Circuit Court for Montgomery County
Case No. 153879-FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2093

September Term, 2022

HEBA HELAL

v.

GAMAL R. HELAL

Berger,
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: October 16, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case is before us on appeal from the Circuit Court for Montgomery County where appellant, Heba Helal ("H. Helal"), challenges the December 2022 Memorandum Opinion ("opinion") and Judgment of Absolute Divorce, which (1) granted H. Helal an absolute divorce from Gamal R. Helal ("G. Helal"), (2) awarded H. Helal $200,000 and (3) ordered H. Helal to return certain items of personal property to G. Helal. H. Helal noted a timely appeal. H. Helal presents the following issue for our review:[1] whether the circuit court erred when it determined that the contents of two savings plans established by G. Helal's single-member LLC were non-marital assets.[2] For the reasons to follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties married in June 2011, and H. Helal filed for absolute divorce in June 2018. In October 2022, after G. Helal filed an answer and counterclaim also seeking absolute divorce, the circuit court held a three-day merits hearing. During the hearing both parties raised numerous issues. Addressing the issue herein, evidence was presented which focused on two savings plans established by Helal Enterprises, LLC ("Helal Enterprises"), G. Helal's single-member limited liability corporation. The first of these savings plans is

[1] Rephrased from: "Whether the Trial Court erred in finding that Appellee's retirement interests/entitlements under both the Helal Enterprises' Defined Benefit Plan and the Helal Enterprises' Profit Sharing Plan were non-marital assets of Appellee."

[2] A second issue, challenging the circuit court's ability to order the return of personal property to G. Helal, was raised in the parties' briefs, but was resolved by the parties prior to oral argument. Accordingly, the issue is now moot and we do not address it in this opinion.

the Helal Enterprises Defined Benefit Pension Plan,[3] and the second is the Helal Enterprises Profit Sharing Plan (collectively, "the savings plans").[4]

It is uncontested that Helal Enterprises was formed prior to the parties' 2011 marriage. During the existence of Helal Enterprises, its sole customer was the ExxonMobil Corporation, ("ExxonMobil") which entered into a contract with G. Helal in 2009 ("2009 contract"), roughly two years before the parties' marriage. In 2014, after the parties' marriage, Helal Enterprises and ExxonMobil signed a second contract which extended the contractual relationship ("2014 extension contract" or "2014 contract"). Both contracts encompassed consulting services to be performed by G. Helal, which included traveling internationally and providing "advice and assistance to senior ExxonMobil personnel" globally. Both contracts anticipated that the services rendered would take up about 50% of G. Helal's work time, and neither required specific deliverables as part of their terms. The contracts also both referred to the quarterly disbursements paid to Helal Enterprises as a "retainer fee." The language in both contracts is substantially similar, with limited differences between the two.

The 2009 contract covered the period from October 2009 to July of 2014. In addition

[3] As of August 31, 2022, the benefit plan had a total value of $1,556,444.83, and was comprised of two accounts, one with Washington Capital Partners, and another with ETrade.

[4] As of August 31, 2022, the profit sharing plan had a total value of $27,705.49, and was comprised of two accounts held with Washington Capital Partners and ETrade.

to a schedule of quarterly payments in amounts that increased from $75,000 to $250,000,[5] the 2009 contract also contained two "Termination Payment" tables. By the terms of the contract, if either signatory prematurely canceled the agreement, Helal Enterprises would collect a termination payment accounting for (1) the date of termination, and (2) whether the termination was for cause, or for a reason other than for cause.[6] If the contract was terminated for a reason other than cause, Helal Enterprises would receive a termination payment $2 million greater than if the contract was terminated for cause. G. Helal ultimately earned a total of $5,147,750 from the 2009 contract, which was not terminated prior to the contract period.

As the 2009 contract was nearing expiration, G. Helal and ExxonMobil entered into an extension contract in August 2014.[7] This agreement extended the covered period until September of 2019, when G. Helal retired. The 2014 extension contract called for the quarterly payments of $250,000 to continue and to be consistent for the 5-year contract period. In most respects, the two contracts were substantially similar. The extension contract did adjust the termination payment to be entitled by G. Helal only if the contract was both (1) terminated by ExxonMobil and (2) the termination was not for cause. The

[5] The contract also contained a single disproportionately large payment of $2,372,750 to be paid in January of 2013.

[6] The contract defined "cause" as "(i) Helal's gross negligence or willful misconduct in the performance of the Services; (ii) any act of fraud or misappropriation by Helal of material assets of ExxonMobil; or (iii) any material breach of the provisions of this Agreement and failure to cure such breach[.]"

[7] As we explain in greater detail *supra*, the parties disagree on whether the 2014 ExxonMobil contract was a renewal of the first, or a wholly new contract.

language in the 2009 contract guaranteed a termination payment in the event of any form of premature cancellation. Neither contract was prematurely cancelled. Both G. Helal and H. Helal agree that the second contract was signed and performed during the duration of the parties' marriage. The savings plans themselves were also created on January 1, 2012, during the parties' marriage, and funded through at minimum 2018. The parties agree that the savings plans were exclusively funded with the proceeds of the ExxonMobil contract(s).

Following the merits hearing, the circuit court issued a memorandum opinion wherein it found that the 2014 contract was an "extension" of the first, with "virtually identical terms." The court also determined that "each [contract] provided for large, guaranteed termination payments," and "[t]here was thus a very high likelihood that, absent some unanticipated occurrence, the payments to Helal Enterprises would be received," and the payments were therefore "more than mere 'expectancies[.]'" Thus, the circuit court found that Helal Enterprises had an entitlement to the proceeds that was "sufficiently definite so as to be deemed 'acquired' by… [G. Helal] before the marriage." The court concluded that because the retirement and savings plans were fully funded by the proceeds of the ExxonMobil contracts, and therefore directly traceable to a non-marital asset, G. Helal's interest in the savings plans was itself non-marital. The court determined that as the proceeds of the ExxonMobil contracts were the sole funding source for the savings plans, marital assets had not been comingled with non-martial assets, and therefore, G. Helal's property interest in the savings plans was non-marital. Additional facts will be

included as they become relevant to the issues.

STANDARD OF REVIEW

We review the circuit court's findings of fact for clear error. *Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009). "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) (quoting *Hillsmere Shores Improvement Ass'n*, *Inc. v. Singleton*, 182 Md. App. 667, 690 (2008). Furthermore, "[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Kusi v. State*, 438 Md. 362, 383 (2014) (quoting *Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 130 (1952). In reviewing a court's determination of "what is, and what is not, marital property," we likewise review under the clearly erroneous standard. *Richards v. Richards*, 166 Md. App, 263, 271 (2005). This is because "[o]rdinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). Furthermore, "[w]hen reviewing mixed questions of law and fact, we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of law." *Fischbach* 187 Md. App. at 88. (internal citations and quotation marks omitted).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT THE SAVINGS PLANS WERE NON-MARITAL PROPERTY.

A. Marital and Non-Marital Property

Title 8 of the Family Law Article of the Maryland Code provides for the equitable distribution of marital property, defined as "property, however titled, acquired by 1 or both parties during the marriage." Md. Code Ann., Fam. Law ("FL") § 8-201(e)(1). Marital property does not include property either "acquired before the marriage," or that which is "directly traceable" to property acquired before the marriage. FL §8-201(e)(3). Conversely, "any property acquired during the marriage that cannot be directly traced to a nonmarital source is marital property." *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993). However, "[p]roperty that is initially non-marital can become marital," *Innerbichler*, 132 Md. App. at 227, if marital and non-marital property are commingled "to the point direct tracing is impossible[.]" *Melrod v. Melrod*, 83 Md. App. 180, 188 (1990). A court's division of marital from non-marital property "is important only in the context of the court's ability to grant a monetary award 'as an adjustment of the equities and rights of the parties concerning marital property.'" *Noffsinger*, 95 Md. App. at 281 (quoting *Melrod*, 83 Md. App. at 185). The party asserting a marital property interest bears the burden of producing evidence sufficient to show the identity and value of the property. *Id*.

B. Parties' Contentions

On appeal, H. Helal claims error in the court's finding that the savings plans, which are funded exclusively from the proceeds of the ExxonMobil contracts, are non-marital

property. In support of this contention, H. Helal argues that the circuit court committed error in making factual findings (1) that the 2014 ExxonMobil contract was an extension of the 2009 contract, and (2) that the proceeds of both ExxonMobil contracts are directly traceable to contractual rights acquired by G. Helal prior to the marriage.

H. Helal asserts that, contrary to the court's determination that the 2014 ExxonMobil contract was an extension of the 2009 contract, the 2014 contract was a distinct contract with materially different terms. Therefore, as the 2014 contract was signed and performed entirely during the parties' marriage, H. Helal posits that all proceeds of the extension contract are martial assets. Next, H. Helal argues that because the realized value of the contracts as performed was higher than the value of the termination payments, all money paid out pursuant to the contracts during the marriage was a marital asset. H. Helal also contends that even if some or all the 2009 ExxonMobil contract's proceeds were non-marital assets, they were comingled in the savings plans with proceeds of the 2014 extension contract, and therefore converted to marital assets.

G. Helal disagrees. He opines that the circuit court did not err in finding that his interest in the savings plan was a non-marital asset, as there was sufficient evidence for the court to properly reach that conclusion. Specifically, G. Helal asserts that all payments were pursuant to a single contract with ExxonMobil that was signed two years before the parties' marriage, which was renewed in 2014. He argues that the existence of a contractual entitlement to the termination fee, as well as the fact that the payments were to occur on a defined and pre-determined schedule, supports the court's finding that all proceeds under

the contract were acquired before the marriage. In G. Helal's view, the fact that he was paid more than the baseline required by the termination clause is immaterial. We address each of the parties' contentions in turn.

C. The Circuit Court Did Not Commit Error in Finding the 2014 Contract Was an Extension of the 2009 Contract.

In reviewing the record, we do not find evidence of clear error in the trial judge's finding that the 2014 ExxonMobil contract was an extension of the 2009 contract.[8] At trial, G. Helal's accountant described the 2014 contract as "the renewal contract", and G. Helal stated that the contract was "renewed in 2014 because that was one of [his] conditions with Exxon." G. Helal also described his initial negotiations with Exxon as resulting in the 2009 contract that would last "five years . . . renewable in 2014." The 2009 contract, in its schedule of payments, lists the final payment due as "$250,000 (and each quarter thereafter if extended)." All payments in the 2014 extension contract were quarterly payments of $250,000. A form memorializing preliminary negotiations between G. Helal and ExxonMobil regarding a third contract was introduced in evidence, wherein the 2014 contract is described as a "renewal after [the] original 5-year term." The language of the 2014 contract contains a single reference to the 2009 contract, characterizing it only as "the

[8] H. Helal asserts that we should review this finding *de novo*, as a matter of contract interpretation. To be sure, H. Helal is correct about the standard of review for a question of contract interpretation, *see Credible Behavioral Health, Inc. v. Johnson*, 446 Md. 380, 392 (2019); however, in this case, the court did not make a legal conclusion interpreting the signatories' rights under the contract, but instead made the factual finding that the 2014 ExxonMobil contract was a renewal of the 2009 contract. *See Leaf Co. v. Montgomery County*, 70 Md. App. 170, 174 (1987). Accordingly, we review for clear error. *Anderson*, 200 Md. App. at 249.

prior agreement." Additionally, the contractual relationship between G. Helal and ExxonMobil did not lapse between the end of the 2009 contract and the beginning of the 2014 extension contract. Continuity between the contracts is further supported by language in the 2014 contract, which stated "payment for the third quarter of 2014 has already been paid pursuant to the prior agreement."

To be sure, H. Helal is correct that there are slight adjustments between the terms of the original 2009 contract and the 2014 extension contract.[9] However, these minor alterations are not inconsistent with the circuit court's determination that the two contracts had "virtually identically terms[.]" Taken together, the evidence in the record is sufficient to show that the circuit court's finding was not clearly erroneous. *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) ("[a] trial court's findings are not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." (internal citations and quotation marks omitted)).

H. Helal posits that the second contract was not a renewal of the first, and its proceeds not a pre-marital asset, because unlike the first contract, the second contract did not include "effective guaranteed termination payments." In asserting error in the court's finding of a single, renewed agreement, H. Helal seizes on a line in the circuit court's opinion that "each [contract] provided for large, guaranteed termination payments." H.

[9] These differences include variations between the schedule of payments, the amount of the quarterly disbursement G. Helal was granted to cover office and administrative expenses, and a term in the 2014 contract stating that G. Helal would not use subcontractors without ExxonMobil's permission, and other relatively minor alterations in contract language or terms.

Helal notes that while the 2009 contract entitled G. Helal to a termination payment if the contract was prematurely terminated by ExxonMobil for *any* reason, the 2014 extension contract mandated a termination payment to G. Helal only if the contract was terminated by ExxonMobil for a reason other than cause. Accordingly, H. Helal asserts reversible error, claiming both that this distinction is evidence the second contract was not a renewal, and that the payments in the second contract were not "guaranteed," contrary to the circuit court's finding. She therefore asks us to conclude that G. Helal had no pre-marital entitlement to the proceeds of the second contract.

H. Helal's reading of the circuit court's opinion is misplaced. The challenged sentence of the opinion states: "Significantly, although neither of the contracts were terminated during their respective term, each provided for large, guaranteed termination payments." We find this to be supported by the evidence and not to be a clearly erroneous statement. Although the guarantees may not have applied in every possible context,[10] this does not render such contractual provisions ineffective, or unable to be described as 'guarantees.' Moreover, the court made additional statements in the opinion concerning the contract proceeds, including that the payments were "nearly certain to be paid," and "[t]here was thus a very high likelihood that, absent some unanticipated occurrence, the payments to Helal Enterprises would be received."

[10] The first contract mandated that ExxonMobil make a termination payment to G. Helal if the contract was prematurely canceled under any circumstance. The second contract allowed ExxonMobil to avoid making the termination payment if ExxonMobil terminated the contract for cause, or if G. Helal himself terminated the agreement.

Taken together, we read these statements to show not that the court believed that G. Helal had a 'guaranteed' entitlement to the termination payments in all possible circumstances, but instead as demonstrative that the court understood that ExxonMobil's performance was 'guaranteed' in the sense that the structure of the payments, which incentivized ExxonMobil to avoid prematurely terminating either contract, served as a strong assurance the contracts would be fulfilled. This understanding supported the court's finding that G. Helal's pre-marital "entitlement [to the proceeds of the contract] . . . was in the court's view sufficiently definite so as to be 'acquired' by . . . [G. Helal] before the marriage." We read the sentence noted by H. Helal in the court's findings not alone but in the context of the full record and the opinion in its entirety, and in doing so, it is apparent that the circuit court both possessed an accurate understanding of the termination payments and did not commit clear error when finding that the contracts were guaranteed, or that the 2014 contract was an extension of the 2009 contract. *See Starke v. Starke*, 134 Md. App. 663, 688 (2000) ("[T]he evidence, at least arguably, cut[s] both ways. . . . Whatever the fact finder does in such circumstances is, by definition, not clearly erroneous.").

D. The Circuit Court Did Not Err in Finding the Proceeds of the Contract Were Non-Marital Assets.

Having determined the circuit court did not err in finding that the 2014 ExxonMobil contract was an extension of the 2009 contract, we now address H. Helal's argument that the court erred by finding that the proceeds of the contracts were acquired before the marriage. As H. Helal asserts that as the contracts were not in fact canceled, and G. Helal's actual earnings under the contracts were greater than the value of the termination payments,

any of Helal Enterprises' earnings after the date of marriage were marital property.

In its opinion, the circuit court held that "the source of funds providing payment for the property about which there is a dispute, with the largest items being . . . [the savings plans], may be traced directly to proceeds from the ExxonMobil contract," which H. Helal does not dispute. The court went on to state that, because of the structure of the termination payments, "[t]here was a very high likelihood that, absent some unanticipated occurrence, the payments to Helal Enterprises would be received." The court found that G. Helal's "entitlement to [the proceeds of the ExxonMobil contracts] was established before the marriage, and that entitlement was in the court's view sufficiently definite so as to be deemed 'acquired' by [G. Helal] before the marriage."

Although H. Helal is correct that both the actual amount of money Helal Enterprises earned under the contracts was in excess of that guaranteed by the termination payments,[11] and that the bulk of the proceeds of the contracts, including the entirety of the 2014 extension contract, was paid after the date of the parties' marriage, these facts, without more, are insufficient to meet the high bar needed to render the circuit court's finding that the fruits of the contracts were pre-marital assets clearly erroneous. *See Fuge v. Fuge*, 146 Md. App. 142, 180 (2002) ("If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous."); *Pugh v. State*, 103

[11] The parties were married on June 29, 2011. According to the table of termination payments, if the first contract between ExxonMobil and Helal Enterprises was terminated as of the parties' date of marriage, G. Helal would have been entitled to a minimum payment of $1,061,500 in addition to the disbursements he had already earned.

Md. App. 624, 657 (1995) ("[W]e cannot substitute our judgment for that of the trial court, even if we might have reached a different result.")

In order to disturb the circuit court's factual finding that the proceeds of the contracts were pre-marital assets, and subsequently, that the value of the savings plans were directly traceable to pre-marital assets, we would be required to find that no competent evidence existed to support the factual findings of the court below. *Id.* This is not the case. In determining that the proceeds of the contracts were non-marital, the court had evidence of the existence of the termination payments, as well as evidence that payments were made under a specified quarterly schedule in place before the marriage and was defined as a "retainer fee" rather than employment income. Thus there was sufficient evidence for the court to find that G. Helal's entitlement to the proceeds of the contracts was "in place before the marriage, and [was] directly the result of the efforts of [G. Helal] and the high level of achievement accomplished by him as a result of a long and successful career."[12] Taken together, viewed "in a light most favorable to the prevailing party," *Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 456 (2004) (citation omitted), this evidence meets the standard of "competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Consequently, we can identify no clear error in the circuit court's determination. Nor do we find any legal error.

[12] The court, citing *Niroo v. Niroo*, analogized G. Helal's premarital right to the payments to renewal commissions paid to an insurance broker, which were also paid out during the marriage, but were "sufficiently certain to be received" prior to the marriage. 313 Md. 226, 237 (1988).

If an interest has been acquired before marriage, the fact that the dividends thereof were disbursed during the marriage is insufficient to convert them into a marital asset. *See Mount v. Mount*, 59 Md. App. 538, 549–50 (1984) (holding that shares of stock received during a marriage as dividends from stock acquired prior to the marriage were directly traceable to the non-marital stock, and therefore were not marital property).

Because we discern no error in the court's findings that the proceeds of both contracts were non-marital assets, and that those proceeds were the only source of funding for the savings plans, we must necessarily also agree that no marital assets were comingled with non-marital proceeds when the savings plans were funded. Therefore, we decline to disturb the circuit court's conclusion that G. Helal's interest in the savings plans, as it is directly traceable to a non-marital source, is a non-marital asset. *See Noffsinger*, 95 Md. App. at 281–82; FL § 8-201(e)(3).

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