Circuit Court for Anne Arundel County
Case No. C-02-FM-15-003536

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2120

September Term, 2018

LISA K. LANE

v.

JOHN C. LANE, JR.

Berger,
Arthur,
Gould,

JJ.

Opinion by Gould, J.

Filed: May 4, 2020

Lisa Lane appeals from the judgment entered by the Circuit Court for Anne Arundel County granting her a divorce from her former husband, John Lane. Specifically, Ms. Lane challenges the decision of the court to set aside a separation agreement that she and her husband had signed in 1995. Ms. Lane contends that the court also erred by: 1) improperly considering her taxable income, rather than her salary, in determining her ability to pay alimony; 2) double-counting Mr. Lane's attorney's fees and expenses in the court's assessment of fees against her; and 3) failing to consider the value of Mr. Lane's workers' compensation claim in evaluating his finances. Finding no error, we affirm.

FACTUAL & PROCEDURAL BACKGROUND

Mr. and Ms. Lane were married on December 30, 1988. Though their marriage lasted for nearly 30 years, it was, by all accounts, rather unconventional. They entered into a separation agreement on July 12, 1995 (the "Separation Agreement"), but thereafter periodically lived and worked with each other. They even had a second child together in 1998.

The Separation Agreement, in relevant part, stated:

> SEPARATION
>
> The parties hereto agree to live separate and apart from each other, free from interference, authority and control by the other, as if each were single and unmarried.
>
> ***
>
> CHILD SUPPORT
>
> Husband shall pay to wife, for the support and maintenance of the child, the sum of Two Hundred Dollars ($200.00) per month. Said support

shall continue until such time as the child shall reach emancipation, marriage, or death, whichever shall be the first occurrence.

***

PERSONAL PROPERTY

All personal property issues have been resolved between the parties.

PRIOR DEBTS AND FUTURE OBLIGATIONS

The parties hereto agree that the prior debts have been or are being resolved, and they further agree that there shall be no further debts or obligations charged against the other.

ALIMONY AND SUPPORT

It is the mutual desire of the parties that hereafter they shall each maintain and support themselves separately and independently of the other. Accordingly, and in consideration of this Agreement, the wife releases and discharges the husband absolutely and forever for the rest of her life from any and all claims, demands, past, present and future for alimony and support both pendente lite and permanent; and the husband releases and discharges the wife absolutely and forever for the rest of his life from all claims, demands, past, present and future for alimony and support both pendente lite and permanent.

ATTORNEY'S FEES AND COURT COSTS

Husband agrees to pay the attorney's fees and costs incurred for a divorce between the parties provided that the divorce is uncontested.

In 2001, Ms. Lane started a business that would in 2005 become Road Safety, LLC ("Road Safety"), a company specializing in traffic control, including construction-related lane closures and signage. Ms. Lane owns 51% of the membership interests in Road Safety, while her brother owns the remaining 49%.

Mr. Lane worked at the company from time to time. In 2007, Mr. Lane was injured on the job for Road Safety, and subsequently filed a claim for workers' compensation benefits.

Between 2000 and 2009, three pieces of real property were acquired and titled in Ms. Lane's name.

In 2015, Ms. Lane filed for divorce. She asserted that the Separation Agreement provided for the division of marital property, leaving nothing for the court to decide on that issue. Mr. Lane filed a motion to "strike" the Separation Agreement on the basis that the couple had reconciled after their initial separation. After a hearing, the circuit court granted the motion and set aside the Separation Agreement, agreeing with Mr. Lane that the parties had reconciled and thus abrogated the agreement under Noffsinger v. Noffsinger, 95 Md. App. 265 (1993).

The matter later came up for trial. The court ruled from the bench after five days of testimony. Initially, the trial court affirmed the motion court's ruling that the Separation Agreement was not valid. Among other things, the trial court found that the parties had never complied with the agreement.

After discussing the evidence and identifying each of the items of marital property, including Ms. Lane's interest in Road Safety, the court found that $13,300 of marital property was owned by Mr. Lane, and $1,363,995 of marital property was owned by Ms. Lane. The court then discussed and applied the factors enumerated in Md. Code Ann., Fam. Law ("FL") § 8-205 (1984, 2012 Repl. Vol.), and ordered Ms. Lane to pay Mr. Lane

$400,000 for his equitable share of the marital property. The court also awarded Mr. Lane monthly alimony of $6,000 and $74,657.30 in attorney's fees and expert witness costs.

This timely appeal followed.

DISCUSSION

THE SEPARATION AGREEMENT

Ms. Lane argues that the circuit court erred in concluding that the parties reconciled and abrogated the Separation Agreement before Ms. Lane's acquisition of what the court later determined to be marital property. She also argues that, even if there was no error in that regard, the court erred by not specifying the date as of which the agreement had been abrogated. Ms. Lane argues that, at the latest, any reconciliation had occurred after she acquired the property that supported the court's award of $400,000 to Mr. Lane, and therefore should be excluded from the marital property category. As Ms. Lane sees it, the court was required to determine precisely when the parties had abrogated the Separation Agreement, and only consider the property acquired after that date in determining an appropriate monetary award.

The Plain Language of the Separation Agreement

Marital property is defined as "property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). It does not include property "excluded by valid agreement." Id., (e)(3)(iii). Under FL §§ 8-203, 8-204, and 8-205, the court resolves disputes about marital property by: (1) determining which property constitutes marital property; (2) valuing such property; and (3) adjusting the equities and rights of the parties

by transferring ownership of certain types of property and/or granting a monetary award. In seeking to exclude her interest in Road Safety and the real properties she acquired after the Separation Agreement was executed, the premise behind Ms. Lane's arguments is that the Separation Agreement qualifies as a "valid agreement" under FL § 8-201(e)(3)(iii) that excludes all property acquired after the Separation Agreement went into effect on July 12, 1995.

Although neither party argued in the circuit court or on appeal whether the Separation Agreement qualifies as an agreement that excludes property from a marital property classification, we may affirm the ruling of the circuit court "on any ground adequately shown by the record[,]" even one "not relied upon by the trial court or the parties." Fischbach v. Fischbach, 187 Md. App. 61, 88-89 (2009). Here, the Separation Agreement does not even address the issue of after-acquired property, let alone purport to exclude after-acquired property from a marital property classification. See McGeehan v. McGeehan, 455 Md. 268, 295-301 (2017) (holding that the relevant analysis to determine whether property acquired after a specific agreement constitutes non-marital property is whether the parties expressed such an intent in the agreement); Falise v. Falise, 63 Md. App. 574, 581 (1985) (cleaned up) (holding that "[i]n order to exclude property 'by valid agreement' from the reach of a monetary award[,] the parties must specifically provide that the subject property must be considered 'non marital' or in some other terms specifically exclude the property from the scope of the Marital Property Act."). For this reason alone,

we would find that the trial court did not err in its marital property classifications and affirm the judgment of the circuit court.

The Abrogation of the Separation Agreement

Even if the Separation Agreement could be construed to exclude after-acquired property from the definition of marital property, we find no error in the circuit court's finding that, under Noffsinger, the parties had reconciled and abrogated the agreement. And, although the court did not expressly state so, by classifying the after-acquired property at issue here as marital, the court implicitly found that the reconciliation occurred before such property was acquired.

A trial court's determination that a separation agreement has been abrogated by post-separation conduct is reviewed for an abuse of discretion. See Noffsinger, 95 Md. App. at 273, 275. Trial judges are not required to explain their entire thought process and every factual finding when rendering a decision after a bench trial. Rule 2-522(a) ("In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages."); see also Prahinski v. Prahinski, 75 Md. App. 113, 136 n.6 (1988) (citation omitted) (holding that "a trial court is not required to articulate each step in its thought process").

Here, the circuit court twice ruled that the Separation Agreement had been abrogated. The first time, almost two years before trial, the motions court held an evidentiary hearing during which it took testimony from eight witnesses, including Mr. and

Ms. Lane. Relying on Noffsinger, the motions court found that the parties had reconciled and, on that basis, set aside the Separation Agreement.[1]

Ms. Lane asked the trial court to revisit the issue and find that the Separation Agreement had not been abrogated.[2] The trial court did revisit the issue and made this finding:

> So, first I note and I find that Judge Vitale has by previous order and memorandum set aside the separation agreement. The Court has reviewed her memorandum opinion.
>
> The Court has reviewed her order and the Court finds that her agreement to set aside the separation agreement is valid.
>
> However, Mr. Jarashow has asked me to consider Casoris v. Casoris and a memo involving reconciliation not automatically voiding property division in the separation agreement.
>
> As I read the Casoris case and the Mott v. Barinowski cases that he cited and also he cites Abreze v. Kramer what was interesting to the Court is that those cases deal with reconciliation and resumption of marital relations abrogating separation agreements so far as there may not be independent consideration and the parties basically intending the agreement to be the final and complete settlement of property rights based upon independent consideration and then the facts indicating that the parties complied with and lived under the agreement with independent consideration.
>
> I find absolutely nothing to support any type of belief that the separation agreement is valid. If you look at the separation agreement which was marked as Exhibit A in the August 27, 2015 e-filing in the Circuit Court,

[1] The motions court applied the wrong legal standard because under Noffsinger, a reconciliation does not automatically abrogate a separation agreement. 95 Md. App. at 272. Rather, a separation agreement is only avoided "by the intentional renunciation of the agreement[,] which the reconciliation and resumption of marital relations sometimes evidences." Id. (quotation omitted). Accordingly, if this were the only ruling on the issue, we would have to reverse the motions court's decision.

[2] The court's ruling on Mr. Lane's motion to strike was an interlocutory order subject to revision at any time pursuant to Maryland Rule 2-602(a).

an agreement which was dated the 12th of July 1995, if you look to see whether or not they actually followed the agreement to see whether or not it should remain in effect, you can actually go almost paragraph through paragraph and see where there was absolutely no following of the agreement.

Paragraph 1. They agreed to live separate and apart. They never lived separate and apart. There were times when they were separate and apart but they never lived separate and apart. They were back together over and over and over again.

They did not act as if they were each single and unmarried. They, in fact, acted as if they were married and if you look at the protective orders, each one indicated they had children in common and were spouses.

Child custody. The wife and the husband were to have joint custody, primary custody being with the wife. Reasonable visitation and assure cooperation for the best interest of the children.

That did not happen. They lived together multiple times where they were both raising the children. And they both made joint decisions regarding the children. I will get into it later why I believe the wife made more but they lived together and they had another child. This was written in single tense, minor child. They went and had another.

Child support. He never paid her $200 a month. It happened for a little bit but it never continued. It certainly was not going on in 2000, 2001, ’02, ’03, ’04, ’05, ’06, ’07, ’08, ’09, ’10, ’11, ’12, ’13, ’14, ’15, ’16, ’17 and ’18. He never, ever followed that.

Hospital, medical and dental insurance. She had them insured. She carried all the insurance. She got the medical insurance for the family. So that was not complied with.

All personal property issues resolved between the parties. Well, that was not true. You know, from Judge Vitale’s opinion about the truck and we know that they lived together and we know that they vacationed together. We know that while the real property might have been titled in her name, they never resolved personal property issues.

Prior debts and future obligations. Absolutely not true. We know that Ms. Lane paid off his credit cards.

> Alimony and support. That is not true. Ms. Lane actually supported him and paid him $2,600 a month while they were living separate and apart.
>
> Attorney's fees and court costs. Husband agrees to pay the attorney's fees and cost incurred for a divorce provided it is uncontested. Well, I am sure he is not stroking any checks today to Mr. Jarashow or Mr. Bittner and when it was filed the first thing he did -- well, not the first thing was he squawked about that.
>
> So there is absolutely nothing in this agreement to indicate that it was followed by the parties. There was no independent consideration and they did everything they could to abrogate it.
>
> So, the Court finds that Judge Vitale's decision has set aside the agreement not that it is really my finding but since it was argued, the Court finds that it was appropriate to set it aside and the Court finds affirmative facts to show that the parties never abided by, followed or in any way lived pursuant to the separation agreement.
>
> The reconciliation occurred. They even had relations up until 2015. Judge Vitale, I believe, in some ways either said or hinted that it was a lifestyle thing. When they fought, dad left. They made up and they were good again for a while and a while would change from incident to incident.
>
> So, in this case the court finds that Judge Vitale's decision was certainly proper.

We have reviewed the trial record carefully and each of these factual findings is amply supported by the evidence. See Reynolds v. Reynolds, 216 Md. App. 205, 218-19 (2014) ("we review the trial court's factual findings for clear error"). For instance, Mr. Lane testified that:

- The parties maintained their property and assets together after executing the Separation Agreement.
- The parties verbally agreed to "cancel" the Separation Agreement.

- The parties purchased the real properties in question together, despite not titling them as such. The parties agreed to keep his name off the title and credit applications because of his poor credit and tax problems.

- The parties shared in spending his Workers' Compensation payments.

- The parties went on vacations together.

- The parties purchased and own a camper/trailer together.

- The parties lived together, and when Mr. Lane stayed elsewhere, it would usually only be for several weeks.

- Mr. Lane would give Ms. Lane money and she would pay for their expenses jointly.

- Mr. Lane participated significantly in raising the parties' children.

- Around 2010, Ms. Lane was financially supporting Mr. Lane by providing monthly payments to him.

In addition, Ms. Lane testified that, after executing the Separation Agreement:

- Mr. Lane only rarely paid child support.

- The parties had recurring sexual relations and even had a second child together.

- Ms. Lane paid for the family's health insurance.

- Ms. Lane paid some of Mr. Lane's credit card bills.

Based on this evidence, the trial court did not abuse its discretion in finding that the parties had reconciled and abrogated the Separation Agreement before acquiring the property—including Road Safety and the real properties—at issue in this appeal.

CALCULATION OF MS. LANE'S INCOME

As most business owners will attest, there can be a mismatch between the money that the owners take home in the form of salary or profits and the amount of income earned by the company as reflected in its tax returns. The reason for this mismatch is simple: companies need working capital to weather the periods of time when cash flow is down. Ms. Lane argues that the circuit court improperly relied on her taxable income, even though she keeps much of that income in the company as working capital. Thus, she argues that the court should have looked solely to the money she brings home, which she claims is far less than the income attributed to her on the company's tax returns.[3]

In support, Ms. Lane cites to Quinn v. Quinn, 11 Md. App. 638 (1971).[4] In Quinn, a husband appealed a divorce decree awarding his former wife alimony and counsel fees. Id. at 641. The husband was the sole owner of a construction company and made all decisions with regards to disbursement of the company's assets. Id. at 647. On appeal, the

[3] Ms. Lane also argues that the circuit court erred by failing to take into account her expenses, as required by FL § 11-106(b)(9). To the contrary, as explained more fully below, the trial court expressly considered Ms. Lane's expenses, but questioned whether they could have accounted for so much of her income.

[4] Ms. Lane also cites to Walker v. Grow, 170 Md. App. 255 (2006), which we do not find persuasive on this issue. In Walker, we held that a court "*can* consider whether subchapter S income shown on a parent's tax return was actually received by the parent as actual income, or constituted pass-through income not available for child support." Id. at 281 (emphasis added). We did not hold that a trial court *is required to* draw a distinction between the two categories of income. Moreover, we noted that courts must be vigilant that the parent is not purposely using the corporate form to decrease her child support obligations, and that the burden "is on the parent seeking to exclude pass-through income from actual income to persuade the court that the pass-through income is not available for child support purposes." Id. The principles espoused in Walker support the trial court's exercise of discretion here.

husband argued that the Chancellor had erred by considering the corporation's taxable income instead of the monies he received from the corporation as salary and/or dividends, in determining his financial ability to pay alimony. Id. We agreed and reduced the award, finding that, under those specific facts, the Chancellor should not have merely relied on "the husband's taxable income or his adjusted gross income," but should have also considered "the husband's gross salary and other current income," as well as the wife's income and the standard of living to which the couple had grown accustomed. Id. at 650-51. Noting the heavily fact-specific nature of the alimony inquiry, we reasoned that there had been no showing that the husband had been misusing the corporate form to shield assets from his wife or was receiving an unreasonably low salary. Id. at 643-44, 648. In coming to our decision, we noted the abundant evidence that the corporation's accounting practices and the disbursements to the husband had been reasonable. Id. at 649-50.

Ms. Lane stretches Quinn beyond its breaking point. Quinn does not, as she contends, stand for the proposition that "[i]ncome is only that amount the party actually receives that can be spent," but excludes monies kept in the business. Instead, the takeaway from Quinn is that it *may* be appropriate to rely on the amount taken home in salary and profit distributions instead of taxable income, and that "each factual situation in determining an award of alimony is unique, making inappropriate the application of any mechanical or rigid formula." Id. at 643. As such, the trial court has broad discretion to weigh the evidence, including the competing expert testimony, in arriving at its decision. See id. at 643-44.

Here, Mr. Lane's expert testified that Road Safety's retained earnings was more than adequate:

> There is something to potentially have a rainy-day fund, but there is strong working capital on the books. So, to the extent that Ms. Lane wanted to take the entire amount of this flow through business income, there is nothing stopping her from doing that, which is why I labeled this as potential.

He explained that retained earnings could be manipulated to hide assets:

> So, phantom income is that variance between what you pay taxes on that is listed as business income as well as what you actually take out as cash flow on distributions.
>
> ***
>
> In a case where you have a majority owner, 51 percent shareholder who do[es] whatever they want with this, she can decide if she wants more or less. So, the phantom income is pretty minimal.
>
> And I wouldn't—I would be more concerned about using distributions that could easily be manipulated especially in a divorce proceeding than looking [at] what she could potentially take out of the company.

Id. at 99-100.

The judge specifically found Mr. Lane's expert to be more credible than Ms. Lane's expert. The court also inferred that Ms. Lane was hiding money in Road Safety to avoid paying Mr. Lane:

> And I do believe, Ms. Lane, that you have an intense desire to keep Mr. Lane from pretty much getting anything because I think that in your heart of hearts while you want him to have something, you truly believe that Road Safety is your baby. You did it. It is yours and he should not share the benefit of it.
>
> ***
>
> Per [Mr. Lane's expert], there is cash flow of $374,900 per year . . . [T]he Court finds that the tax returns from the past eight years support a finding of $362,000 a year and with distributions of over $400,000 a year and hundreds of thousands of dollars as retained earnings in the corporation

> and with the wife being the 51 percent majority owner of this company, she controls what she gets.
>
> It was very interesting when I went to her financial statement and I added up everything that she claimed were expenses, and even after you add it all up and if you took $400,000 and divided all her expenses from it, she comes up with $9,181 extra dollars per month.
>
> *Where is the money? Where is the money?* If I look at the fact that she double counted the health insurance both on the personal side as well as on the second section. If I look at all the repairs she claims on the home. If I look at the allowance she is claiming even though the credit cards are zero, that is $4,000 right there and just out of the $14,000 in draws.
>
> *Where is the money?* You go to the financial statement and you take $12,825.93 and then you take the deficit of $11,321.93 and add those two up and you are still left with over $9,000 [per month] which is not accounted for which comes out of the paper salary which is the salary.
>
> ***
>
> A lot of it did not make sense.
>
> So the Court can easily find—when I tell you the alimony number, she has the ability to pay. She averaged in the last seven years over $362,000 a year. She decides what to take. It is really over $400,000 a year.

(Emphasis added).

These findings reflect a conscientious consideration of the exhibits and testimony, as well as the credibility of the witnesses. The court's analysis does not conflict with Quinn, nor was it an abuse of discretion.[5]

WORKERS' COMPENSATION CLAIM

[5] Ms. Lane claims the trial judge injected personal comments into proceedings that suggested a prejudice against Ms. Lane. The trial court's personal comments were consistent with the judge's informal style and betrayed no indication of bias. In fact, the notion that the judge personally disliked Ms. Lane doesn't square with his effusive praise of her, including describing her "as wonderful a person as [he has] ever met in [his] courtroom."

Ms. Lane argues that the circuit court erred by failing to consider as marital property a potential workers' compensation award to which Mr. Lane may have been, and may still be, entitled. According to Ms. Lane, Mr. Lane had been injured while working for Road Safety and has a "pending workers' compensation case in which he is eligible for an award." She contends that the circuit court should have attributed a value to the amount of the award that he could have received during the marriage but "[f]or some unexplained reason" did not seek.

However, as the circuit court recognized, "[t]here [was] no credible proof of an open claim or disposition or dissipation of any Worker's Comp award." There was no testimony of the potential value of the claim. Ms. Lane relies solely on the *ipse dixit* of her counsel in footnotes on the parties' "Joint Statement Concerning Marital and Non-Marital Property," which listed certain past and potential awards and provided back-of-the-napkin calculations for the range of potential awards. The court cannot be expected to make a finding on the value of his claim without any evidence.

ATTORNEY'S FEES

Ms. Lane argues that the circuit court double-counted Mr. Lane's attorney's fees and expenses when awarding him alimony. Specifically, she argues that the court awarded him $74,657.30 for attorney's fees and expert costs, but also awarded him $6,000 per month in alimony, which included $2,083 that Mr. Lane had budgeted for "legal fees & expert fees" (according to his financial statement). Thus, Ms. Lane contends that the alimony award must be reduced by $2,083 to avoid a double-recovery for attorney's and expert's fees.

Ms. Lane's contention has no support in the record. To the contrary, the evidence suggests that the court specifically *avoided* double-counting these costs: though Mr. Lane asked for $8,083 in monthly alimony, the court awarded only $6,000—exactly $2,083 less

than the total amount Mr. Lane requested that included legal expenses. Thus, there is no merit to Ms. Lane's contention that the court allowed a double-recovery for these expenses.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.