UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2604

September Term, 2014

RYAN C. HEWETT

v.

ANGELA M. DINATALE-HEWETT

Eyler, Deborah S.,
Nazarian,
Friedman,
JJ.

Opinion by Nazarian, J.

Filed: November 12, 2015

* 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.

Ryan C. Hewett ("Husband") appeals three decisions the Circuit Court for Carroll County made in the course of granting him a divorce from his ex-wife, appellee Angela M. Dinatale-Hewett ("Wife"). He contends that the trial court abused its discretion by awarding Wife sole legal and primary physical custody of the couple's children, by granting Wife $2,000 per month in indefinite alimony, and by valuing the couple's marital property. We find no error as to the custody issue, but vacate the alimony and monetary awards and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Husband and Wife were married in 2004 and have three children. Husband worked full-time outside the house as a cable splicing technician while Wife stayed home to care for the children. Until September 2013, Wife was the primary caretaker. She cooked, cleaned, arranged extracurricular activities for the children, attended school conferences and doctor's appointments, and helped them with their homework. In addition, Wife supplemented the parties' income with a modest face painting and photography business.

Unfortunately, the marriage was troubled from the start, as the circuit court explained in the Memorandum Opinion Husband challenges in this appeal:

> From the inception of this marriage[,] there have been difficulties between the parties, mainly tied to Husband's moodiness, explosive temper[,] and verbal abuse of both Wife and their children. Husband repeatedly referred to Wife as 'fat' and 'a whore' in front of the children. He called the children 'little shits' and often retreats to his bedroom upon coming home from work to sleep or watch TV and did not spend significant time with his family. He often slept on weekends when family life went on without him; he often disappeared at

> night to go out without his family. He sought to control Wife by his insults and by depriving her of sufficient money to run the household. He gave her an allowance of one hundred dollars per week, and although he claims to have paid the household bills beyond the amount, the evidence shows that Wife paid many of these bills, either from her supplemental income or on her personal credit card . . . Husband expected Wife to come to him for any items she needed beyond the one hundred dollars per week, and in doing so cemented his control over her.

Wife also contributed to the breakdown of the marriage: starting in September 2013, she began an extramarital affair but continued to live with Husband, creating extra War of the Roses-style tension in the family home. For the next nine months, Wife was disengaged from her parenting duties, and was absent so often that Husband became the primary parent for his children. In June 2014, Wife moved out and took the children to live with her at her parents' house. The parties agreed to share access to the children and arranged a schedule.

Husband filed a Complaint for Absolute Divorce, Child Custody, and Other Relief on January 23, 2014. Wife filed a counter-complaint requesting, among other things, an absolute divorce, child support, and indefinite alimony. Following a *pendente lite* hearing, the court granted Husband and Wife shared physical custody of all three children and required Husband to pay $856 in child support starting in September 2014.[1] The court also denied Wife's request for alimony.

[1] Husband's child support payments were adjusted downward to reflect his contribution to the mortgage on the family home.

The court held a four-day trial on the merits in October 2014, then issued a Memorandum Opinion on December 4, 2014. The court granted Husband an absolute divorce based on Wife's adultery. The court also granted Wife sole legal custody and primary physical custody of the children, $2,000 per month in indefinite alimony, $692 per month in child support, use and possession of the family Suburban for three years, a monetary award of $13,500, a share of Husband's 401(k) account, a share of Husband's pension, and a contribution to Wife's attorney's fees.

In its alimony analysis, the court found that Wife incurred reasonable monthly expenses of $4,925 in order to cover residential, medical, transportation, school, and other miscellaneous costs for her and the children. With an average annual salary of only $2,398 and without a bachelor's degree, the court found that Wife was capable of earning a maximum of $12.00 per hour at a full time job, and therefore needed alimony. In its child support calculations, however, the court imputed to Wife an income greater than $12 per hour. Further, the court found that Husband, who had an annual income of $89,085, reasonable monthly expenses of $3,053, and child support payments of $692 per month, was able to pay alimony while meeting his own needs. These findings led the court to conclude that Wife should receive indefinite alimony.

The court fashioned the $13,500 monetary award by dividing the sum of the couple's marital property, including a 2001 Suburban and a 2001 Lexus, roughly in half. Although Husband testified that the Suburban was encumbered by a loan taken from his 401(k), and that the Lexus was encumbered by credit card debt, the court included the full,

unencumbered market value of each car when determining the total value of the couple's marital property. In addition, the court split the value of Husband's 401(k) account between Husband and Wife, subtracting the value of the loan against it only from Husband's share after finding that the loan was made for a non-marital purpose.

Husband filed a motion to amend the circuit court judgment on the issues of custody, alimony, marital property, and attorney's fees. In a written order, the court denied the motion on all issues save for the attorney's fees award, which it modified to credit a payment Husband had made earlier, and Husband filed a timely notice of appeal. We will discuss additional facts as appropriate below.

II. DISCUSSION

On appeal, Husband contests: (A) the circuit court's decision to grant sole legal custody of all three children to Wife; (B) the amount and duration of the alimony award; and (C) the court's valuation of the couple's marital property and the monetary award that resulted.[2] For all three issues, our inquiry is limited to whether the trial court abused its

[2] Husband presented the issues as follows:

1. Did the trial judge err in awarding indefinite alimony of $2,000 monthly?

2. Was the court legally wrong in granting a monetary award to Wife without taking into account marital debt and marital property titled to Wife?

3. Was it error for the trial judge to grant sole legal custody to Wife where both parties requested joint legal custody?

discretion, or whether its findings of fact are clearly erroneous. *Tracey v. Tracey*, 328 Md. 380, 385 (1992); *Kartman v. Kartman*, 163 Md. 19, 23 (1932).

A. The Circuit Court Did Not Abuse Its Discretion By Granting Wife Sole Legal And Primary Physical Custody Of The Parties' Children.

At trial, Husband sought joint legal and shared physical custody of all three children. Wife sought sole custody of the couple's elder daughter, as well as joint legal and primary physical custody of the younger two children. But notwithstanding the parties' willingness to share custody of the younger two children, the trial court granted sole legal and primary physical custody of all three children to Wife. Husband argues that the trial court erred in awarding Wife sole custody, and particularly in the court's decision that they could not communicate effectively regarding the children.[3]

Custody disputes between divorcing parents are decided according to the best interests of the children. *Taylor v. Taylor*, 306 Md. 290, 303 (1986); *Ross v. Hoffmann*, 280 Md. 172, 174-75 (1977); *Montgomery County v. Sanders*, 38 Md. App. 406, 407 (1977). There is no standard formula for determining the children's best interest—they depend on the facts of each case. *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992) ("Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interest standard . . . ."); *Sanders*, 38 Md. App. at 419 ("The best interest standard is an amorphous notion, varying with each individual case . . . ."). The trial judge "who has had the parties before him, has the best opportunity to observe their

[3] For her part, Wife urges us to affirm the trial court's decision to grant her sole legal and primary physical custody.

temper, temperament, and demeanor, and so decide what would be for the child's best interest . . . ." *Kartman*, 163 Md. at 23.

The trial court conducted a detailed analysis of both Husband and Wife's potential to serve the children's best interests,[4] and there is ample evidence to support its decision to grant sole legal and primary physical custody to Wife. Husband argues that because he and Wife were both willing to share custody of the two younger children, the children's best interests necessarily are served by joint custody. Not so. It's true that the parents' *ability* to communicate effectively is "clearly the most important factor in the determination of whether an award of joint legal custody is appropriate . . . ." *Taylor*, 306 Md. at 304. But where the record demonstrates an inability of the parents to communicate effectively about the best interests of the children, joint custody is inappropriate. *Id.*

The record in this case readily supports the trial judge's finding that *these* parents could *not* communicate effectively. The trial court found, for example, that Wife did not respond in a timely manner when Husband attempted to contact her between September 2013 and June 2014, a period when she was frequently absent from the household. The

[4] The trial court's Memorandum Opinion detailed the court's specific consideration of: the parents' capacity to communicate and reach shared decisions regarding the children's welfare; the fitness of each parent; the relationship between each child and each parent; potential disruptions to the children's social and school life; the demands of parental employment; the age and number of children; the sincerity of the parents' requests for custody; the adaptability of the prospective custodian to the task of parenting; the physical, spiritual, and moral well-being of the children; the environment and surroundings in which the children will be reared with each custodian; the influences likely to be exerted on the children; the character and reputation of both parties; the potentiality of maintaining family relations; opportunities for visitation; and material opportunities affecting the future life of the children.

record reveals bitter disputes between Husband and Wife after June 2014, when they separated and attempted to share custody of the children.[5] The trial court found that Husband's emails and texts to Wife during this time were couched in terms of what he would do or what should happen, rather than seeking agreement. "When the evidence discloses severely embittered parents and a relationship marked by dispute, acrimony, and a failure of rational communication, there is nothing to be gained, and much to be lost, by conditioning the making of decisions affecting the child's welfare upon the mutual agreement of the parties." *Id.* at 305. Whether or not we, as trial judges, would have reached the same decision doesn't matter—the record before the trial court is entirely consistent with its conclusion that these parents could not communicate for the purpose of determining the children's best interests and sharing custody.

The record also supports the trial court's conclusion that, as between the two communication-challenged parents, the children's best interest lay in awarding sole legal and primary physical custody to Wife rather than to Husband. Although neither was without flaws, the court found Wife to be a fit parent and primary caretaker for the children (save for the nine-month period between September 2013 and June 2014), and found Husband fit, but less so. The court pointed to Husband's habit of sacrificing the needs of his children in order to punish Wife, for example, when he refused to repair the family car. The court found Wife's requests for custody sincere and Husband's suspect, given that he

[5] *See, e.g.,* Husband's email to Wife regarding scheduling the children's time between them ("Furthermore, your request to return the children on Sunday at 5pm because dinner is a 'family tradition' is a joke. IT IS NOT HAPPENING.") (emphasis in original).

was a "distant and disengaged father" prior to September 2013. At the same time, the court found Wife to be an adaptable parent, bartering her face painting and photography services in exchange for clothes and supplies for the children, and that Husband was controlling and less adaptable. Both parents offered advantages and disadvantages and both had a story to tell, which left the circuit court to assess their relative demeanor and credibility, as well as the demeanor and credibility of their witnesses. But we will not second-guess the court's resolution of this hotly disputed and fact-intensive issue, or reverse its discretionary decision to award custody to Mother. *See Petrini v. Petrini*, 336 Md. 453, 469 (1994) (commenting that "trial courts are endowed with great discretion in making decisions concerning the best interest of the child.").

B. The Court Does Not Appear To Have Projected Wife's Ultimate Future Income Before Awarding Indefinite Alimony.

Alimony is meant to provide an opportunity for the recipient spouse to become self-supporting, and the law favors fixed-term, "rehabilitative" alimony. *Karmand v. Karmand*, 145 Md. App. 317, 328 (2002). However, a court has discretion to award indefinite alimony in two exceptional circumstances: *first*, if "due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting," FL § 11-106(c)(1), or, *second*, where, "even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate." FL § 11–106(c)(2).

Husband objects to the court's decision to award alimony to Wife, both as to the amount of alimony awarded ($2,000 per month) and its indefinite duration. Family Law Section 11-106(b) sets out each of the factors the court must consider when deciding the duration of alimony and the amount to award:

> (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
>
> (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
>
> (3) the standard of living that the parties established during their marriage;
>
> (4) the duration of the marriage;
>
> (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
>
> (6) the circumstances that contributed to the estrangement of the parties;
>
> (7) the age of each party;
>
> (8) the physical and mental condition of each party;
>
> (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
>
> (10) any agreement between the parties;
>
> (11) the financial needs and financial resources of each party, including:
>
> (i) all income and assets, including property that does not produce income;

(ii) any award made under §§ 8–205 and 8–208 of this article;

(iii) the nature and amount of the financial obligations of each party; and

(iv) the right of each party to receive retirement benefits; and

(12) [other considerations not relevant here].

In this case, Wife was thirty-nine years old at the time of the trial, and she did not claim that illness or other factors prevent her from making progress toward self-support. So she falls into the second category of potential indefinite alimony recipients, and her eligibility for indefinite alimony depends on whether an unconscionable disparity would remain after she reaches her maximum projected earnings. Importantly, this analysis required the court first to "project forward in time to the point when the requesting spouse will have made maximum financial progress, and compar[e] the relative standards of living of the parties at that future time." *Francz v. Francz,* 157 Md. App. 676, 692 (2004) (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 146 (1999)). And a disparity in the parties' post-divorce standards of living by itself does not mandate indefinite alimony—to be unconscionable, the disparity in standards of living must work a "gross inequity." *Whittington v. Whittington*, 172 Md. App. 317, 339 (citing *Brewer v. Brewer*, 156 Md. App. 77 (2004)). The FL § 11–106(b) factors "frequently have a strong bearing on whether a particular disparity can fairly be found to be an unconscionable disparity." *Ware v. Ware,* 131 Md. App. 207, 232-33 (2000).

Our review of the alimony award consists of two steps. "*First,* we review the trial court's findings of fact as to [each of the 11-106(b) factors,] and reverse them only if clearly erroneous." *Bryant v. Bryant*, 220 Md. App. 145, 160 (2014) (citing *Wenger v. Wenger,* 42 Md. App. 596, 607 (1979)). *Second,* we review the trial court's finding of unconscionable disparity, a factual question "that necessarily rests upon the court's first-level factual findings on the factors [in FL § 11–106(b)] that . . . are relevant to all alimony determinations, and 'all the factors . . . necessary for a fair and equitable award'; and upon how much weight the court chooses to give to its various first-level factual findings." *Id.* (quoting *Whittington*, 172 Md. App. at 337-38).

1. FL § 11-106(b) Factors

Husband attacks the circuit court's conclusions on several factors in the indefinite alimony equation. All but two are simply disagreements with the circuit court's resolution of disputed facts, and we need not address them in detail. We cannot, however, discern from the court's Memorandum Opinion whether or to what extent the court considered Husband's credit card debt and the marital award and their effect on his ability to pay alimony.

First, Section 11-106(b)(9) required the court to analyze Husband's ability both to pay alimony and meet his own needs. The court found that Husband earned $89,085 annually, and incurred "reasonable monthly expenses of $3,053," which included the mortgage and utilities for the marital home, household necessities, health insurance, transportation, recreation, gifts, and other miscellaneous items. The court concluded that

Husband's monthly income, self-reported at $5,781.85, allowed him to pay $3,053 in monthly expenses, $2,000 in alimony to Wife, and $692 in child support, which left $36.85 each month and did not include minimum payments on his credit cards, although Husband's sworn financial statement shows that he has incurred close to $20,000 in debt on three credit cards (at the time of trial, Husband owed monthly minimum payments on his Discover card alone of over $250). The fact that an alimony obligation of $2,000 leaves Husband unable to make even the minimum payment on one of his three cards is not dispositive, of course—the court was correct when it recognized, at the close of its child support analysis, that "the child support and alimony ordered will leave both Husband's and Wife's households without sufficient income to pay their reasonable monthly expenses, but this is unavoidable," and that "[i]t is incumbent on both parties to be more frugal than they have in the past." Put another way, the negative answer doesn't make the math wrong. But we cannot see in the Memorandum Opinion how the court considered Husband's debt in reaching its alimony figure and, on remand (which is required for reasons we will get to shortly), the court should explain the role, if any, Husband's debt plays in its alimony calculation.

Second, and similarly, we cannot discern whether or how the circuit court considered the $13,500 marital award in its alimony analysis. FL § 11-106(b)(11) requires that the alimony award take into account the financial needs and financial resources of each party. The circuit court set up a checklist listing each alimony factor, including FL § 11-106(b)(11)(ii), which requires the court to consider any award made under FL § 8-

205 and FL § 8-208.[6] At this point in the checklist, the court entered: "None except family use of personal property detailed in Section F." Thus, the court accounted for its determination under FL § 8-208 that the Suburban was family use personal property, but it did not account for the monetary award under FL § 8-205. Again, on remand, any alimony award must take the corresponding marital award into account. *Hollander v. Hollander*, 89 Md. App. 156, 176 (1991); *Blake v. Blake*, 81 Md. App. 712, 729 (1990).

Husband attacks several other elements of the alimony equation, but to no avail. He argues that the record does not support any finding on Wife's ability to become self-supporting under § 11-106(b)(1). He contends that the trial court erred in its assessment of Wife's reasonable monthly housing expenses, as well as its assessment of her earning capacity. And he suggests that Wife's financial needs should be inferred from her original request of $1,000 in alimony per month. We disagree.

The circuit court estimated that Wife would incur housing expenses of $2,150 per month, a figure that tracks the housing expenses Wife reported in her sworn financial statement and includes a $1,750 expense for the primary residence. Husband argues that this expense is overvalued because Wife currently lives with her parents, and thus incurs housing expenses substantially less than those reported on her financial statement. But although it is true that Wife currently lives with her parents, she testified that she planned to find her own home, and that once she did, she expected her housing expenses to be

[6] FL § 8-205 allows the trial court to transfer ownership in marital property and grant a monetary award. FL § 8-208 allows the court to decide that one party shall have sole possession and use of certain property, regardless of how it is titled.

similar to the $1,750 in mortgage payments the parties incurred in the marital home. Husband complains that Wife provided only vague testimony regarding correspondence with a realtor, but it was the trial court's prerogative to credit Wife's version of her finances. *See Bryant*, 220 Md. App. at 163. In addition, the court recognized that Wife was not incurring her usual expenses while she and the children were living with her parents, and adjusted Husband's back child support accordingly.

As the party seeking alimony, Wife bore the burden to establish her financial needs and her (in)ability to meet them. *Turner v. Turner*, 147 Md. App. 350, 389 (2002). Contrary to Husband's assertions, the record contained sufficient evidence to determine Wife's current ability to support herself. The court's findings about her ultimate earning capacity raise different issues we address below, but the court's findings about her *current* prospects were supported by the record. The court found, among other things, that "Wife has done nothing to prepare herself for life after this marriage," that she has an associate's degree, has worked part-time in face painting and photography, and had experience in the past as a kindergarten aide. And although Wife initially sought an alimony award of only $1,000, FL § 11-106 does not constrain the court's alimony award to the parties' requests.

We also disagree with Husband's assertion that the circuit court erred by failing to include in its *alimony* calculation its finding from its *child support* analysis that Wife's "current income level results from a voluntary impoverishment from her failure to earn full time income." Husband points to *Reynolds v. Reynolds*, which explains that "[m]ost, if not all, of the voluntary impoverishment factors will be relevant to alimony under FL

§ 11-106(b)(1) and (b)(2), and so a finding of voluntary impoverishment would ordinarily entail a finding, for purposes of alimony, that the impoverished party *could* support him or herself, but *chooses* not to." 216 Md. App. 205, 220 (2014) (emphasis in original). But nothing in *Reynolds compelled* the court to make that particular leap. Throughout the opinion, the court recognized the couple's voluntary divisions of familial labor, and the court found in any event that it "expect[ed] her to become employed full-time." As we will discuss shortly, the court's findings raise concerns about whether and how the court projected Wife's earnings ceiling for purposes of determining any unconscionable disparity. But we see no abuse of discretion in the court's decision not to disqualify Wife from alimony based on the parties' agreement that she would serve as a primary, stay-mostly-at-home caregiver.

Next, Husband argues that because the circuit court found that "[his] conduct did not cause Wife to commit adultery[,]" the court should have blamed the parties' estrangement exclusively on Wife's adultery for purposes of Section 11-106(b)(6). And to be sure, Wife, as the party seeking alimony, had the burden of proving that husband's conduct contributed to the parties' estrangement. *Freedenburg v. Freedenburg*, 123 Md. App. 729, 740 (1998). But Husband's argument is hard to take seriously. By his own reckoning, Husband "said hurtful, inappropriate things to Wife and to his children throughout the marriage[,]" "became addicted to pain medication during the spring and summer of 2012[,]" and "freely admitted that he was sometimes a jerk and that he said hurtful things he should not have said[.]" Wife testified that Husband was verbally abusive

to her *on their honeymoon*, and the court found, among many other things, that Husband called Wife vulgar names in front of the children, called the children by vulgar names as well, and "sought to control Wife by his insults and by depriving her of sufficient money to run the household." Husband doesn't deny any of this. Instead, he wife-shames: because Wife stayed with him, he argues, the circuit court abused its discretion when it found that Husband's abusive and controlling behavior over the course of eight-plus years contributed to the estrangement of the parties. We disagree. There is no doubt that Wife's affair also contributed to the demise of this marriage, and two wrongs don't make a right. But Wife's indisputably bad conduct hardly absolves Husband from all responsibility for his indisputably significant role in the family's misery. *Both* parties contributed to the demise of this marriage, and the court certainly didn't abuse its discretion to Husband's detriment by calling this factor as "a draw."

Husband argues *next* that the court failed to consider that much of his income comes from overtime pay, which he says is not guaranteed. In fashioning an alimony award that is within Husband's means, the circuit court was required to determine what Husband earned in the past and earned at trial, and project forward based on that evidence. *Walter v. Walter*, 181 Md. App. 273, 288 (2008). The Court found that Husband's projected pay for 2014 was $90,000. On this basis, we see no error in the court's conclusion that Husband can afford alimony payments.

Finally, Husband argues that the court erred by failing to describe the significance it attached to its findings under 11-106(b)(4) and (7) that Husband and Wife had been

married for ten years, and that they were thirty-eight and thirty-nine years old, respectively. (ANT 13, 14) We disagree. A court "may express a decision on alimony in any way that shows consideration of the necessary factors." *Blake v. Blake*, 81 Md. App. 712, 728 (1990) (*citing Newman v. Newman*, 71 Md. App. 670, 678 (1987)). The circuit court made clear that it was aware of these factors, and we can see in the Memorandum Opinion and the court's subsequent order that it considered the parties' age in making the alimony award.

2. Unconscionable Disparity

The court's decision to award indefinite (rather than rehabilitative) alimony depends in the first instance on whether Wife can eventually become self-supporting, and then, if so, whether any discrepancy in the former spouses' respective standards of living rises to the level of unconscionability. Trial judges are given wide discretion to determine those exceptional cases where an award of indefinite alimony is warranted. *Karmand*, 145 Md. App. at 328. "[A] trial court's finding of unconscionable disparity . . . is a question of fact, and the appellate court will review it under the clearly erroneous standard contained in Md. Rule 8-131(c)." *Id.* at 330 (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999), *cert denied*, 358 Md. 164, 747 (2000)).

The court's findings regarding Husband's half of this equation are not controversial: the court found, and the record supports, that at the time of the trial, Husband was employed full time, earning $89,085 in 2013 and was projected to earn $90,182 in 2014. But the court's findings as to Wife's future earnings, and her ability to become self-supporting, are difficult to discern. On the one hand, the Memorandum Opinion states that, "[w]hile the

Court does expect Wife to become employed full time, there is no evidence before the Court of any career path which by interest or aptitude would suit Wife, nor is there any evidence of the cost or duration thereof[,]" and the court found for alimony purposes that Wife earned only an average $2,398 per year from her part time photography and face painting. The court also found Wife does not have a bachelor's degree, and is capable at her maximum economic potential of earning $12 per hour at a full-time job, amounting to a yearly salary of $24,000. But on the other hand, the court found for child support purposes that Wife had voluntarily impoverished herself, and seems to have imputed to her for purposes of this calculation income at a level equal to the "maximum economic potential" the court identified with regard to alimony. This leaves a quandary: if Wife could begin making $24,000 per year right away (or soon) were she to begin full-time photography and face-painting, how can that same figure (or ballpark) represent her ultimate progress toward self-support?

It may be that these figures can be reconciled, or that we have misunderstood the court's analysis. But the decision to award indefinite alimony to a thirty-nine-year-old spouse must be grounded in a discernible projection of her future maximum earning potential that leaves her with an unconscionably disparate standard of living for an indefinite period of time. We do not mean to suggest that Wife could not be a viable candidate for indefinite alimony; she could. Instead, we vacate the alimony award and remand for the court to connect these dots explicitly, either on the existing record or, if it chooses, to hold further proceedings. And because alimony, child support, and marital

awards are inextricably intertwined, we are constrained to vacate those awards as well so that the court can consider on remand whether its updated decision requires any corresponding modifications. *Malin v. Mininberg*, 153 Md. App. 178, 217 (2003); *Rosenberg v. Rosenberg*, 64 Md. App. 487, 509 (1985).

C. There Is A Disconnect Between The Status Of The Loan On Husband's 401(k) And The Value Of The Marital Property.

The Marital Property Act allows a court to make a monetary adjustment in order to allocate marital property fairly and equitably between divorcing spouses. To ensure that any adjustment the court makes is equitable, the statute requires a three-step process. *First*, the court determines which of the couple's property is "marital property," that is, property acquired by one or both parties during the marriage, irrespective of which party it is titled to. FL §§ 8-203, 8-201. *Second*, the judge determines the value of the marital property. FL § 8-204. And *third*, the court decides whether to grant a monetary award, as well as whether to transfer specific property, to accomplish an equitable division of the marital property. § 8-205. The parties are not disputing the identity of the marital property, only its valuation and the court's allocation under § 8-204.

1. Valuation

As the term suggests, the process of valuing the parties' marital property requires the trial court to assign a value to each marital asset, then subtract marital debt attributable to the asset. *Zanford v. Wiens*, 314 Md. 102, 104 (1988); *Goldberg v. Goldberg*, 96 Md. App. 771, 782 (1993). "Marital debt" is debt traceable directly to the acquisition of marital

property; "non-marital debt" is not, and thus does not reduce the value of marital property. FL § 8-201(e); *Schweizer v. Schweizer*, 301 Md. 626, 636-37 (1984) (citing *Harper v. Harper*, 294 Md. 54 (1982)). Although the trial judge is responsible for determining the value of the marital property, it is the burden of the party seeking the marital award—in this case both Husband and Wife—to produce evidence of its value. *Blake*, 81 Md. App. at 720.

Husband contends on appeal that the circuit court overvalued two pieces of marital property, the 2001 Suburban and the 2001 Lexus. He argues that the Suburban, valued at $4,900, should have been valued at $734 because it is encumbered by a loan of $4,166, taken from Husband's 401(k). In addition, Husband argues that the Lexus, valued at $9,000, is encumbered by $8,785 in credit card debt that should have been subtracted from the marital property value in the circuit court's analysis. For her part, Wife asserted that the parties owed no debt on these vehicles. In addition, Wife asserts that Husband failed to document his claim that the vehicles are encumbered by loans. We agree with Wife that the absence of liens on the vehicles leaves the cars unencumbered, and thus that it was reasonable for the court to value the cars at their unencumbered value. At the same time, though, we cannot follow the court's finding that Husband took the January 2014 loan on his 401(k) account "for a non-marital purpose," a decision that affected the court's allocation of the 401(k) balance between the parties.

The circuit court found that both the Suburban and the Lexus were marital property. The court made no findings about whether, as Husband testified, the loan on the 401(k)

was used to purchase the Suburban, but the record revealed that the account was encumbered by two different loans: one dated January 2014 for $6,000, which Husband testified was used to purchase the Suburban, and a second dated July 2014 for $2,500, which Husband testified he used to pay off outstanding credit card debt. At the time of trial, $4,228.25 was still owing on the January 2014 loan and $2,398.24 was still owing on the July 2014 loan, a total of $6,626.49. The circuit court found, without further explanation, that "Husband's loan was not made for a marital purpose and [the court] shall charge the loan against Husband's share." And when dividing Husband's 401(k) plan, the court subtracted the $6,626 owing from the 401(k) total value, then divided the result in half to calculate the marital share. ($75,621[7] - $6,626 = $68,995 / 2 = $34,498). In order to "charge the loan against Husband's share," the court assigned $34,498.00 to Husband, then added the amount owing to Wife's share. ($34,498 + $6.626 = $41,124).

This would be an appropriate result if—and this is the rub—it is true that Husband took the loans against his 401(k) plan for non-marital purposes. We cannot discern from this record, however, whether this premise is correct. The first loan was taken out while the parties still lived together, and the Suburban that Husband testified that he bought with the proceeds of that loan was classified by the court (correctly, in our view) as marital property; indeed, to support its decision to award this same vehicle to Wife as family use personal property, the court found that it "was acquired by Husband during the course of the marriage, titled in his name and used primarily for family purposes." The credit card

[7] This is the figure the court used in its calculation, but the 401(k) statement itself showed a total value of $79,655.

debts that, according to Husband, were paid off by the second loan also were incurred during the course of the marriage. So between the court's findings regarding the nature and use of the Suburban and the absence of any testimony suggesting that the debts were incurred for a non-marital purpose, it appears that the court found that the proceeds of the loan went to further marital purposes. And unfortunately, the court's finding that the loans were taken for non-marital purposes, and charged entirely to Husband for purposes of their property distribution, leaves a discrepancy that we cannot reconcile.

This discrepancy requires us to vacate the marital award and remand. It may be that, as with the alimony award, the court can resolve the discrepancy from the existing record, although it may not. We leave it to the court to determine in the first instance whether additional proceedings are necessary and, if so, what form they should take.

2. Monetary Award

Although the monetary award must be vacated for other reasons, it is worth a brief word about Husband's other challenges to the monetary award. Stated generally, he contends that the trial court should have effected an equal division of the parties' individually owned marital property, and, as before, he disagrees with many of the court's underlying decisions. His arguments fall flat.

Family Law Section 8-205 gives the trial court broad discretion to determine whether and in what amount to grant a monetary award after identifying marital property and assessing its value. However, FL § 8-205 does not require that the judge divide marital property *equally*—rather, it requires *equitable* division of marital property. *Brewer v.*

Brewer, 156 Md. App. 77, 105 (2004). "[E]ach case must depend upon its own circumstances to insure that equity be accomplished." *Alston v. Alston*, 331 Md. 496, 507 (2000). Thus, whether the monetary award equally divides the value of Husband and Wife's individually owned marital property is irrelevant, as long as the distribution is equitable given the circumstances.

Section 8-205(b) requires that the trial court consider at least ten factors in order to arrive at an equitable award.[8] The court need not go through a detailed checklist, nor refer specifically to each factor, provided that the factors have actually been considered. *See Malin*, 153 Md. App. at 429; *but see Campolattaro v. Campolattaro*, 66 Md. App. 68, 81

[8] These include:

> (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. FL § 8-205(b).

(1986) ("[T]he chancellor who fails to provide at least some of the steps in his thought process leaves himself open to the contention that he did not in fact consider the required factors."). As long as it is clear from the record that the required factors were considered, we will presume that the law was applied correctly. *Hoffman v. Hoffman*, 93 Md. App. 704, 724 (1992). And although we identified in the previous section a discrepancy that needs to be reconciled, we find that the circuit court otherwise considered the factors properly and equitably.

Although the circuit court did not list all of the § 8-205(b) factors separately, we can see from its Memorandum Opinion that the court addressed the contributions of each party to the well-being of the family, the economic circumstances of each party, the circumstances contributing to the parties' estrangement, the duration of the marriage, the age of each party, as well as the physical and mental condition of each party in its alimony analysis. *See* § 8-205(b)(1), (2), (4), (5), (6), (7). The court assessed the value of each party's property interests and the effort each party expended toward accumulating the marital property listed in Appendix 3 to the opinion. *See* § 8-205(b)(2), (8). The Memorandum Opinion made and analyzed the alimony award, the use of personal property, and the use of the family home. *See* § 8-205(b)(10). And at the end, the court tied all of these pieces together: "Having identified and valued the marital property, and having considered the other financial interests and obligations of both parties, the Court will grant a monetary award as an adjustment of the equities and right of the parties concerning marital property to Wife from Husband in the amount of $13,500." Were it not for the

discrepancy we identified above regarding Husband's 401(k) account, we would have had no trouble finding this marital award to fall within the court's broad discretion.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED AS TO CHILD CUSTODY, AND OTHERWISE VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.