

Circuit Court for Montgomery County
Case No. 153187-FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2089

September Term, 2019

BERTIN NGAMY NOUTCHANG

v.

SIDONE FEUTCHA

Nazarian,
Friedman,
Kenney, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 14, 2021

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Bertin Ngamy Noutchang (“Husband”) and Sidonie Feutcha (“Wife”) divorced in November 2019. In their Judgment of Absolute Divorce, the Circuit Court for Montgomery County awarded Wife \$104,649 as a share of the home they shared at the time of the divorce, \$37,500 as an equal share of the parties’ bakery in Cameroon, and \$17,935.50 as a one-fourth share of Husband’s 401(K), as well as child support and arrears. Although Husband doesn’t challenge the court’s decision to give Wife a marital award, he contends on appeal that the trial court mis-valued the home and allocated too much of its value to Wife. We affirm the judgment.

I. BACKGROUND

On September 9, 1997, Husband and his brother purchased a home located in Silver Spring for \$174,600. On August 16, 2001, the day before Husband and Wife married, Husband’s brother executed a deed making Husband the sole owner of the property. Wife’s name was never added to the deed. On August 17, 2001, the date the parties married, the property had a value of \$245,000 and an existing mortgage lien against the property for \$171,000, leaving \$74,000 in equity.

Husband refinanced the mortgage on the home several times during the marriage. In September 2003, Husband took a line of credit against the home and used the funds to pay closing costs and to pay marital expenses, including payments on a Capital One credit card account, a Citi credit card account, and on his and Wife’s vehicles. At the time of the divorce, one secured loan remained on the property with a balance of \$106,701.

When Husband and Wife first married, Wife had just arrived in the United States

and was unable to work right away. At first, she made non-monetary contributions—she took care of the home and their three children when they were born. When Wife began working, she made monetary contributions as she could, and her contributions increased as her wages grew. Even so, Husband always had a larger salary and contributed more to the household financially.

When Husband and Wife divorced in 2019, their Judgment of Absolute Divorce awarded Wife a marital award grounded in three main assets. The court awarded Wife \$104,649.10 attributable to a fifty/fifty split of the value of the home (after paying off the outstanding loan and deducting Husband’s pre-marital investment),¹ \$37,500 attributable to a fifty/fifty split of the parties’ bakery in Cameroon, and \$17,935.50 attributable to a one-fourth share of Husband’s 401(k) retirement account. The court also ordered Husband to pay \$519 per month for child support for the parties’ two minor children, which would reduce to \$362 per month when the elder of the two finished high school in 2019, and \$2,076.00 in child support arrears. Neither the child support nor the arrears are at issue on appeal.

Husband filed a timely notice of appeal. We supply additional facts as necessary below.

¹ The appraised value of the home, as will be discussed, was \$390,000. The court subtracted Husband’s pre-marital equity (\$74,000), then the outstanding loan (\$106,701.79), which left \$209,298.21 in equity as of the time of divorce. The court then divided that equity equally, allocating \$104,649.10 to each.

II. DISCUSSION

Husband’s brief raises three issues on appeal,² all of which relate to the valuation of the home and the portion of that value the court awarded to Wife in the marital award. He doesn’t challenge the award itself, nor any other component of it. He contends *first* that the court overvalued the home; *second*, undervalued his non-marital interest in the house; and *third*, abused its discretion in including in Wife’s marital award a full half of the home’s net value.

A. The Home’s Value Was Disputed And The Court’s Valuation Wasn’t Clearly Erroneous.

Although it isn’t the only point of contention, all three issues in this case flow from the court’s valuation of the parties’ home, beginning with the gross value of the home itself.

² Husband phrased the Questions Presented in his brief as follows:

1. Whether the Court erred in its valuation of the marital home by accepting the value assigned by an appraiser after the appraiser admitted the home was “not marketable” in its below average condition and would not be marketable without a significant investment to bring the property on to marketable condition.”

2. Whether the Court erred in valuing Husband’s non-marital interest in the marital home by refusing to include as non-marital property the increase in value of Husband’s non-marital investment (in the home) during the marriage.

3. Whether, in awarding Wife half of that which the Court determined to be the marital value in the home, the Court took the “easy route” of simply dividing the property value in half and relied on “facts” which were contrary to or unsupported by the evidence, rather than properly applying the equitable principles in Md. Fam Law Code §8-205(b).

“Valuation is a question of fact subject to the clearly erroneous standard of review.” *Abdullahi v. Zanini*, 241 Md. App. 372, 413 (2019) (citing *Blake v. Blake*, 81 Md. App. 712, 720 (1990)). “When the trial court’s findings are supported by substantial evidence, the findings are not clearly erroneous.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000) (citing *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). An appellate court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c).

The valuation question arose here in the context of the three-step process for dividing property in divorce cases. *First*, for each disputed item of property, the court must determine whether it is marital or non-marital. Md. Code (1984, 2012 Repl. Vol.), § 8-203 of the Family Law Article (“FL”), see *Flanagan v. Flanagan*, 181 Md. App. 492, 519 (2008). Marital property is “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). Among other things, the definition of marital property excludes property acquired before 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 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)(2)–(3). *Second*, the court determines the value of the marital property.

FL § 8-204; *see Flanagan*, 181 Md. App. at 519. And *third*, the court “must decide if the division of marital property according to title would be unfair. If so, [it] may make a monetary award to rectify any inequity ‘created by the way in which property acquired during marriage happened to be titled.’” *Flanagan*, 181 Md. App. at 519–20 (*quoting Doser v. Doser*, 106 Md. App. 329, 349 (1995)); *see* FL § 8-205(a).

Husband takes issue with step two of the circuit court’s analysis in this case and specifically with the valuation of the parties’ home. Husband argues that the court incorrectly valued the home by, *first*, applying the wrong legal standard for fair market value and, *second*, overvaluing the house as of the time of the divorce. We disagree.

a. The Background and the Legal Standard.

A party who seeks a monetary award shoulders the burden of proving the value of the property (both marital and non-marital). *Abdullahi*, 241 Md. App. at 413. During her case-in-chief, Wife offered testimony on the value of the home from an expert in the field of residential real estate appraisals, Jeffery William Vinson.³ Mr. Vinson provided two appraisals: one valued the home at \$245,000 as of the date the parties married, and the other valued the home at \$390,000 at the time of divorce; the latter appraisal included a \$30,000 (downward) adjustment for the condition of the house. Husband disputed the appraised value of the marital home upon the date of divorce, claiming that the number was too high because it failed to account for the cost of renovations needed to bring the

³ The parties stipulated to Mr. Vinson’s (misspelled as Jeffrey “Vincent” in the transcript) expertise, and there were no issues about his qualifications or the factual bases of his appraisals.

house into “marketable condition.” He testified that based on his opinion and his own research it would cost \$60,000 to repair the roof, the deck, the garage door, the driveway, two bathrooms, and the bedroom doors, and to make other cosmetic fixes. But Husband presented neither expert testimony nor any evidence supporting his \$60,000 estimate. Although he stated that the \$390,000 appraisal was high, he didn’t produce an alternative appraisal, nor did he present any offers made to purchase the home at a lower price. Husband’s theory was that the appraised value of the home, \$390,000, should be reduced by \$60,000, his estimate for the cost of the repairs that he claimed were necessary.

Mr. Vinson testified that his job as an appraiser was to “gather data for comparable analysis, . . . doing a non-intrusive inspection. [Appraisers are] not home inspectors, we’re looking at the property, we’re making certain assumptions on the property. . . . If there’s some negative, we’re going to identify it.” Mr. Vinson testified that he researched, measured, walked through, and photographed the property. Then he compared the house to comparable sold properties in order to determine the value of the home. Mr. Vinson specifically considered the cost of deferred maintenance in his valuation, and he opined that as of the time of divorce, the home was worth \$390,000.

Husband relies on *Rosenberg v. Rosenberg* for the definition of value, and specifically its statement that “[u]nder Maryland law, value means fair market value which is defined as ‘the amount at which property would change hands between a willing buyer and a willing seller’” *Rosenberg v. Rosenberg*, 64 Md. App. 487, 525–26 (1985) (*first citing Gravenstine v. Gravenstine*, 58 Md. App. 158, 172–73 (1984), *then quoting Value*,

Black’s Law Dictionary 537 (rev. 5th ed. 1979)). And that’s true. But a disputed valuation raises a dispute of fact, and the ultimate valuation has to be grounded in something. In the absence of an actual offer to purchase a property, courts rely often on estimates and appraisals. *Id.* at 526 (emphasis added) (“Value is the ‘estimated or *appraised* worth’ of property”) (*quoting* Black’s, *supra* at 1391)). On one side of the ledger, Wife’s expert, Mr. Vinson, produced fully supported appraisals that met the definition of “fair market value” at two different points in time. Mr. Vinson’s then-current appraisal also accounted for the diminished condition of the property. On the other side, Husband offered his view, supported by unsubstantiated estimates of the necessary repairs and their costs that he generated himself. On this record, we cannot say that the circuit court’s decision to rely on Mr. Vinson’s appraised value of \$390,000 was clearly erroneous, and we agree that the value formed an appropriate starting point for dividing the marital portion of the home’s value and determining whether a marital award was appropriate.

B. The Circuit Court’s Valuation Of Husband’s Non-Marital Interest In The Home Is Accurate.

From there, Husband contends that the circuit court undervalued his non-marital share in the property. He purchased the house before he and Wife married, and as of the date of their wedding, Husband had \$74,000 in equity in the home—everybody agrees that on the marriage date, the house was worth \$245,000 and was encumbered by a mortgage of \$171,000. The trial court’s property division calculation credited Husband the first \$74,000 in the home’s value, but he argues that his pre-marital interest should have garnered a percentage return in the ratio that the non-marital portion “bore to the total non-

marital and marital value at the time of divorce.” In his view, the increase in the home’s value resulted from market forces, not the expenditure of marital funds or energy by him and Wife during the marriage, and that he should receive the benefits of the increased market value.

“Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property We review the [court’s] factual findings under the clearly erroneous standard.” *Flanagan*, 181 Md. App. at 521. We consider the evidence in a light most favorable to the prevailing party, and we defer to the judgment of the trial court. *See L.W. Wolfe Enters., Inc. v. Md Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005). We “do [] not sit as a second trial court, reviewing all the facts to determine whether [Husband] has proven his case.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). “If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *Yivo Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005). And although we recognize that the trial court had the discretion to allocate more of the post-marital equity to Husband, we discern no error in its decision to split the value equally.

Everyone agrees, as they should, that although Husband purchased the house before the marriage, “[p]roperty that is initially non-marital can become marital.” *Innerbichler*, 132 Md. App. at 227. And although it’s true that “[t]he party seeking to demonstrate that particular property acquired during the marriage is nonmarital must trace the property to a nonmarital source,” *Noffsinger v. Noffsinger*, 95 Md. App. 265, 283 (1993), we have no

such dispute here. Wife acknowledges Husband's non-marital stake in the house and doesn't contend that his equity became marital at any point. The issue instead is whether Husband was entitled to a greater portion of the equity at the time of divorce, which is a division that would recognize the pre-marital financial investment in the property that he made but Wife didn't.

Husband analogizes to several cases, typically involving stocks, distinguishing situations where non-marital assets had increased in value due to the parties' active efforts (and thus the gains were marital) from those where the gains were attributable primarily to general market forces (and thus the gains remained non-marital). *Compare Merriken v. Merriken*, 87 Md. App. 522, 538 (1991) (increase in the value of non-marital stock was due to active efforts made during the marriage to increase the value of the stock, transforming it from non-marital to marital property) *with McNaughton v. McNaughton*, 74 Md. App. 490, 501 (1988) (value increase in non-marital stock was due to market forces beyond the husband's control and not the husband's effort during the marriage, so gains were non-marital) *and Rosenberg*, 64 Md. App. at 527–31 (the Court was unable to find that an increase in the value of stock held by husband was marital property as the wife was unable to point to husband's "personal efforts" that had led to the increase in the stock value). In Husband's view, the increase in the value of the home over the course of the marriage was due entirely to market forces, and his non-marital interest should have been valued accordingly.

But the circuit court disagreed. The court acknowledged that Husband was the primary provider for the family and was the sole financial contributor until Wife had the opportunity to work. Even so, the court credited Wife’s contributions in a variety of forms. The court noted that she contributed to bills at an increasing rate as her salary increased, and that during the marriage, she placed proceeds from a substantial car accident settlement into a joint account they used to renovate the home (the remainder went to purchase the bakery in Cameroon). Moreover, Husband did not offer any particular calculation of what his return on investment should have been. To be sure, the court could have allocated more of the home’s increase in value during the marital years to Husband, but nothing compelled the court to give Husband a greater portion of the increase. The record supports the court’s decision that Wife’s financial and non-financial contributions to the household and the improvement of the home itself warranted an even split. Put another way, the marital home may have benefited from market forces, but the court did not abuse its discretion in crediting the deliberate efforts of both Husband and Wife to increase the value of the home during the marriage.

C. The Court Properly Applied FL § 8-205(b).

Finally, Husband argues that the court did not properly consider the factors outlined in FL § 8-205(b) when calculating the overall marital award. He contends that the court “over-emphasiz[ed]” Wife’s contributions during the marriage “while down-playing or ignoring [his] contributions.” But “the ultimate decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of

discretion.” *Flanagan*, 181 Md. App. at 521 (citing *Alston v. Alston*, 331 Md 496,504 (1993)). Although Husband argues that the court misapplied other statutory factors in determining the final marital award, his arguments relate entirely to the portion of the award flowing from the valuation of the house and the allocation of the house equity (beyond, of course, Husband’s pre-marital equity, which he retained in full). And again, the court could well have decided to divide the parties’ marital property differently, but it didn’t abuse its discretion on this record in opting not to give a greater share to Husband than it did.

Family Law Article § 8-205(b) identifies the factors a court must consider when making a monetary award. Husband argues that the court disregarded his economic circumstances, his age, his physical health, and how and when the property was acquired and the effort provided by each party to accumulate the property. But “[a]lthough consideration of the factors is mandatory [,] the trial court need not ‘go through a detailed check list of the statutory factors, specifically referring to each, however beneficial such a procedure might be’” *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003) (second alteration in original) (first citing *Doser v. Doser*, 106 Md. App. 329, 351 (1995); then quoting *Grant v. Zich*, 53 Md. App. 610, 618 (1983)). And the court did consider all of the evidence before it and the appropriately weighed the statutory factors in reaching its decision. The court specifically considered the economic circumstances of each party at the time the award was made, the circumstances that contributed to the estrangement, how and when specific marital property was acquired, and more. The court’s on-the-record

ruling did not recite all of the factors in checklist form, but the court did exercise its “broad discretion to reach an equitable result” when fashioning this monetary award, *Hart v. Hart*, 169 Md. App. 151, 161 (2006), and did not abuse that discretion in splitting this couple’s marital property in nearly equal parts.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. APPELLANT
TO PAY COSTS.**