

Circuit Court for Baltimore City  
Case No. 24-D-17-001960

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 3063

September Term, 2018

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KELLY CAVALLIO

v.

RYAN BROWN

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Graeff,  
Beachley,  
Salmon, James P.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: April 17, 2020

\*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.

On November 15, 2018, the Circuit Court for Baltimore City granted Ryan Brown, appellee, a Judgment of Absolute Divorce against Kelly Cavallio, appellant. The circuit court denied Ms. Cavallio’s request for a monetary award “as an adjustment of the equities and rights of the parties in the marital property” and ordered that each spouse retain their own respective personal property, including their financial assets.

On appeal, appellant presents the following question for this Court’s review, which we have rephrased, as follows:

Did the trial court commit reversible error by failing to engage in the analysis required by FL §§ 8-202 through 8-205 and articulate facts in support of its judgment denying a monetary award to appellant?

For the reasons set forth below, we shall vacate, in part, the judgment of the circuit court and remand for further proceedings.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Ms. Cavallio and Mr. Brown met in 2002 at a young professionals’ event hosted by their employer, John Hopkins Health Systems.<sup>1</sup> They began dating in 2005. In April 2008, the couple purchased and moved into a townhouse in the Hampden neighborhood of Baltimore City (“Tilden Drive”). Although they evenly contributed to the down payment on the home, the property was titled in Mr. Brown’s name, and he was solely obligated on

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<sup>1</sup> Both parties are employed by Johns Hopkins in hospital administration roles. Ms. Cavallio has worked there since 1993. Mr. Brown worked there for sixteen years and now is located in Howard County.

the mortgage. The couple got married on July 28, 2012, and their only child, R.B., was born in August 2014.

The parties had a combined gross income of nearly \$500,000 per year, with Ms. Cavallio earning \$18,125 per month at the time of trial, and Mr. Brown earning \$21,918 per month.<sup>2</sup> In addition to maintaining separate checking and saving accounts, they had a joint checking account into which Mr. Brown deposited his entire paycheck and Ms. Cavallio deposited a portion of her paycheck. This joint account was used to pay household bills such as the mortgage and utilities; at the end of the month after those expenses were paid, they transferred the remaining balance into a joint savings account.<sup>3</sup> The couple frequently traveled and shopped for clothing and other items, saved for retirement and R.B.'s future education, and purchased two cars, without incurring debt aside from the mortgage and a loan for Mr. Brown's car.<sup>4</sup>

Around the time of R.B.'s birth, Ms. Cavallio and Mr. Brown began to experience difficulties in their relationship. In June 2014, they fought following brunch with a friend, and Ms. Cavallio stated that this was a "turning point" in which she knew something was

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<sup>2</sup> Mr. Brown's attorney proffered these incomes at trial in July 2018, and Ms. Cavallio cites those figures in her brief. The figures were lower on the 2017 financial statements, where Mr. Brown listed his monthly gross income as \$17,836. Ms. Cavallio's listed gross monthly income is \$17,205.62 on her financial statement submitted in 2017.

<sup>3</sup> Mr. Brown testified that the mortgage payment was approximately \$2,800 to \$3,000 per month.

<sup>4</sup> Ms. Cavallio's car was purchased in cash using her portion of the joint savings left in the account after Mr. Brown withdrew his half, as discussed *infra*.

wrong in the relationship. In September 2014, they fought after attending a family wedding, which Mr. Brown described as a “lightbulb moment” that he was losing affection for Ms. Cavallio. In November 2014, Mr. Brown opened an M&T Bank account without telling Ms. Cavallio as a financial “security blanket” because the mortgage and utilities were all in his name.<sup>5</sup> When Ms. Cavallio found out about the account, she asked him to close it, which he eventually did.

In January 2015, Mr. Brown transferred \$111,000 of the \$185,000 in their joint savings account without consulting Ms. Cavallio. He testified that he did so as a financial safety precaution because he was planning to have a conversation with Ms. Cavallio about their relationship, and he was concerned about how Ms. Cavallio would react. When Ms. Cavallio was notified of the transfer by the bank before Mr. Brown returned home, she was “hysterical” and called Mr. Brown, who immediately transferred the money back. This incident sparked a conversation in which Mr. Brown expressed that he “had lost all affection” for Ms. Cavallio and wanted to seek marriage counseling. The couple attended two sessions with a marriage counselor without success.

In July 2015, Mr. Brown spent a week in a local hotel. The same month, Mr. Brown separated their finances by transferring half of the funds in their joint saving account, or \$92,000, into his own accounts, and left the other half for Ms. Cavallio. Ms. Cavallio did not object to this transfer, but she did not move her portion out of the account for a few months because certain household charges were still being automatically paid from it. Ms.

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<sup>5</sup> Mr. Brown testified that he deposited approximately \$3,000 into this account.

Cavallio stopped contributing to the mortgage payments, utilities bills, and childcare costs at this time. The parties both testified that Ms. Cavallio did not pay any share of the mortgage or utilities at the Tilden Drive property from July 2015 until the settlement conference in November 2017.<sup>6</sup>

From July 2015 until May 2017, the parties continued to cohabit, but they were “estranged.” Mr. Brown described their marriage during this time as “[e]xtremely stressful” and “[t]umultuous,” with “very little communication.” Mr. Brown also became increasingly aware of Ms. Cavallio’s shopping habits, which he described as “excessive,” and he documented the large volume of packages that were delivered to the house.

In May 2017, Mr. Brown moved out of the Tilden Drive property into a rented apartment nearby on Clipper Mill Park Road. He testified that, aside from personal items, he took only a desk and some sports memorabilia from the Tilden Drive property, and he purchased all new furniture for the apartment. After the move, however, he continued to pay the mortgage and utilities for the Tilden Drive property, in addition to the rent and utilities at his new apartment. Although there was no formal custody arrangement during this period, Mr. Brown saw R.B., then age 3, on a regular basis.

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<sup>6</sup> Ms. Cavallio testified that she paid for groceries, R.B.’s health insurance, and the household cleaning service during this period. In March 2016, she began paying for childcare. She also testified that she made numerous non-monetary contributions to the household, including cooking, doing laundry, decorating the home, and more. Mr. Brown asserts in his brief, based on documents obtained in discovery, that Ms. Cavallio spent in 2016 nearly \$53,000, or 43% of her disposable income, on clothing, shoes, and other merchandise.

On June 12, 2017, Mr. Brown filed a Complaint for Custody in the Circuit Court for Baltimore City, requesting joint legal custody and shared physical custody of R.B. On August 10, 2017, Ms. Cavallio filed a Counter-Complaint for Limited Divorce based on desertion, constructive desertion, and separation. She requested, among other things, that the court grant her “a monetary award as an adjustment of the equities and rights of the parties in the marital property.” Ms. Cavallio attached her financial statement to the counter-complaint, which stipulated that her monthly expenses totaled \$8,745.93 and her total net income was \$10,659.16 per month.

On November 16, 2017, the court entered a Temporary Consent Order based on the parties’ temporary agreement regarding physical custody of R.B. and the use and possession of the marital home. The order also provided that Ms. Cavallio contribute \$268 per month toward the mortgage payments, and expenses related to utilities, home security, HOA, and health insurance and childcare for D.B. were the sole responsibility of Ms. Cavallio.

On June 7, 2018, Ms. Cavallio filed an Amended Counter-Complaint for Limited Divorce and/or Absolute Divorce in which she renewed her request for a monetary award. On June 26, 2018, Mr. Brown filed an Amended Complaint for Absolute Divorce, in which he also requested, among other things, a monetary award “as an adjustment of the equities and rights of the parties in the marital property[.]”

On July 20, 2018, three days before trial, the parties filed a Joint Statement concerning their marital and non-marital property. As pertinent to this appeal, the Joint

Statement listed the house, two cars, furniture at both houses, china and crystal, six bank accounts, and six retirement accounts as marital property.<sup>7</sup> Each party listed various additional bank and retirement accounts as non-marital property because they were acquired before the marriage or were excluded by valid agreement. The parties disputed the status of some jewelry and watches and Mr. Brown's sports equipment.

The court held a trial on July 23 and 24, 2018. Both parties testified extensively to their dating history, the financial arrangements before and during the marriage, the breakdown of the marriage, the issues regarding custody after their separation, and more. As pertinent to this appeal, the parties provided comprehensive documentation and testimony regarding their finances, including bank statements for their joint and separate checking and savings accounts, statements for their retirement and investment accounts, information on tuition reimbursement programs for both R.B. and Ms. Cavallio, and their tax returns and tax bills.

Mr. Brown testified that, during the marriage, he consistently contributed to his savings, retirement, and investment accounts. He encouraged Ms. Cavallio to do the same, in part to limit their joint tax obligations, but she did not save as much as he did. Instead, she spent her discretionary income on clothes, shoes, and bags. Mr. Brown stated that her spending habits and lack of savings was a "reoccurring conversation" during the marriage,

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<sup>7</sup> This includes the "Vanguard" account, which was an investment account that Mr. Brown used to reinvest payouts from his Supplemental Executive Retirement Plan ("SERP"). Mr. Brown testified that Ms. Cavallio received similar payouts from her SERP, but she "chose not to reinvest those funds."

and on average, he saved \$12,000 more per year than Ms. Cavallio. Ms. Cavallio did not deny spending a portion of her discretionary income on material items, but she testified that they could afford to shop for nice things because they were fortunate to have good jobs with good incomes. She stated that she was sufficiently saving and planning for the future, including by establishing a separate 529 plan for R.B.'s future educational expenses.<sup>8</sup>

With respect to the division of property, Mr. Brown requested that the court consider that the joint savings account was already split in half in 2015, and they had both been financially independent since that time. Counsel argued in closing that adding up and equally dividing the remaining shares from the joint savings would be “another equalization of those accounts” and would give her “another cut of it.”<sup>9</sup> Additionally, Mr. Brown’s counsel proffered that a monetary award to adjust the retirement accounts was not appropriate because they were both “similarly situated adults” with regard to their earnings, and Ms. Cavallio had the ability to save more but chose not to. Instead, she suggested that the parties should each keep their respective retirement accounts. Mr. Brown testified that he believed that the parties were capable of dividing up their personal property.

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<sup>8</sup> Mr. Brown proffered a savings spreadsheet he compiled in preparation for trial using their W-2s and statements from their retirement and investment accounts. He calculated that, if Ms. Cavallio had saved at the same rate as he had from 2012–2017 (an average of 16%), she would have saved an extra \$67,634. The spreadsheet reflects that she saved between 6–16% of her income, or an average of 11%, during this same period.

<sup>9</sup> The Joint Statement reflects that, at the time of trial, Ms. Cavallio still had \$53,165.28 of her half of the account, and Mr. Brown had \$81,135.09 of his half.



Ms. Cavallio, on the other hand, requested that the court value and add up all the marital assets and equally divide them, in part because they did not mutually agree to the 2015 split of the joint savings account.<sup>10</sup> In closing argument, her counsel argued that it would be inequitable not to divide up the savings they had accumulated between 2015 and 2018 because marital property is valued on the date of divorce. Counsel provided a spreadsheet that requested a monetary award of \$89,518.92, i.e., \$59,607.39 for their personal property/bank accounts, plus \$29,911.53 for their retirement accounts. Such an award, calculated using Ms. Cavallio's valuations in the Joint Statement, would result in an even split of the asserted monetary value of all their marital assets.

At the end of the trial, the court made its oral ruling from the bench. It began by noting that each party was in excellent financial shape, with comparable earnings. The court granted the request for an absolute divorce and awarded the parties joint legal and physical custody of R.B., with tie breaking authority to Ms. Cavallio regarding R.B.'s education. The court addressed child support and denied Ms. Cavallio's request for use and possession of the Tilden Drive property, ordering that it be sold, and the proceeds split evenly.<sup>11</sup>

With regard to the division of property, the following occurred:

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<sup>10</sup> With respect to their cars, she expected that they would each keep their own car but asked the court to take into consideration the value of the cars when fashioning an award.

<sup>11</sup> The court noted that, if Ms. Cavallio wanted to buy out Mr. Brown's interest in the marital home, the parties could agree to that. Ms. Cavallio's counsel stated that her client intended to do so.

THE COURT: . . . . I want to talk about the money first. I -- for a significant amount of time Mr. Brown paid the majority -- paid the mortgage, paid the childcare when he wouldn't give that information over to his wife that she was asking for. And I took that into consideration when I -- when you talked about being equitable. To me it doesn't mean equal. And to me, after hearing the evidence today, I think that it will be equitable that each party maintains their own accounts, whether it's their retirement, whether that's -- it's their bank accounts, whether it's their -- the Vanguard account. I -- and, you know, after hearing about just the spending, how Mr. Brown put all of his money into the account and Ms. Cavallio put some of the money into the joint account to me it is equitable that each party leaves out with the accounts as they are. So Ms. Cavallio would have her accounts, Mr. Brown would keep his accounts.

With respect to the personal properties, I don't have a way of coming up with [an] unbiased calculation to the properties and so I'm either going to ask if you would consider keeping your own --

[MR. BROWN'S COUNSEL]: I'm going to stand up, Your Honor, and tell you that everything that's in the [marital home] she can keep. There's a -- Mr. Brown --

MR. BROWN: Tools.

[MR. BROWN'S COUNSEL]: -- there's just a couple tools or some tools he wants from the house. So if you wanted, they could just keep what's in their -- each respective's property.

THE COURT: And so --

[MS. CAVALLIO'S COUNSEL]: We have an agreement.

THE COURT: -- instead of having to sell everything you keep what's in the property and you keep what's -- what you have.

On November 15, 2018, the court issued a Judgment of Absolute Divorce.<sup>12</sup> The court, among other things, ordered that Ms. Cavallio's request for a monetary award was denied in accordance with the oral ruling. The order further provided:

16. ORDERED, that each party shall retain as his or her sole and separate property any automobiles, stocks, bonds or other securities, savings or checking accounts, certificates of deposit, money market funds, pensions, profit-sharing plans, individual retirement accounts, deferred compensation of any kind, and any other assets of any kind or nature in his or her own name, free and clear of any Interest of the other; and it is further,

17. ORDERED, that all tangible personal property and household chattels presently located at the 3102 Tilden Drive residence, with the exception of Plaintiff's tools, shall be and remain the sole and exclusive property of Defendant, free and clear of any interest of Plaintiff and all tangible personal property and household chattels presently located at Plaintiff's Clipper Park Road residence shall be and remain the sole and exclusive property of Plaintiff, free and clear of any Interest of Defendant.

18. ORDERED, that Plaintiff and Defendant shall each pay his or her own counsel fees incurred in connection with the separation and divorce[.]

This appeal followed.

### STANDARD OF REVIEW

This Court has described the standard of review regarding the division of marital property and monetary awards as follows:

First, we utilize the "clearly erroneous" standard to the court's determination of what is, and what is not, marital property 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, 752 A.2d 291 (2000); *see also* Md. Rule 8-131(c). Factual findings that are supported by substantial evidence are not clearly erroneous. *Collins v.*

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<sup>12</sup> The Judgment of Absolute Divorce was initially entered on October 1, 2018, but that Judgment was vacated and refiled on November 15, 2018, in order to facilitate the buy-out of the marital home by Ms. Cavallio.

*Collins*, 144 Md. App. 395, 409, 798 A.2d 1155 (2002). Second, as to the court’s decision to grant a monetary award, and the amount thereof, we apply an abuse of discretion standard of review. *Gallagher v. Gallagher*, 118 Md.App. 567, 576, 703 A.2d 850 (1997). Within that context, “we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.” *Innerbichler, supra*, 132 Md. App. at 230, 752 A.2d 291.

*Richards v. Richards*, 166 Md. App. 263, 271–72 (2005). Although “[t]he decision whether to grant a monetary award is generally within the sound discretion of the trial court[,]” the court “must exercise its discretion in accordance with correct legal standards.” *Alston v. Alston*, 331 Md. 496, 504 (1993). *Accord Hart v. Hart*, 169 Md. App. 151, 161 (2006).

### DISCUSSION

Ms. Cavallio argues on appeal that the circuit court erred by failing to perform the analysis required under Md. Code Ann. (2012 Repl. Vol.), §§ 8-201 through 8-205 of the Family Law Article (“FL”) before declining her request for a monetary award. She contends that the court failed to identify and value their assets and did not “analyze the facts presented to [it] in relation to the statutory requirements” under FL § 8-205 in order to divide and distribute property to determine a monetary award. Instead, she asserts, the court “summarily” ruled that both parties should retain their own property, which resulted in a “substantially lopsided award of the marital property” in favor of Mr. Brown, without a proper explanation or analysis. She also argues that the circuit court’s failure to identify how it made its factual findings violated Md. Rule 2-522, which requires the court to “dictate into the record a brief statement of the reasons for [its] decision[.]” Accordingly,

Ms. Cavallio requests that this Court vacate the portion of the judgment relating to property distribution and remand for further proceedings.

Mr. Brown argues that the circuit court did not abuse its discretion in denying Ms. Cavallio’s request for a monetary award. He asserts that the court was not required to explicitly state its consideration of each FL § 8-205(b) factor on the record, and the record shows that, after two days of extensive testimony and evidence, the court heard and properly considered the value of the property and the parties’ economic circumstances and evaluated that evidence in light of FL § 8-205(b). He notes that the court appropriately assessed the discrepancy in the parties’ savings and spending habits during the marriage when it denied her request for a monetary award, and he states that the court is not required to equally divide marital assets.

When determining the appropriateness of a monetary award in a divorce proceeding, the circuit court must engage in a three-step process: The court must (1) determine whether disputed property is marital or non-marital;<sup>13</sup> (2) determine the fair market value of all marital property; and (3) “decide if the division of marital property according to title would be unfair, and 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.” *Abdullahi v. Zanini*, 241 Md. App. 372, 405–06 (2019) (cleaned up). The purpose of a monetary award

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<sup>13</sup> Marital property is defined as “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). Marital property does not include property “acquired before the marriage,” “acquired by inheritance or gift from a third party,” “excluded by valid agreement,” or property “directly traceable to any of these sources.” FL § 8-201(e)(3).

is to “rectify any inequity ‘created by the way in which property acquired during marriage happened to be titled.’” *Flanagan v. Flanagan*, 181 Md. App. 492, 520 (2008) (quoting *Doser v. Dosser*, 106 Md. App. 329, 349 (1995)).

In fashioning a monetary award pursuant this third step, the court must consider the following factors under FL § 8-205(b):

- (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.

“The court shall articulate that it has considered all [FL § 8-205(b)] factors when granting (or denying) a monetary award request.” *Richards*, 166 Md. App. at 274. The court, however “is not required to ‘enunciate every factor he considered on the record,’ as long as he or she states that the statutory factors were considered.” *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003) (quoting *Randolph v. Randolph*, 67 Md. App. 577, 585 (1986)). *Accord Lemley v. Lemley*, 102 Md. App. 266, 295 (1994) (“At a minimum, the [court] must state for the record that the required factors were considered.”).

Here, the circuit court failed to provide sufficient reasoning for this Court to determine whether its decision declining to order a monetary award was an abuse of discretion. The parties disputed the fair market value of many items of property listed on the Joint Statement, including their two cars, the furniture for both residences, and retirement accounts.<sup>14</sup> The record does not reflect that the court resolved those disputes and determined the value of these assets or the pension plans. Nor did the court state that it had considered all of the FL § 8-205 factors. Because the record does not reflect that the court engaged in the required analysis, we shall vacate the portion of the judgment denying

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<sup>14</sup> For example, Ms. Cavallio valued her 2013 Acura MDX at \$20,224, whereas Mr. Brown valued it at \$22,910. Mr. Brown valued his 2017 Lexis RX 350 at \$40,513, whereas Ms. Cavallio valued it at \$53,000. Ms. Cavallio valued the new furniture in the Clipper Mill apartment at \$18,500; Mr. Brown valued it at \$5,000. Ms. Cavallio valued the furniture remaining at the Tilden Drive property at \$3,247; Mr. Brown valued it at \$25,000. Ms. Cavallio valued a china and crystal set in the Tilden Drive property at \$1,428; Mr. Brown valued it at \$5,000.

the request for a monetary award. *See Freese v. Freese*, 89 Md. App. 144, 152 (1991) (order denying monetary award remanded because the trial court failed to undertake the steps required by FL §§ 8-203 through 8-205).

It may be that, on remand, the court will determine, in the exercise of its discretion, that Ms. Cavallio is not entitled to a monetary award as an equitable adjustment of the rights of the parties in the marital property. Without the proper analysis, however, we cannot determine whether the court's ruling here was an abuse of discretion. *Id.* at 153 (“The trial court is vested with broad discretion in deciding whether to grant a monetary award, but the exercise of that discretion should be informed and based upon reason.”).<sup>15</sup>

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY VACATED, IN  
PART, WITH REGARD TO THE  
MONETARY AWARD. CASE IS  
REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION. COSTS TO BE PAID BY  
APPELLEE.**

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<sup>15</sup> Our holding today is limited to the monetary award. All other findings by the circuit court should not be disturbed on remand.