds from a joint bank account.

Ms. Jones's counsel initially proffered that: "Your Honor, my client wants to have the house that she is occupying remain hers. She is interested in waiving any interest in [the Cheltenham property] based on the contractual agreement the two of them had at the date of their separation [in 2013]." Counsel for Mr. Turner added that "the parties were in agreement for most of the items, except for the homes" and explained that:

> [T]he reason for that is because when Mr. Turner put the down payment on the Cheltenham property, the parties split two or more of their investment accounts 60/40. Sixty going to Ms. Jones and 40 to Mr. Turner. Mr. Turner used his portion to acquire the Cheltenham property, and Ms. Jones put her portion into bank accounts. And so it is Mr. Turner's position that Ms. Jones has already received her portion of the Cheltenham property, and that is where the complication with the bank accounts came in.

THE COURT: **I will entertain – when we get back together, I will entertain testimony to that fact.**

(Emphasis added).

Accordingly, the circuit court scheduled the next day of trial for March 17, 2021, so that the parties could obtain appraisals for the Clinton and Cheltenham properties.

Voluntary Separation & Property Settlement Agreement

On March 15, 2021—two days before the March 17 hearing—the parties entered into a voluntary separation and property settlement agreement ("Separation Agreement") that resolved all issues concerning the parties' personal property, bank accounts, time shares, and other assets. With respect to the real property owned by the parties, Article 4(A) of the Separation Agreement provided that:

> The parties agree that the division of the marital property namely [] Edison Lane, Clinton, Maryland 20735, owned as tenants by the entireties and [] Marlboro Woods Drive, Cheltenham, Maryland 20623 titled in the name of Reginald Turner shall be reserved from this agreement and shall be subject to the determination and Order of the Circuit Court for Prince George's County, Maryland.

Article 4(E) of the Separation Agreement resolved the parties' joint bank accounts as follows:

> The parties hereby agree that all funds contained in any all bank, savings and loan, credit union, stock, bond or other financial accounts that are titled in the joint names of the parties shall be divided equally between the parties within 30 days following execution of this Agreement. Said joint accounts specifically include but are not limited to the following accounts whose values may change slightly at the time of actual division but are recited here for purposes of providing approximate values: TD Ameritrade Accounts ending in [] and [], with a total balance of $13,184.69 as of January 31, 2021, First National Bank of Pennsylvania Account ending in [] with a balance of $5,803.13 as of December 31, 2020, and the Franklin Templeton Account ending in [] with a value of $12,602.31 as of February 12, 2021.

> The parties acknowledge that each has financial accounts in his or her sole name, and that said accounts are considered marital property for the purposes of marital property distribution. The parties acknowledge nevertheless, that each shall maintain said accounts as his or her [] sole property, exclusive of the other, exclusive of any 401k or retirement accounts, titled in their individual names.[2]

Article 8 of Separation Agreement dealt with the parties' retirement and pension benefits:

> The parties further acknowledge and agree that according to Maryland law, pension and retirement interest acquired during the marriage are marital property. The term "retirement interests" as used herein shall mean and include, without [sic] any and every retirement interest, pension plan, deferred income plan 401(k) or Keogh plan or account, annuity, profit sharing plan or Individual Retirement Account of every nature, character or description whether qualified or unqualified vested or nonvested. **Except as otherwise expressly provided in this Agreement each party waives any interest, right, division or distribution of all or any part of the other party's Retirement Interest**, including, without limitation, any interest which the waiving party might otherwise have, take or receive as a result of any existing law, regulation, statute, contract plan provision, beneficiary designation will or otherwise. The parties further agree that at the conclusion of these proceedings each will execute waivers of the survivor benefits provided under these plans and complete the necessary documentation to comply with the terms of this Agreement not longer than sixty days (60) from the enrollment of the final Decree of Absolute Divorce.

(Emphasis added).

Finally, Article 14(D) of the Separation Agreement provided, in relevant part, that:

> Husband and Wife enter into this Agreement with full recognition of their right to have a court determine the distribution of their marital property in accordance with Maryland law, Secs. 8-201 – 8-214, Family Law Article, MD. Code Ann., 2006 Replacement Volume, *as amended*. They each further

[2] Because the parties allegedly split 60/40 the money contained within the two Ally CDs accounts, these specific accounts were not listed in the parties' Separation Agreement.

> agree to accept the terms of this Agreement in lieu of a court-ordered determination of their rights in these matters.

(Emphasis added).[3]

March 17 Hearing

At the beginning of the proceedings on March 17, 2021, the circuit court heard argument on the motion for specific performance filed by Ms. Jones before resolving the remaining issues in the parties' divorce petition.

i. Motion for Specific Performance

On March 5, 2021, Ms. Jones filed a motion for specific performance requesting that the court order Mr. Turner to execute the quit claim deed waiving his interest in the Clinton property, along with a motion to shorten time. Mr. Turner filed an opposition to both motions on the same date. Mr. Turner's counsel requested the court receive evidence about the two properties at issue and how the parties divided their assets before resolving the issue of Ms. Jones's motion for specific performance. The court noted, in relevant part:

> THE COURT: So if I remember correctly, one of the parties is alleging that money was taken out of a joint account and used to purchase the second home and that that was part of the settlement as to how that bank account got divided; therefore, marital assets were not used to buy the second home.
>
> [MR. TURNER'S COUNSEL]: So the marital asset, which was divided, there were two Ally CDs of which Your Honor will receive documentation of today, and those CDs were divided between the parties 60/40, with [Ms. Jones] receiving 60 percent and [Mr. Turner] receiving 40. [Ms. Jones] used her 60 percent and [Mr. Turner] used his 40 percent of that specific account to purchase the real property where [Mr. Turner] currently

[3] We read "as amended" to mean the Family Law statute in effect at the time. We refer throughout this opinion to the statute as it appeared in the 2019 Replacement volume of the Family Law Article.

> resides, husband, and husband is seeking his share of the former marital property. . .
>
> ***
>
> THE COURT: And was it a written agreement between the parties?
>
> ***
>
> [MR. TURNER'S COUNSEL]: There was no agreement between the parties as to the disposition of husband's property. The only thing that was written down between the parties was there is a notarized piece of paper that was attached to husband's complaint and then there is another notarized document that was also raised last time, which I don't believe has been introduced into evidence yet.

Ms. Jones's counsel then interjected that the 2013 agreement by Mr. Turner to give Ms. Jones a quit claim deed for the Clinton property was, in fact, consideration for Ms. Jones's agreement to waive her rights in Mr. Turner's retirement benefits—not in exchange for waiving her marital interest in the Cheltenham property.[4] Ms. Jones's counsel continued:

> The contracts are written as contingencies, basically indicating to the Court that if [Mr. Turner] is successful in securing the mortgage, based on [Ms. Jones's] attestations to A) waiving her financial interest so that he has financially resources available; and B) that she can be independently secure without his financial need for the marital home. Once that happens and he successfully settles on his new house, he will then waive his interest in her property and execute a quick [sic] claim deed.
>
> This is a contract that is written and notarized and executed by the parties and was fulfilled when [Mr. Turner] settled on his property. That contract became binding in 2013 and remains so to the present date. No one is disputing the execution of that contract or its validity with regard to what [Mr. Turner] represented to [Ms. Jones] and his assurances that in exchange

[4] This appears to contradict Ms. Jones's counsel's earlier proffer made during the February 18 hearing when she stated: "Your Honor, my client wants to have the house that she is occupying remain hers. She is interested in waiving any interest in [the Cheltenham property] based on the contractual agreement the two of them had at the date of their separation [in 2013]."

> for her giving her financial interest in his retirement account, he would give up his interest in his home.
>
> Now, eight years later, [Mr. Turner] is now saying that should not be demonstrative or controlling, **but this oral agreement and the allegation regarding the stock split, which has nothing to do with the interest in the marital [home] that belongs to my client.** [Mr. Turner] has expressly contractually exempted himself from that property, and under the statute the written agreement makes it no longer a marital claim interest for him. He has expressly waived his interest.
>
> The only thing he has failed to do was comply by executing the quick [sic] claim deed. . . .

(Emphasis added).

Thereafter, the court proceeded to take testimony during *a full hearing on the merits* on Ms. Jones's motion for specific performance.[5]

1. Ms. Jones's Testimony

At the hearing on March 17, 2021, Ms. Jones testified that Mr. Turner presented to her "an agreement" that required her support "to get the financing on the [Cheltenham] house because the lender was not sure whether or not [Mr. Turner] would be able to afford the house" given "the fact that he had obligations at our present [Clinton] home." Ms. Jones explained that "the agreement said that . . . upon settlement of [Mr. Turner's] new [Cheltenham] home, that he would relinquish all rights and ownership to his present home

[5] In his Question Presented, Mr. Turner contends that "the trial court abused its discretion when it granted [Ms. Jones'] Motion for Specific Performance absent a hearing on the merits" and complains that he was "never permitted a chance to present his evidence and testimony freely and properly to the court." This is simply not reflected in the record. The court did, in fact, have a full hearing on Ms. Jones's motion for specific performance and took testimony from both parties. Indeed, the bulk of the formal testimony presented in the pre-trial hearing was on the motion for specific performance. So, when the court turned to Mr. Turner's petition for absolute divorce, much of the testimony had already been presented and considered by the court.

and that [Mr. Turner] would follow up with a quick [sic] claim deed." Ms. Jones believed that "[Mr. Turner] gave me this [agreement] and I said, okay, . . . if you don't want to be here [with me in the Clinton marital home], then I'll have my house and we made a deal." According to Ms. Jones, in exchange for the quit claim deed, she agreed to (1) waive her rights in Mr. Turner's annuity, and (2) provide a statement that she was financially responsible for the Clinton property.

Thereafter, Ms. Jones testified that she attempted "on numerous occasions," which she approximates to about ten or fifteen times "to get [Mr. Turner] to sign the quick [sic] claim deed as he promised, but he never would sign it." Ms. Jones presented Mr. Turner a template version of a quit claim deed she downloaded from Staples.com, which Mr. Turner refused to sign, in part, "[b]ecause he did not like what it says." In support of her motion, Ms. Jones submitted as evidence an email message from Mr. Turner that said, "I have not forgotten about the Quit Claim Deed that will be modified and signed promptly." The email in question, dated July 12, 2013, reads in full:

> I have some things I need to say. I believe this is the best way to do it. I don't want any confusion going forward. I received your text about Chainey, yes, I do have a problem with you using my information. If you are going to get work done why won't/didn't you use your own information? . . . **We have separate lives and I'm tired of having to worry about your information being assigned to me.** So when you return to Chainey please make sure that your information is under your name and has nothing to do with my account. There is no need for you to use my name anyplace for anything. You were unwilling or just didn't feel like making changes. Well because of that action I have been constantly fighting and trying to get information separated and corrected. . .. **When we first separated** you were so concerned about me using your information (as if I couldn't be trusted) and it looks like that is something I needed to be concerned about. I had all of that foolishness with

> AMEX, WSSC. **Any account that has us listed jointly needs to be eliminated/corrected.**
>
> We have a few things that we need to discuss going forward. We still need to discuss the time share property. . .. **Once I can figure out the best way the vehicles will be separated. I believe that can be done just by signing the title but I want to be sure before I make that claim. I have not forgotten about the Quit Claim Deed that will be modified and signed promptly.**
>
> . . . **Anything else you need to handle just like I do, separate**. I avoid coming to you for anything and I believe you should be doing the same. This will eliminate all the confusing mess I have to go through any time I try to do anything business related. . ..

(Emphasis added).

The last time the parties discussed the quit claim deed was six years later in 2019, when "[Mr. Turner] was trying to get me to sign . . . his annuity waiver thing; or paper or something like that. I reminded him. I said, you haven't done your part that you promised me. Why are you trying to get me to sign something for you?"

2. Mr. Turner's Testimony

Mr. Turner testified that "[Ms. Jones] was in agreement that we should sign that statement and that I was not responsible for the finance of the Clinton home, and that would allow me to purchase this [Cheltenham] home." Mr. Turner, however, disagreed that the reason he had to do that was to qualify for the financing on the Cheltenham property. Instead, Mr. Turner claimed that, since the Cheltenham property was within 25 miles of the Clinton property, he needed the two notarized statements from Ms. Jones because the lenders wanted to make sure that he was not trying to use the Cheltenham home as a rental property. Mr. Turner testified that it was never his understanding he was "enter[ing] into

a contract wherein [he] would release [his] interest in the [Clinton] home completely without compensation in exchange for [Ms. Jones] releasing her interest in [Mr. Turner]'s pension[.]" Mr. Turner believed the notarized documents merely *reaffirmed* Ms. Jones's past oral promise in 2005 to waive her rights to Mr. Turner's retirement benefits.

According to Mr. Turner, Ms. Jones orally agreed to waive her marital interest in the Cheltenham property in exchange for the quit claim deed. Mr. Turner explained that, prior to purchasing the Cheltenham property, the parties agreed to split two joint bank accounts, which totaled approximately $80,370.14, with Ms. Jones taking sixty percent (approximately $48,000), and Mr. Turner receiving the remaining forty percent (approximately $32,000).[6] Then—with Ms. Jones's apparent consent—Mr. Turner used $20,000 of his $32,000 for the down payment on the Cheltenham property. Mr. Turner maintained that Ms. Jones agreed to receive sixty percent or, approximately $48,000, as *compensation* for her marital interest in the Cheltenham property, which is evidenced by the fact the Cheltenham property was titled only in Mr. Turner's name. In exchange, Mr. Turner promised to give her a quit claim deed on the Clinton property "[u]pon successful settlement [of the Cheltenham property] on February 28, 2013." Although there was no formal written agreement to memorialize this 60/40 split, there was a letter from Ms. Jones

[6] We note that Mr. Turner's statements regarding how the parties divided their two Ally CD bank accounts 60/40 were made after the court granted Ms. Jones's motion for specific performance.

to Mr. Turner that mentions the 60/40 split of their bank accounts for the parties' 2013 taxes.[7] The letter reads in relevant part:

> The following is the data that must be split on our tax returns so that everything is accounted for. Please let me know if you have any concerns or comments. If you agree, please send me an email saying you agree with the breakdown/allocations and that you will file accordingly. . . .
>
> ***
>
> - Ally Bank – Closed two CD accounts – claim as Interest Income on Schedule B[.]
>
>   **We actually agreed to split and disbursed the money [i]n each account below 60/40 in Feb. 2013-Beverly/Reggie[:]**
>
>   1. Acct. #[] – received $305.20 Interest per 1099: (split 60/40 Beverly - $183.00, Reginald - $122.00)
>   2. Acct. #[] – received $68.58 interest per 1099; (split 60/40 Beverly - $41.00, Reginald - $27.00). Also Penalty for early withdraw is $108.21 (split []60/40 Beverly - $65.00, Reginald - $43.00)
>   3. Total Interest Income Ally - $373.78; (split 60/40 Beverly $224.00, Reginald $149.00) . . .
>
> ***
>
> Thanks,
>
> Beverly

(Emphasis added).

Mr. Turner testified at trial that "I had never seen a quick [sic] claim deed, and when I did research on [it], I was going to sign a quick [sic] claim deed but not the quick [sic] claim deed she gave me because there was no compensation in that [template version] for the marital home." Mr. Turner wanted to "amend" the quit claim deed Ms. Jones presented

[7] We also note that, although this Exhibit was attached to Mr. Turner's motion to alter and amend the final judgment and was listed on Exhibit lists submitted by Mr. Turner during the case, it was never introduced as evidence at trial other than by proffer by Mr. Turner's attorney.

to him to include compensation for his equitable interest in the Clinton property. However, Ms. Jones "utterly refused to sign anything that had any type of compensation for me from the marital home" and "made it very clear she would not sign any quick [sic] claim deed that I gave her." As a result, Mr. Turner never executed the quit claim deed and the parties continued to live separately in their respective homes from 2013 until present.

Then, in 2019 "when [Mr. Turner] was getting ready to retire, [he] asked [Ms. Jones] to sign [a new] form," however "she didn't understand why she needed to sign another form because she had already signed and notarized it" in 2013 when the three documents were executed together. Mr. Turner explained that he needed an "updated form" and "signature" from Ms. Jones because the 2013 form that "she previously signed and notarized . . . was no longer valid." Ms. Jones refused to sign any updated retirement annuity waiver, however, until Mr. Turner executed the quit claim deed as he promised to do in 2013. Shortly thereafter, Mr. Turner initiated the divorce proceedings.

3. *Court's Ruling on Specific Performance*

After hearing closing arguments on the motion for specific performance, the court found that "Mr. Turner signed the document that said, 'Upon successful settlement on February 28, 2013, I, Reginald Turner, relinquish all rights and ownership to the property located at 8709 Edison Lane, Clinton, Maryland.' Mr. Turner has relinquished his rights to the property, and I order that he sign the deed to transfer [the Clinton property] to Ms. Jones." The court explained that "the reason we found against Mr. Turner on the first issue is because the agreement he signed says [']I specifically waive my ownership interest in

that property[’] . . . in extremely clear, precise language." This unambiguous language, according to the court, did not "relieve [Mr. Turner] of his obligation to sign [the quit claim deed] before he sent that email" regarding amending the quit claim deed. With respect to Mr. Turner's assertion that he did not understand "what a quick [sic] claim deed was or, . . . what he [was] signing when it is at the request of mortgage company" without counsel, the court found "it hard to believe that any legitimate mortgage company was accepting of any of those documents in the way they were phrased. Mortgage companies are very precise, and that is not what they would accept, if they even requested it."

ii. Petition for Absolute Divorce

Next, the court resumed the hearing on Mr. Turner's petition for absolute divorce and the disposition of the Cheltenham property, which was the only remaining issue for the court to address pursuant to the parties' Separation Agreement.[8] The court determined that the Cheltenham property was marital after the following colloquy:

> THE COURT: Do you have an agreement with [Ms. Jones] that [the Cheltenham] home is excluded marital property?
>
> MR. TURNER: [Ms. Jones's] stated it. I don't have a written agreement. No sir.
>
> THE COURT: Okay. So without a written agreement, when it comes to real estate, the Court cannot do anything.
>
> MR. TURNER: They [sic] Court cannot - -

[8] The court concluded that the Clinton property was marital property that was excluded from distribution under the Marital Property Act by virtue of a valid agreement between the parties. As such, with the exception of the Cheltenham property, the Separation Agreement resolved all of the remaining assets and marital property between the couple and limited the issues before the court.

THE COURT: There is no enforcement rights of an agreement that is not in writing as it relates to real estate.

MR. TURNER: All right, sir.

THE COURT: And I know you are going to want to shoot me when I give you this answer. You have been paying the mortgage on the property with marital assets.

MR. TURNER: Okay. So because we are still technically married? Is that what you mean, sir?

THE COURT: Because you are still legally married.

Based on the appraisals obtained by the parties, the court ascertained the value of the Cheltenham property. Mr. Turner accepted $435,000 for the appraisal for the Cheltenham property with an unpaid principal in the amount of $178,939, yielding $256,061 in equity. Mr. Turner explained to the court that he put down $20,637.16 to buy the Cheltenham property. He explained that he drew the money from the $32,000 he received from the 60/40 split of the parties' bank accounts ($80,370.14) and paid down the mortgage using his regular paychecks. The court credited Mr. Turner the $20,637.16 used for the down payment and, and after subtracting that sum from $256,061, concluded that the "mathematics is that the home that Mr. Turner lives in has marital assets of $235,424" and "if we were to split that evenly between the parties, they would come out with [$]117,712." After Mr. Turner's counsel pointed out that Mr. Turner "is still now out $12,000 because [his annuity] is not going to refund him the money that was deducted for survivor benefits for Ms. Jones, upon her refusal to sign the document waiving those benefits," Ms. Jones agreed to credit that amount against any potential award she might receive. The court accordingly reduced the monetary award from $117,712 to $105,712 to

account for the $12,000 adjustment. Mr. Turner's counsel attempted once more to reference the 60/40 split before the court issued a final monetary award:

> [MR. TURNER'S COUNSEL]: Additionally, at the beginning of today's hearing and at the last hearing Your Honor had referenced the division of the Ally account, in that Ms. Jones received 60 percent of that account, and Mr. Turner was not able to put on all of the evidence that he had to demonstrate the 60 percent that went out to Ms. Jones. And I am just curious if the Court might want that information in terms of finalizing the marital award, in that Ms. Jones did receive 60 percent from that Ally account and then that was, in turn, kept by her while Mr. Turner put his in the Cheltenham home?
>
> THE COURT: **But isn't that an agreement between the parties outside of what is in front of us?**
>
> [MR. TURNER'S COUNSEL]: That agreement relates to the real property at issue today. The 60 percent which was given to Ms. Jones and which she then had use of and still does is, in Mr. Turner's opinion, an unjust enrichment to her.
>
> ***
>
> THE COURT: **If that was an agreement that was made by the parties for whatever reason they made that agreement, if it is an agreement that moves that account and the proceeds from that account outside of our jurisdiction because it -- it is no longer marital property.** . . . [W]hen I asked Mr. Turner if he had any of that in writing, he admitted, no, he does not.
>
> [MR. TURNER'S COUNSEL]: We only have the letter from Ms. Jones to Mr. Turner that details the 60/40 split.
>
> THE COURT: But does the letter from Ms. Jones say she is getting the 60 percent and waiving her interest in his property?
>
> [MR. TURNER'S COUNSEL]: No. It does not, Your Honor.

(Emphasis added).

Finally, Mr. Turner's counsel emphasized the factors listed under FL § 8-205(b), and argued that:

> [I]n light of what Mr. Turner just said, I just want to put on the record, . . . just point out that the goal of divorcing these parties under [FL §] 8-205[b](1) of the factors is a fair and equitable monetary award, and in this situation I think Mr. Turner feels that this is not a fair and equitable disposition. And I want to make that point, that this is a consideration under [§]8[-]205 in the . . . marital property factors. . . .

The court's oral findings were brief:

> Based on the testimony of Mr. Turner and Ms. Jones, which I find to be credible, true and convincing, I make the following findings.
>
> . . . [T]he parties, Plaintiff, Reginald Turner, and Defendant, Beverly Jones, were married on April 30th, 1988 in a religious ceremony in District Heights, Maryland. The parties have both lived in Prince George's County for at least six months. There were no children born or adopted of this marriage. There are no other cases involving the parties. Both parties are over the age of 18.
>
> The parties have mutually and voluntarily entered into a settlement agreement . . . dated March 15, 2021, which resolves all outstanding issues, other than the ones discussed here. Both parties have waived alimony; and therefore, according to this, the Court grants and awards an absolute divorce to the Plaintiff, Mr. Reginald Turner. And the settlement agreement is incorporated but not merged.

Then, based on the prior discussion, but without any analysis or mention of the FL § 8-205(b) factors, the court ordered Mr. Turner to pay Ms. Jones a monetary award of $105,712, which he was to pay in increments of $400 a month. On March 22, 2021, the circuit court entered judgment for an absolute divorce to Mr. Turner.

Motion to Alter or Amend Final Judgment

On March 26, 2021, Mr. Turner filed a motion to alter or amend the final judgment, arguing, *inter alia*, that the circuit court erred by failing to consider or take testimony on the eleven factors set forth under FL § 8-205(b) and to modify and reduce the monetary award accordingly. In addition, Mr. Turner argued that the circuit court erred in finding the existence of a valid agreement between the parties that waived Mr. Turner's marital

interest in the Clinton property because it lacked adequate consideration on the part of Ms. Jones. The consideration for the quit claim deed, according to Mr. Turner, was ***not*** the waiver of Ms. Jones's interest in Mr. Turner's retirement annuity because Ms. Jones had already agreed to waive her interest in 2005. Rather, Ms. Jones orally agreed to waive her marital interest in the Cheltenham property in exchange for the quit claim deed to the Clinton property and was compensated for doing so by virtue of the parties' 60/40 bank account split. According to Mr. Turner, by failing to consider "the factual reality that [Mr. Turner's] home was titled in his name alone with [Ms. Jones's] full cooperation and permission" as "*prima facie* evidence of the fact that it was always intended to be [Mr. Turner's] separate property," the court neglected to balance the equities as required by FL § 8-205(b). Mr. Turner requested that the court: (1) deny Ms. Jones's motion for specific performance in its entirety; (2) reduce the monetary award from the equity in Mr. Turner's current home to zero; (3) hold a new trial limited to the issue of the parties' real property and analyze the FL § 8-205(b) factors as required by statute; and (4) an award of reasonable attorneys' fees and costs.

On April 8, 2021, Ms. Jones filed an opposition motion to Mr. Turner's motion to alter or amend.[9] In support of her motion, Ms. Jones averred that: (1) the court did not err in concluding that Mr. Turner waived his interest in the Clinton home; specifically, that the "[c]ourt's decision, found after the conclusion of the testimony and assessing the credibility

[9] Because Ms. Jones, *pro se*, filed an informal brief on appeal, we discuss in detail her opposition motion to Mr. Turner's motion to alter or amend filed by his attorney addressing the same arguments presented on appeal.

of the witnesses . . . satisfied the requirements of FL § 8-205(e)(3) by having executed a valid waiver by agreement." Ms. Jones further asserted that it does not matter how the Cheltenham property was titled because "[t]he statute makes clear that title is not dispositive in determining whether an asset is or is not marital property." Relying on *Malin v. Mininberg*, 153 Md. App. 358 (2003), Ms. Jones averred that "the court need not list all factors in making its ruling." Moreover, according to Ms. Jones, "[Mr. Turner] was permitted by the Court to inquire independent of his counsel regarding the basis of the Court's determination that [Ms. Jones] was entitled to a monetary award," to which the court explained that it considered: (a) the value of the Cheltenham property as determined by the independent appraiser, (b) the outstanding mortgage, (c) Mr. Turner's independent contributions to its acquisition, including the down payment, and, (d) Mr. Turner's admission that the 60/40 Ally CD split was used to make the down payment on the Cheltenham property. Finally, Ms. Jones argued that there is no evidence in the record to support the claim that she waived her marital interest in the Cheltenham property. With respect to the letter from Ms. Jones to Mr. Turner detailing the 60/40 split, *supra*, Ms. Jones claims that "[s]ince the letter was neither authenticated nor examined[,] its inclusion is improper."

On January 31, 2022, the circuit court denied Mr. Turner's motion to alter or amend the final judgment. Mr. Turner noted a timely appeal on February 25, 2022.

DISCUSSION

To the extent that the circuit court's decision "involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the [circuit] court's conclusions are 'legally correct' under a *de novo* standard of review." *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quoting *L.W. Wolfe Enters. v. Md. Nat'l Golf*, 165 Md. App. 339, 344 (2005)) (footnote omitted). "Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property. Findings of this type are subject to review under the clearly erroneous standard embodied in Md. Rule 8-131(c)." *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (cleaned up). However, we review the ultimate decision by the circuit court to grant or deny a monetary award for abuse of discretion. *Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019).

I.

MOTION FOR SPECIFIC PERFORMANCE

A. Parties' Contentions

Mr. Turner assigns two errors in the circuit court's ruling on Ms. Jones's motion for specific performance. First, he avers the court erred by finding the existence of a valid contract in the three notarized documents executed by the parties in 2013. More specifically, Mr. Turner claims that Ms. Jones failed to offer any consideration for the 2013 agreement. Mr. Turner urges that Ms. Jones's waiver of her rights in his pension was, at best, *past consideration* because it was merely reaffirming the parties' prior 2005 oral agreement to waive their respective rights in the other's annuity. Mr. Turner argues that,

instead, in exchange for the quit claim deed, Ms. Jones agreed to waive her marital interest in the Cheltenham property by receiving approximately $48,000 from the parties' joint Ally CD bank accounts in 2013 as compensation. Mr. Turner also maintains that he did not understand the concept of a quit claim deed, and that he never intended for the quit claim deed to also waive any marital equity he might receive from paying off the Clinton property in 1997.

Second, Mr. Turner argues that the court abused its discretion in denying him the opportunity to present evidence in a chronological manner "to make matters easier to understand." Specifically, Mr. Turner contends that the circuit court precluded him from conducting a full hearing on the merits and taking testimony regarding how the parties divided some of their assets in 2013, and the 2005 alleged oral agreement to waive each other's retirement benefits.

We note that Ms. Jones filed only an informal letter in response to Mr. Turner's appeal, in which she asserts that the circuit court did not err or abuse its discretion in finding a valid contract existed between the parties to exclude the Clinton property as marital property. Specifically, Ms. Jones explains that:

> The agreement . . . between us was that I would help [Mr. Turner] get his own home, in his name-only, by informing his to-be new home financing company that I would not need his financial assistance once he moved into his new home. We had that statement notarized. . . . [which] included a statement with [Mr. Turner's] signature stating that he would in turn provide a quit claim deed relinquishing all rights and ownership of the [Clinton] property . . . to me. In the long and short of it, my husband took money that he and I had saved in our joint bank accounts and purchased his new home at [Cheltenham]."

B. Contracts Between Married Parties

The disposition of property acquired during a marriage is governed by sections 8-201 to 8-214 of the Family Law Article of the Maryland Code (1984, 2019 Repl. Vol) ("FL") upon annulment and divorce. Section 8-201(e) defines "marital property" as follows:

> (1) "Marital property" means the property, **however titled**, acquired by 1 or both parties during the marriage.
>
> (2) "Marital property" includes any interest in real property held by the parties as tenants by the entirety **unless the real property is excluded by valid agreement**.
>
> (3) Except as otherwise provided in paragraph (2) of this subsection, "marital property" does not include property:
>
> (i) acquired before the marriage;
>
> (ii) acquired by inheritance or gift from a third party;
>
> (iii) **excluded by valid agreement**; or
>
> (iv) **directly traceable to any of these sources**.

FL § 8-201(e) (emphasis added). Section 8-101(a) provides that "[a] husband and wife may make a valid deed or agreement that relates to alimony, support, property rights, or personal rights." FL § 8-101(a). Whether the parties have reached a valid agreement or not depends upon contract principles and the facts of each case.

A contract is "an agreement which creates an obligation" that is created by "the concurrence of two or more persons in a common intent to affect their legal relations." *Canaras v. Lift Truck Servs., Inc.*, 272 Md. 337, 346 (1974) (cleaned up). This agreement is enforceable only when "an offer made by one party" is accepted "by the other party to that contract." *Id.* The "offer," which must contain certain and definite terms, is "a

proposal to enter into a contract." *Id.* To accept the offer, the party to whom the offer is specifically addressed, must agree to all the terms in the offer. *Id.* at 346-47. There need not be a formal writing, so long as a reviewing court can determine if there has been a breach of the contract. *See Cochran v. Norkunas*, 398 Md. 1, 23 (2007) (distinguishing between manifestation of acceptance by conduct from acceptance by silence). "In most instances, the determination of a contract's enforceability is decided by the existence of consideration, which may be established through evidence of a benefit to the promisor or a detriment to the promisee." *Holloman v. Cir. Cty. Stores, Inc.*, 391 Md. 580, 590 (2006) (cleaned up). An illusory promise, which is described as "appearing to be a promise, but . . . not actually binding or obligating the promisor to anything" does not constitute consideration to enforce a contract. *Id.* at 590-91 (quoting *Cheek v. United Healthcare, Inc.*, 378 Md. 139, 148 (2003)). The Supreme Court of Maryland[10] has recognized that, while "a binding promise may serve as consideration for another promise[,] . . .[u]nless the obligation is binding, however, the requisite consideration does not exist to support a legally enforceable agreement and it is considered illusory." *Id.* at 590 (citing *Cheek*, 378 Md. at 148).

Maryland adheres to the objective rule of contract interpretation, giving effect to the written terms of the parties' agreement. *See, e.g.*, *Myers v. Kayhoe*, 391 Md. 188, 198 (2006); *Tomran, Inc. v. Passano*, 391 Md. 1, 13 (2006). "If the language of the contract is

[10] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland, following constitutional amendment approved by the voters.

unambiguous, we give effect to its plain meaning and do not delve into what the parties may have subjectively intended." *Rourke v. Amchem Prods., Inc.*, 384 Md. 329, 354 (2004) (citing *Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250-51 (2001)). Moreover, absent proof of fraud, duress, or mutual mistake, a party has a duty to read and understand the contract before signing it; however, even if the party signs it without reading it, the party remains bound by its terms, regardless of whether they are later dissatisfied with the bargain. *See, e.g.*, *Holloman*, 391 Md. at 595; *Canaras*, 272 Md. at 344-35. All provisions of a contract must be considered together, giving effect to every clause and phrase, under the objective standard of what a reasonable person in the position of the parties would conclude the manifestations to mean. *Owens-Illinois v. Cook*, 386 Md. 468, 496–97 (2005); *Wells*, 363 Md. at 250-51. As our Supreme Court explained in *Rocks v. Brosius*:

> A contract need not be evidenced by a single instrument. Where several instruments are made a part of a single transaction they will all be read and construed together as evidencing the intention of the parties in regard to the single transaction. This is true even though the instruments were executed at different times and do not in terms refer to each other.

241 Md. 612, 637 (1966); s*ee also Ford v. Antwerpen Motorcars, Ltd.*, 443 Md. 470, 479 (2015) ("[O]ur longstanding common law contract principles permit[] the construction or reading of multiple documents together as part of a single transaction."). In *Rourke*, for example, the Supreme Court of Maryland held that the trial court did not err in concluding that two separate documents—a letter and a settlement agreement—when read together, constituted an enforceable agreement to arbitrate a dispute. 384 Md. 329, 354-56 (2004). This is especially true when separate documents are executed together at the same time.

See e.g., *Rothman v. Silver*, 245 Md. 292, 295-96 (1967) (concluding that "the four writings are to be read and construed together, as if they were one instrument" because "the agreement of the parties was integrated in and evidenced by the four documents they executed"—the last three of which "were all dated and executed February 7, 1962.").

C. Analysis

Applying the foregoing precepts to the facts of the present case, we discern no error in the circuit court's determination that the three notarized documents executed in 2013 constituted a valid contract between the parties to exclude the Clinton property as marital property. Mr. Turner contends that the circuit court erred in finding that a contract existed between the parties because it lacked adequate consideration. We find no merit to this argument.

As our caselaw explains, Maryland follows an objective theory of interpretation when determining the existence of a contract. We look to the plain meaning of the words used and, if they are unambiguous, we do not look to the subjective intent of the parties. *Rourke*, 384 Md. at 354 (citations omitted). Turning to the three notarized documents, which we read together as though they are a single document, *see Rothman*, 245 Md. at 295-96, we can discern no ambiguity from the words: "Upon successful settlement on February 28, 2013, I, Reginald Turner, relinquish all rights and ownership to the property located at 8708 Edison Lane, Clinton, MD. I will also sign the Quick [sic] Claim Deed form at that time." Indeed, Mr. Turner ***expressly*** agreed to "relinquish all rights and ownership" to the Clinton property occupied by Ms. Jones and promised to execute a quit

claim deed to that effect upon "successful settlement on February 28, 2013" of the Cheltenham property. Despite what Mr. Turner may have subjectively intended, the clear and plain language of Ms. Jones's consideration for the quit claim deed was her signed and notarized statements that she would "relinquish all rights to Reginald Turner's retirement annuity" in addition to her attestation that "[t]here will be no monthly financial support needed from Reginald Turner to maintain" the Clinton property. Mr. Turner settled on the Cheltenham property as planned on February 28, 2013, and at that time, his promise to execute a quit claim deed to Ms. Turner became enforceable. The court explained that the agreement Mr. Turner signed expressly waiving his ownership interest in the Clinton property was made in "extremely clear, precise language." We agree, and hold that the circuit court did not err in finding that the three notarized documents executed in February 2013 constituted a valid agreement between the parties.

Mr. Turner's claim that he was mistaken about the meaning and significance of a quit claim deed does not change the outcome for two reasons. First, "[i]t is well established that in the absence of" fraud, duress, or mutual mistake, "one having the capacity to understand a written document who reads it, or, without reading it or having it read to him, signs it, is bound by his signature." *Canaras*, 272 Md. at 344 (quoting *Rossi v. Douglas*, 203 Md. 190, 199 (1953)). Even when a person cannot read or understand English but nevertheless "executes a deed under a mistake as to its contents, he is bound both at law and in equity if he did not require it to be read to him or its object explained." *Canaras*, 272 Md. at 345 (citing Williston, Contracts, § 90A)). Second, from our review of the

record, Mr. Turner appears to be an intelligent and engaged citizen given both the demands of his job as Director of Administration in the District of Columbia courts, and his role in founding and co-managing a non-profit organization, God's Distribution Center, located in Clinton, Maryland. All evidence indicated that Mr. Turner had the capacity to read, write, and understand the two notarized statements that he signed in 2013.

We are not persuaded by Mr. Turner's argument that the circuit court erred by failing to allow him to present his evidence in a chronological order to assist the court in better understanding how the parties divided their assets. We first note that the circuit court is vested with broad authority in determining the admissibility of evidence, including the authority to decide whether to admit certain evidence, and by what methodology. *See* Md. Rule 5-611(a); *Bey v. State*, 140 Md. App. 607, 623 (2001) ("Whether to admit lay opinion testimony is vested in the sound discretion of the trial judge.") (citing *Rosenberg v. State*, 129 Md. App. 221, 254-55 (1999)). Maryland Rule 5-611(a) provides that "[t]he court ***shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence*** so as to (1) make the interrogation and presentation effective for ascertainment of the truth" and "(2) avoid needless consumption of time[.]" Md. Rule 5-611(a) (emphasis added).

Mr. Turner's assertion that the court did not permit Mr. Turner to testify or put on evidence of the parties' assets and oral agreements is not supported by the record. The circuit court did, in fact, take testimony during a hearing on the existence of a valid contract prior to granting the motion for specific performance. Mr. Turner was permitted to testify

as to (1) his belief that he was providing the three notarized statements only in response to the bank lenders, (2) his misunderstanding of a quit claim deed, and (3) his understanding as to why Ms. Jones waived her rights in Mr. Turner's retirement annuity. Indeed, the record reflects that the court was well aware of the 60/40 division of the joint bank accounts in 2013. Prior to taking testimony on the motion for specific performance, the court noted that: "So if I remember correctly, one of the parties is alleging that money was taken out of a joint account and used to purchase the second home and that part of the settlement as to how that bank account got divided; therefore, marital assets were not used to buy the second home."

Critically, Mr. Turner's counsel was given the opportunity to question Mr. Turner about the 60/40 split on re-direct examination but declined to do so. The objections related to the 2005 oral agreement between the parties were sustained by the court as "beyond the scope of [Ms. Jones's] direct examination," but the court made clear to Mr. Turner's counsel that "You can present your evidence when it is your turn. If you don't have any questions for [Ms. Jones], you can present your witness or you can call [Ms. Jones] back in your case." At the close of Mr. Turner's testimony, however, his counsel declined to call more witnesses or re-direct Mr. Turner. Therefore, we find no error or abuse of discretion in how the circuit court conducted the hearing on the motion for specific performance.

Accordingly, we affirm the judgment of the circuit court granting Ms. Jones's motion for specific performance upon finding that a valid agreement existed between the parties. We now turn to the monetary award.

II.

THE MONETARY AWARD

A. Parties' Contentions

Mr. Turner's main contention is the monetary award itself. Most of the arguments raised in Mr. Turner's brief are rooted in the circuit court's analysis—or lack thereof—of the FL § 8-205 factors when it decided to grant Ms. Jones a monetary award of $105,712, representing her marital equity in the Cheltenham property. Among other things, Mr. Turner avers that, even if the circuit court correctly determined that the Clinton property had become non-marital property under the parties' agreement by which Mr. Turner was to provide Ms. Jones a quit claim deed, the court was still obligated to consider (1) the value of the marital home, (2) any property disposed of by the parties' settlement agreement, and (3) any nonmarital property when calculating the final monetary award. Mr. Turner also argues that the court erred by excluding properties resolved via the Settlement Agreement from its consideration of the monetary award, such as the parties' bank accounts. Mr. Turner emphasized that the court failed to take testimony as to any of the eleven factors listed in FL § 8-205(b) and did not mention the factors at all in deciding to grant Ms. Jones a monetary award.

B. FL § 8-205(b) Factors.

"Although Maryland law does not require a court to divide marital property equally between the parties, the division of such property must be fair and equitable. To achieve this result, a trial court may grant a monetary award to correct any inequality created by the way in which property acquired during the marriage happened to be titled." *Brewer v. Brewer*, 156 Md. App. 77, 105 (2004) (cleaned up). The law is clear, however, that "equitable" does not mean "equal." *Brewer*, 156 Md. App. at 105 (citing *Long v. Long*, 129 Md. App. 554, 577-78 (2000)). Circuit courts are "vested with broad discretion in deciding whether to grant a monetary award, but the existence of that discretion should be informed with and based upon reason." *Freese v. Freese*, 89 Md. App. 144, 153 (1992).

The purpose of a monetary award is to correct any inequality created by the way in which property was acquired during the marriage, regardless of how it is titled. FL § 8-201(e). The statute demands a three-step process for determining whether a circuit court may properly grant a monetary award. Step one provides "[i]n a proceeding for annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital." FL § 8-203(a). If there is marital property at issue, the circuit court proceeds to step two, which requires that the circuit court determine the value of all marital property. FL § 8-204(a). The third step is at issue this appeal. After determining the value of the marital property, the circuit court ***may*** grant a monetary award to balance the equities. FL § 8-205.

Before determining whether to grant a monetary award, however, the circuit court **must** consider the factors enumerated in FL § 8-205(b). *See Paradiso v. Paradiso*, 88 Md. App. 343, 350 (2021) (citing *Harper v. Harper*, 294 Md. 54, 79 (1982)). Section 8-205(b) provides:

> The court ***shall*** determine the amount and the method of payment of a monetary award, or the terms of the transfer of the interest in the property described in subsection (a)(2) of this section, or both, after considering each of the following factors:
>
> (1) The contributions, monetary and nonmonetary, of each party to the well-being of the family;
>
> **(2) the value of all property interests of each party**;
>
> (3) the economic circumstances of each party at the time the award is to be made;
>
> (4) the circumstances that contributed to the estrangement of the parties;
>
> (5) the duration of the marriage;
>
> (6) the age of each party;
>
> (7) the physical and mental condition of each party;
>
> (8) **how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property** described in subsection (a)(2) of this section, or both:
>
> (9) **the contribution by either party of property described in 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety**;
>
> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
>
> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

FL § 8-205(b) (emphasis added).

Our precedent establishes that "[i]n determining the amount and method of payment of the monetary award, the court must consider the statutory factors enumerated in [FL § 8-205(b)]. The failure to consider the statutory factors also requires that any monetary award be vacated." *Quinn v. Quinn*, 83 Md. App. 460, 464-65 (1990) (citing *Holston v. Holston*, 58 Md. App. 308, 318, *cert denied*, 300 Md. 484 (1984)); *see also Paradiso* v. *Paradiso*, 88 Md. App. 343, 349-50 (1991) (reversing the circuit court because "the judge failed to classify what is marital property" and to consider the statutory factors in determining whether a monetary award is appropriate.). We note, however, that "while consideration of the factors is mandatory, the trial court need not 'go through a detailed checklist of the statutory factors, specifically referring to each, however beneficial such a procedure might be for purposes of appellate review.'" *Brewer v. Brewer*, 156 Md. App. 77, 107 (2004) (quoting *Doser v. Doser*, 106 Md. App. 329, 351 (1995)). Although the judge is not required to articulate every step in his thought process as he is presumed "to know the law and apply it," when the court "fails to provide at least some of the steps in [its] thought process[,]" it leaves itself "open to the contention that [it] did not in fact consider the required factors." *Compolattaro v. Compolattaro*, 66 Md. App. 68, 78-81 (1986); *see also Bangs v. Bangs*, 59 Md. App. 350, 370 (1984) ("In the instant case, the chancellor did not indicate he was ignoring the alimony award when he made the monetary award[;] [h]e simply did not mention it.").

Even where the parties have a valid agreement to exclude property from the "pool" of distribution under the Marital Property Act, the court still must consider the excluded

property in its analysis of the factors under FL § 8-205(b). The statutory factors, however "'are not prioritized in any way, nor has the General Assembly mandated any particular weighing or balancing of the factors.'" *Brown v. Brown*, Md. App. 72, 110 n.19 (2010) (quoting *Alston v. Alston*, 331 Md. 496, 507 (1993)). We find *Flanagan v. Flanagan*, 181 Md. App. 492 (2008), to be particularly illustrative in this case. In *Flanagan*, the parties submitted the Joint Statement required by Maryland Rule 9-207 prior to trial, listing four items of property. 181 Md. App. 492, 528 (2008). The Joint Statement stated, in part: "The parties agree that all issues with regard to the remaining property that they hold have been resolved." *Id.* at 504. Although we concluded that this constituted a "valid agreement" between the parties to specifically exclude all other property from the scope of the Marital Property Act and served to render those items as non-marital property, we also held that:

> The same rationale does not apply, however, in the context of F.L. § 8-205(b)(2). With respect to the *amount* of a monetary award, that provision instructs the court to consider 'the value of *all property interests of each party*' (emphasis added), which includes non-marital property. Unlike F.L. § 8-204, which governs what property is subject to distribution by the court, F.L. § 8-205(b)(2) requires that, in evaluating the equities between the parties, the court must consider all of the property of each party, both marital and non-marital. That would necessarily include marital property that becomes non-marital by virtue of the parties' agreement in a Rule 9-207 statement.

Id. at 534-35 (citing *Merriken v. Merriken*, 87 Md. App. 522, 545 (1991)) (emphasis in original); s*ee also Brown v. Brown*, 195 Md. App. 72, 116-17 (2010) ("the fact that property may be excluded from the marital property 'pool,' by agreement of the parties in a Rule 9-

207 joint statement, does not mean that the court may not consider such non-marital property as a factor in its equitable distribution of the remaining marital property[.]").

We now turn to the circuit court's analysis of these factors in the present case.

C. Analysis

In the instant case, the court did not mention the factors specified in FL § 8-205(b), and there is no indication from the record whether the court considered them. It appears that the Court only considered the value of the Cheltenham property, applying a mathematical equation, crediting Mr. Turner $12,000 for Ms. Jones's waiver of pension benefits, and considering the $20,000 down payment made by Mr. Turner for the Cheltenham property, to arrive at the marital award. But there is no indication that the court applied the FL § 8-205(b) factors to balance the equities between the parties. When the court "fails to provide at least some of the steps in [its] thought process[,]" it leaves itself "open to the contention that [it] did not in fact consider the required factors." *Compolattaro v. Compolattaro*, 66 Md. App. 68, 78-81 (1986).

In this case, the court touched on some of the factors in its analysis, including the duration of the parties' marriage. However, we hold that the circuit court erred by concluding that any property resolved by the parties' voluntary settlement agreement was excluded from consideration in determining the monetary award. Sections 8-205(b)(2) and (8) require consideration of "the value of all property interests of each party" and "how and when specific marital property or interest in property . . . was acquired, including the effort expended by each party in accumulating the marital property or the interest in property[.]"

FL § 8-205(b)(2), (8). It is true that every factor may not apply in each situation, and that the statutory factors "are not prioritized in any way, nor has the General Assembly mandated any particular weighing or balancing of the factors" *Brown*, Md. App. at 110 n.19 (2010) (quotation omitted). But as we pointed out in *Flanagan*, the court is required to include non-marital assets in its balancing-of-the-equities analysis under FL § 8-205(b). *Flanagan*, 181 Md. App. at 534-35.

On remand, the court should include the Clinton home, the Cheltenham property, and the parties' other assets in its monetary award determination. The parties, for the most part, have already decided who owns what. The court must state, however, how it arrives at a monetary award after applying the FL § 8-205(b) factors and balancing the equities. We are not saying that in applying the factors the court cannot reach the same result.

In sum, for the reasons set forth above, we hold that the circuit court erred by failing to conduct an analysis of the factors outlined under FL § 8-205(b), considering all of the parties' assets, marital and non-marital. Accordingly, we vacate the judgment of the monetary award and remand the case to the court for an analysis as described above. In doing so, the court shall decide whether to take additional evidence or conduct further hearings in order to address all the factors as required by the statute.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY GRANTING MOTION FOR SPECIFIC PERFORMANCE IS AFFIRMED; JUDGMENT GRANTING MONETARY AWARD IS VACATED; CASE IS

REMANDED TO THE CIRCUIT COURT FOR AN ANALYSIS OF THE FL § 8-205(b) FACTORS CONSISTENT WITH THIS OPINION; PARTIES TO BEAR THEIR OWN COSTS.