

Circuit Court for Cecil County  
Case No. 07-C-15-2028

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2613

September Term, 2016

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SAMUEL SPOSATO

v.

JOYCE SPOSATO

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Graeff,  
Nazarian,  
Fader,

JJ.

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Opinion by Nazarian, J.

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Filed: March 20, 2018

\* 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.

This is an appeal and cross-appeal from an order of the Circuit Court for Cecil County granting an absolute divorce to Samuel Sposato (“Husband”) and Joyce Sposato (“Wife”), who had been married for 33 years. The circuit court distributed marital property, allowed Husband and Wife to keep their respective pensions, and made a monetary award to Wife in the amount of \$54,850. Husband raises a number of challenges to the division of marital property and the monetary award, and the parties agree, as do we, that the latter must be vacated and the case remanded for further proceedings. We affirm the remaining decisions.

### **I. BACKGROUND**

Husband and Wife were married on October 20, 1984, and they separated on October 14, 2014.<sup>1</sup> During their marriage, they lived in a house on Bailiff Road in North East, Maryland.

After a two-day bench trial on Husband’s complaint and Wife’s counter-complaint for absolute divorce, the circuit court issued an oral ruling that it followed with a memorandum opinion and order. Both parties filed motions to alter or amend judgment. The court denied Wife’s motion and granted in part and denied in part Husband’s motion. Husband timely appealed, and Wife cross-appealed.

Before the trial, the parties had identified their assets on a Maryland Rule 9-207 Joint Statement of Parties Concerning Marital and Non-Marital Property (“Joint

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<sup>1</sup> The parties had no children, although Husband adopted Wife’s daughter, who was over eighteen at the time of the separation. Wife also has a son.

Statement”). In its memorandum opinion, the circuit court appeared to find that all of the property at issue—except for a deer trophy, which the parties agreed belonged to Husband—was marital property:

The Court considered how and when specific marital property or interest in property was acquired and found that with the exception of a deer trophy, all of the parties’ assets had been acquired during the marriage and both parties seem to have expended equal effort in acquiring these assets.

As a practical matter, however, the court treated two assets other than the deer trophy as non-marital property: settlement proceeds from a personal injury action resolved in Husband’s favor, and a piece of real property in West Virginia titled in Wife’s name. In its oral ruling, the court found that the settlement proceeds were “not marital property,” and in its written order went on to allow Husband to retain those proceeds. The court also allowed Wife to retain the real property in West Virginia without making an express finding that that property was non-marital, although the court seemed to accept Wife’s contention that it had been purchased entirely with non-marital assets, for the benefit of Wife’s son.

Most of the remainder of the property—namely the proceeds from the sale of the marital residence (Bailiff Road), bank and retirement accounts, and the jointly-held rental properties (Willow Drive, South Deen, and Maple Court)—was split evenly between the parties. Each party was awarded one of the couple’s two vehicles, and Husband retained a Harley Davidson motorcycle and a boat and trailer, although on reconsideration, the court added \$4,850 to the initial \$50,000 awarded to Wife to account for half the value of those

items. Other personal property items<sup>2</sup> were awarded to whichever party possessed them at the time the order was entered.

The main sources of contention on appeal are the parties' pensions, which the court found to be marital property, and the amount of the monetary award (\$54,850) to Wife. Husband's pension is a full-career autoworker's pension based on twenty-five years of employment at Fiat Chrysler; Wife's is a State of Maryland employee pension that is vested but not yet paying, and will not reach full benefit status by the time she retires (she has worked only ten years for the State to date). The court allowed Husband and Wife to keep their respective pensions and appears to have calculated the amount of the monetary award to make up the difference in the pensions' respective values. The court found that Husband receives \$1,986.59 per month from his pension. According to Husband, he will lose a portion of that pension when he turns 62 years of age, and the remaining portion will decrease every five years starting at age 60 (he was 61 at the time of trial). The record contained no evidence about Wife's pension other than general statements to the effect that she is not currently collecting it and that once she does, the monthly payment likely will be lower than Husband's. At the time of the trial, Wife was employed and drawing Social Security benefits in the amount of \$1,000 per month.

Additional facts will be supplied as necessary below.

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<sup>2</sup> Those items included the snow blower, generator, tandem axle trailer, decoys, crossbow, compound bow, scope and arrows, tree stand, second tree stand, Craftsman Tool Chests, Tools, Smoker, Power Back GT5250-WK, office furniture, power tools, wood end tables, beermeister, 0.5 carat wedding set, motorcycle lift, tool boxes, food processor, commercial meat grinder, and an old plow.

## II. DISCUSSION

Husband identifies ten issues in his appeal.<sup>3</sup> Wife identifies six in her cross-appeal.<sup>4</sup>

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<sup>3</sup> Husband states the Questions Presented in his appeal as follows:

- I. The Circuit Court should take additional testimony in order to determine the value of the Appellee's Pension
- II. The Circuit Court did not fairly consider the economic circumstances of the parties at the time the monetary award was to be made.
- III. The Circuit Court did not accurately consider the ages of the parties.
- IV. The Circuit Court did not give adequate weight to the physical condition of the parties.
- V. The Circuit Court erroneously considered the award of family use personal property in the context of this case.
- VI. The Circuit Court ordered the sale or division of property, but did not make a finding of whether said property was marital or nonmarital.
- VII. The Circuit Court ordered the sale of the parties' rental properties, but was silent in regard as to who is to pay the mortgages, upkeep and expenses for the rental properties until they are sold.
- VIII. The Circuit Court ordered the sale of property titled solely in the name of the Appellant which the Court is not empowered to do, then reversed itself and increased the monetary award.
- IX. The Circuit Court's division of property is facially inequitable.
- X. The Circuit Court permitted Appellee to keep real property in West Virginia despite the fact that she did not disclose the existence of said property in discovery.

<sup>4</sup> Wife states the Questions Presented in her cross-appeal as follows:

- XI. Did the circuit court err in awarding the sum of Sixteen Thousand One Hundred Forty-Eight Dollars and Sixty-One Cents (\$16,148.61) to the Appellant as Crawford credits for payment of certain expenses for the jointly titled marital home

All of them collapse naturally into two areas of inquiry: the monetary award and other considerations.

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when there was no factual finding to support this award, no explanation as to how this figure was calculated, and the relevant case law does not support such an award?

XII. Did the circuit court err in determining that the Appellee did not meet its initial burden in establishing a *prima facie* case of dissipation when the evidence presented at trial established that between July 2016 and the date of trial the Appellant withdrew Thirty Thousand Dollars (\$30,000) from a marital asset, the Appellant's Merrill EDGE IRRA, to avoid same from being divided by the Court?

XIII. Did the circuit court err by failing to divide the Appellant's entirely marital Fiat-Chrysler pension on an "if, as, and when" basis absent the Appellant providing notice that he was seeking anything other than an "if, as, and when" distribution of his pension or expert testimony regarding the value of same?

XIV. Did the circuit court err in ordering a distribution of the parties' bank accounts without making a determination of the balance contained in said bank accounts even though the balances were listed on the Joint Statement, which was introduced into evidence as Joint Exhibit 1?

XV. Did the circuit court have the authority to order the parties to be "equally liable for any deficit for the sale" of the jointly titled rental properties when the underlying contract regarding properties it meant to determine each parties [sic] proportional share for any deficiency?

XVI. Did the circuit court err by failing to value the parties' personal property, failing to address several items of personal property listed on the parties' Joint Statement and ruling that the personal property is to "remain in the ownership of whomever party possess[es] it"?

**A. The Monetary Award Must Be Vacated.**

Under Maryland law, when a party to a divorce seeks a marital property award, the circuit court must undertake a three-step process to determine how the marital property<sup>5</sup> should be distributed between the parties and whether a monetary award would be appropriate to balance the equities after distribution:

First, for each disputed item of property, the court must determine whether it is marital or nonmarital. Second, the court must determine the value of all marital property. Third, the court must decide if the division of marital property according to title would be unfair. If so, the [circuit court] may make a monetary award to rectify any inequity created by the way in which property acquired during the marriage happened to be titled.

*Brown v. Brown*, 195 Md. App. 72, 109 (2010) (cleaned up); *see also* Md. Code Ann., Family Law (“FL”) §§ 8-203–5.

The purpose of the monetary award, should a court decide to make one, is “to compensate a spouse who holds title to less than an equitable portion of [the marital] property.” *Flanagan v. Flanagan*, 181 Md. App. 492, 519 (2008) (quoting *Ward v. Ward*, 52 Md. App. 336, 339–40 (1982)). In setting the award amount, the court *must* consider the ten factors enumerated in F.L. § 8-205(b).<sup>6</sup> Most relevant to this appeal is subsection

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<sup>5</sup> “Marital property” is defined as “the property, however titled, acquired by 1 or both parties during the marriage.” F.L. § 8-201(e)(1).

<sup>6</sup> F.L. § 8-205(b) provides:

**Required Considerations**

(b) 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 property described in subsection (a)(2) of this section, or both, after considering each of the following factors:

(2) of F.L. § 8-205(b), which requires the court to identify and *value* all marital and non-marital assets. *Flanagan*, 181 Md. App. at 534 (“With respect to the *amount* of a monetary award, [F.L. § 8-205(b)(2)] instructs the court to consider ‘the value of *all property interests of each party*’ (emphasis added), which includes non-marital property.”); *accord Brown*, 195 Md. App. at 117.

In an appeal from a bench trial, we “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). In a divorce action,

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- (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.



“[t]he decision whether to grant a monetary award is generally within the sound discretion of the trial court. Nevertheless, even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards.” *Alston v. Alston*, 331 Md. 496, 504 (1993) (cleaned up).

We see, and will explain, two errors in the determination of the monetary award in this case. *First*, Husband is not entitled to the *Crawford* credits the court awarded him for payments he made with marital assets toward the mortgage and upkeep of the marital residence (*i.e.*, the Bailiff Road house). *Second*, and although we have no quarrel with the court’s decisions to allow both parties to retain and collect their pensions and to retain personal property, the pensions were never valued as required by F.L. § 8-205(b)(2), which leaves no record on which to evaluate the award amount. On remand, as the court identifies, values, and divides the marital and non-marital property, and determines the monetary award amount, it should do so against the following backdrop.

**1. Husband was not entitled to *Crawford* credits.**

In her cross-appeal, Wife argues that the circuit court erred in awarding \$16,148.61 to Husband as *Crawford* credits for payments he made toward expenses on the parties’ jointly titled marital residence (the Bailiff Road property). The concept of “*Crawford* credits” derives from the principle of contribution, that “one co-tenant who pays the mortgage, taxes, and other carrying charges of jointly owned property is entitled to contribution from the other.” *Flanagan*, 181 Md. App. at 540 (quoting *Crawford v. Crawford*, 293 Md. 307, 309 (1982)). The requirement of contribution applies to married

couples who hold property as tenants by the entirety.<sup>7</sup> *Kline v. Kline*, 85 Md. App. 28, 48 (1990) (citing *Schlibach v. Schlibach*, 171 Md. 405, 408 (1937)).

An award of *Crawford* credits for one spouse’s contribution to the maintenance of jointly held property is not a creation of statute, but “an equitable remedy within the discretion of the court.” *Gordon v. Gordon*, 174 Md. App. 583, 642 (2007); accord *Kline v. Kline*, 85 Md. App. 28, 48 (1990). The spouse who pays the mortgage and expenses isn’t necessarily entitled to credit in all cases; rather, “the court must exercise its discretion to determine whether *Crawford* credits are warranted . . . . [T]he test involves whether the total disposition is equitable.” *Flanagan*, 181 Md. App. at 541 (cleaned up). In cases where a spouse uses non-marital funds to pay for mortgage, insurance, and taxes, though, *Crawford* credits may be—but are not always—appropriate in setting the amount of a monetary award. *Kline*, 85 Md. App. at 49; *Flanagan*, 181 Md. App. at 541. But when one spouse uses *marital* funds to pay expenses on a jointly-held property, *Crawford* credits are *not* appropriate. See, e.g., *Prahinski v. Prahinski*, 75 Md. App. 113, 141 (1988) (holding no error when trial court did not award credit for husband’s payment of expenses for rental properties with cash that court found was money acquired during the marriage); *Wassif v.*

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<sup>7</sup> In divorce actions, such contribution is referred to as “*Crawford* credits,” a term derived from *Crawford v. Crawford*, 293 Md. at 314, in which the Court of Appeals held that proceeds from the sale of a marital home should not necessarily have been divided equally between husband and wife under the presumption of gift doctrine where the parties had separated. There was evidence of an agreement between husband and wife that the wife would assume responsibility for the payments on the house because she was living there during the separation, and the case was remanded to the trial court to determine whether such an agreement existed. *Id.* at 315.

*Wassif*, 77 Md. App. 750, 766 (1989) (finding it proper to award credits to the husband for mortgage payments made after the divorce, but not for such payments during parties' separation because those payments were made from marital property); *Broseus v. Broseus*, 82 Md. App. 183, 193–94 (1990) (finding contribution for one spouse's payments on the family home not mandated where payments were made from marital funds); *see also Caccamise v. Caccamise*, 130 Md. App. 505, 525 (2000) (identifying "payment from marital property" as one of four exceptions that "preclude contribution" for maintenance of joint property). That's because both parties already have, in effect, contributed toward the joint expenses, as the payments reduce the marital assets available for distribution.

In this case, the circuit court found that all property was marital property, with the exception of a deer-head trophy. But the court also appeared to find that Husband used his own *non-marital* funds to maintain the marital residence during the parties' separation: the court stated that, from October 2014 to June 2016, Husband "financially maintained" the marital residence "without contribution" from Wife. We hold, and Husband agreed at oral argument, that the circuit court erred to the extent it gave Husband *Crawford* credits when he used non-marital funds to maintain the marital home. The parties conceded, and the record confirms, that the payments were made from *marital* property, specifically from Husband's pension and the Merrill EDGE IRRA, accounts that the parties agreed in their Joint Statement were marital assets. And indeed, as noted above, the court also found these assets were marital property in its memorandum opinion.

Because, as we explain next, the court will need to address other valuation issues on remand, we cannot resolve this issue simply by subtracting the *Crawford* credits from the monetary award. We also express no view on whether Husband might be entitled to some form of credit (albeit *not Crawford* credit) for the fact that Wife occupied the home during the parties' separation, or in connection with any agreement they may have made about relative responsibility for the payment of expenses for the home (there is some mention in the testimony of such an understanding, but no evidence or testimony about its terms). All of this is fair game for the overall marital property distribution calculation that the court will perform on remand.

**2. The pensions must be valued before determining the propriety and amount of a monetary award.**

Both parties have pensions, and everyone agrees that both pensions are marital property. The court decided to let each party keep their respective pension, and it appears that the monetary award was designed primarily to cover the difference in their relative values: Husband's is a full-career autoworker's pension, while Wife is a State employee whose pension has vested but is not yet paying, and she will not reach maximum benefit status by the time she retires. But although we have no quarrel with the structural decision not to divide either pension, we agree with Husband that the pensions must be valued if they are to form the basis of a monetary award.

In a divorce case involving pensions that are marital property—as they were here—the court has two main options. On the one hand, the court may distribute the pensions in proportionate shares on an “if, as, and when” basis, which means that the pensions are

distributed to both parties by percentages “if, as and when” the pensions are collected. *Imagnu v. Wodajo*, 85 Md. App. 208, 214 (1990). On the other, the court may allow each party to keep his or her respective pension, but then must value them and take those values into consideration when calculating the amount of a monetary award. *Id.* at 213–14. There are two accepted methods for determining the value of a pension: (a) calculate the employee’s contributions to the pension plus accrued interest, or (b) use actuarial methods to compute the present value of the future benefits. *Id.* The court need not value the pensions if it distributes them on an “if, as and when” basis. *See* FL § 8-204(a). But if it follows this latter path and decides otherwise to make a monetary award, then the court *must* value the pensions. *See Flanagan*, 181 Md. App. at 534. Put more broadly, a court errs if it makes a monetary award that doesn’t consider the value of pensions. *See, e.g., Nisos v. Nisos*, 60 Md. App. 368, 385 (1984); *Komorous v. Komorous*, 56 Md. App. 326, 330 (1983).

From the high-level descriptions of the pensions at trial, it appears that there may well be a difference in the relative value of the two pensions. But the trial court record contains no concrete evidence about the pensions’ present-day value, or even the payments Wife can expect, and the trial court was left without the record it needed to calculate the relative values of the pensions or on which it could base its decision to let the parties keep their pensions and make a monetary award. For that reason, we must vacate the monetary award and remand. On remand, the court could choose to divide the pensions on an “if, as, and when” basis, then determine whether the relative payouts going forward, and the value

and division of the other marital property, justify a monetary award.<sup>8</sup> Or the court could decide to allow Husband and Wife to keep their respective pensions, then determine whether that distribution warrants an additional adjustment in the form of a monetary award. Either way, the parties will need to develop a record that allows the court to determine the pensions' future payouts or relative values and make the appropriate calculations.

For the same reasons, the court must also determine the value of the other marital assets at issue whose values are disputed. *Flanagan*, 181 Md. App. at 534 (court must take value of all marital and non-marital property into consideration when determining amount of monetary award); *accord Brown*, 195 Md. App. at 117. On appeal, both parties generally argued, and we agree, that the circuit court erred in not determining the value of the parties' personal property, which was distributed based on whichever party had possession. We recognize that the court intended to divide equally the parties' jointly owned real property (the marital home (Bailiff Road), rental properties (Willow Drive, South Dean Avenue, and Maple Court), and bank accounts), and we find no error in those decisions or with the court's decision to treat Husband's injury settlement proceeds and Wife's West Virginia

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<sup>8</sup> Wife argues that the court was *required* to distribute both pensions on an "if, as and when" basis because Husband did not object, pursuant to F.L. § 8-204(b)(2), sixty days before the parties' Joint Statement was due to the distribution of the pensions on an "if, as or when" basis. But Wife cites no authority, and we have found none, to support the proposition that the court loses its discretion to distribute pensions in a manner other than "if, as and when" if a party does not file an § 8-204(b)(2) objection.

Property as non-marital.<sup>9</sup> But in addition to revisiting the division of pensions and personal property, the court will need to show how it values each party's share of the marital property and, therefore, whether and to what extent a monetary award might be justified.

**3. The court considered the other FL § 8-205(b) factors.**

Husband then argues that the circuit court failed to consider other FL § 8-205(b) factors in setting the monetary award amount, including the “economic circumstances of each party at the time the award is to be made,” “age of each party,” and “physical and mental condition of each party.” Md. Code, F.L. § 8-205(b)(3), (6), (7). But the record demonstrates otherwise—the parties offered evidence about their relative ages and health, and the court took them into account. Husband's challenges are really disputes about the relative weight the court afforded to these factors in reaching the monetary award, and it is not our role to second-guess those judgments. Although we must vacate the monetary award and remand for other reasons, we see no abuse of discretion in the way the court considered and applied these other factors.<sup>10</sup>

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<sup>9</sup> Husband challenges the court's decision to treat the West Virginia property (which was titled in her name) as non-marital because, Husband asserts, Wife failed to disclose the existence of such property during discovery. As Wife points out, however, Wife identified that property and its alleged value on the parties' Joint Statement, and the court resolved in Wife's favor the disputed factual arguments about the funding of and purposes for that property. Based on those factual findings, we find no abuse of discretion in the court's decision to treat that property as non-marital, its title notwithstanding.

<sup>10</sup> Husband argues that the circuit court erred by not deciding who should pay the expenses on the rental properties until they are sold. Perhaps it is more a difference in how one asks the question than a disagreement about the answer, but we agree with Wife that it wasn't the circuit court's role to direct how the parties were to manage the properties so long as the court accounted for the resources used for those purposes in the marital property division, which it did. *See Schweizer v. Schweizer*, 301 Md. 626, 636–37 (1984).

**B. The Court Appropriately Took Into Account Other Marital Property Factors And Considerations**

*Finally*, the parties raises three other challenges to the circuit court’s division of marital property. *First*, in his motion to alter or amend the judgment, Husband asked the court to reconsider its initial decision to order the sale of a 2005 Harley Davidson Road King Motorcycle and a 1196 15’ 10” aluminum boat and trailer, arguing that F.L. § 8-205(a) did not authorize the court to order a sale when both items were titled in his name. Although the parties had listed those items on the Joint Statement as marital property and agreed that their collective value was \$9,700.00, the court awarded them to Husband and adjusted the monetary award by half of their value (\$4,850.00). Because those items were marital property, it was altogether reasonable for the court to add an equitable share of their value to Wife’s portion of the property distribution. We affirm this decision, and leave it to the court on remand to incorporate it into the ultimate property division decision.

*Second*, Wife argues that Husband dissipated marital assets when he withdrew \$30,000 from the Merrill EDGE IRRA in order to avoid that amount being divided by the court. The circuit court, relying on *Simonds v. Simonds*, 165 Md. App. 591 (2005), found that Wife failed to prove a *prima facie* case of dissipation, which requires a showing that the opposing party “expended assets for the principal purpose of reducing the funds available for equitable distribution.” *Id.* (cleaned up). Wife, citing trial testimony, asserts that Husband believed the \$30,000 to be his money, and that he paid off a credit card in the amount of \$6,537.31 with those funds. Husband, citing his trial testimony, asserts that the \$30,000 was used to pay expenses, legal bills, rent, medical expenses, and mortgage on



marital home. Whatever Husband believed about his rights to these funds, there is no dispute that he used these marital assets to pay marital debts, and we see no basis on which to disturb the circuit court's conclusion that Husband didn't do so for the purpose of reducing the funds available for equitable distribution. We affirm the circuit court's decision with respect to dissipation as well.

*Third*, Wife argues that the court erred by ordering the parties equally liable for any deficit for the sale of the jointly titled rental properties. Both agree with Wife's assertion that "[t]he court cannot allocate the parties' debts to the detriment of the creditor." Wife argues nevertheless that ordering the parties equally liable for any deficit resulting from the sale of the rental properties would prevent the creditors holding the mortgages from seeking satisfaction of those mortgages from Husband and Wife, who are ostensibly jointly and severally liable for them. Wife cites no authority for this position, nor is there any evidence in the record suggesting that the parties owe more on any of these properties than the proceeds could pay off. But in any event, the argument misses the court's point: to the extent they haven't already, the parties are to sell these jointly held assets and divide any proceeds equally after retiring any joint debts. We agree with the circuit court's quintessentially equitable treatment of these marital assets.

**JUDGMENT OF THE CIRCUIT COURT  
FOR CECIL COUNTY AFFIRMED IN  
PART, VACATED IN PART, AND  
REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION. COSTS TO BE DIVIDED  
EQUALLY.**