

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1239

September Term, 2016

RYAN C. HEWETT,

v.

ANGELA M. DINATALE-HEWETT.

Nazarian
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Zarnoch, J.

Filed: October 26, 2017

*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.

Upon remand from this Court, the Circuit Court for Carroll County awarded appellee Angela Dinatale-Hewett (“Wife”) indefinite alimony, and ordered child support and other relief. Ryan C. Hewett (“Husband”) appeals, questioning whether the circuit court properly followed our prior opinion in awarding indefinite alimony to Wife.

BACKGROUND AND PROCEDURAL HISTORY

Husband and Wife married in 2004 in Carroll County. At the time, Wife had a daughter from a previous relationship, and Husband ultimately adopted her. The couple had two additional children during the marriage -- a son in 2006 and another daughter in 2009. At the time of the trial in late 2014, the children’s ages were 6, 8, and 14. During the marriage, Husband worked as a cable-splicing technician and Wife primarily stayed home to care for the children and manage the household, but Wife also earned a small amount through a modest face-painting and photography business.

The marriage was fraught with discord from the beginning. The circuit court found that the primary factors leading to the breakdown of the marriage were Husband’s “moodiness, explosive temper and verbal abuse of both Wife and their children” and that he “sought to control Wife by his insults and by depriving her of sufficient money to run the household.” Wife also contributed to the marriage’s demise by beginning an affair in September of 2013. On January 23, 2014, Husband filed for divorce and Wife filed a counter-complaint requesting indefinite alimony, among other things.

On December 4, 2014, following a four-day trial on the merits, the circuit court issued its judgment of absolute divorce based on Wife’s adultery, followed by an amended judgment on January 6, 2015. The circuit court granted sole legal custody and primary

physical custody of the parties' minor children to Wife. Further, the circuit court awarded her \$692 per month in child support for the three children, three years of use and possession of the family Suburban vehicle, a monetary award of \$13,500, a share of his 401(k), a share of his pension, contribution toward her attorney's fees, and indefinite alimony in the amount of \$2,000 per month. Husband moved to amend the circuit court's judgment, which the circuit court denied, except as to attorneys' fees.

Husband appealed to this Court in February of 2015. On November 12, 2015, we affirmed the trial court as to child custody and remanded the case to the circuit court on the issue of alimony, as well as child support and the marital property award. We concluded that the trial court had not explained sufficiently the basis for its indefinite alimony determination, and we noted specific areas in which the court's analysis was unclear. Our instructions for the trial court on remand are discussed in detail below; more broadly, however, we explained:

[T]he 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 amount 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.

For purposes of determining whether to award indefinite alimony, the circuit court, on March 11, 2016, received documentary evidence and heard argument.¹ On June 23rd, it issued a Supplemental Memorandum Opinion, explaining that even if Wife became employed full-time as a preschool teacher in the near future, her likely annual income would likely be only about thirty percent of Husband’s current annual income.² Projecting further into the future, and assuming Wife could obtain the necessary education to become employed as a school teacher, the court found that Wife’s likely annual income would be approximately \$43,000 -- less than half of Husband’s current yearly earnings. The circuit court concluded that “even when [Wife] has made as much progress towards being self-sufficient, the income levels of these two parties will be unconscionably disparate.”

Thereafter, the court considered Husband’s credit card debt as it related to his ability to pay alimony, as well as the effect on the marital estate of that credit card debt and the lien on his 401(k). In sum, the court found that Wife was an appropriate candidate for indefinite alimony and awarded her \$1,500 per month commencing on December 1, 2014. However, the court said that when the children were emancipated, Husband “would be entitled to a review and possible reduction of indefinite alimony.” The court declined to enter a monetary award for either party, but modified its child support order due to an error

¹ The court had previously indicated that it would also hear “limited testimony.” However, no party called any witnesses.

² The circuit court relied on a report from the Bureau of Labor Statistics, which indicated that the median annual income in 2012 for preschool teachers was \$27,130. As the court noted, that figure is approximately 30 percent of Husband’s annual income of \$90,000.

in the court’s previous Child Support Guidelines Worksheet, increasing it to \$1,268 per month. Additional facts are discussed in our analysis.

DISCUSSION

On appeal, Husband argues that the trial court erred principally for two main reasons in granting Wife indefinite alimony. First, he contends that the court’s “prediction as to Wife’s maximum future earnings” is “not grounded in evidence and [is] projected too far into the future as to be a reliable indicator.” Second, Husband argues that “[t]he trial court erred in its calculation of Husband’s actual income and ability to pay.”

An appellate court will not disturb an alimony judgment “unless it concludes that ‘the trial court abused its discretion or rendered a judgment that is clearly wrong.’” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 246 (2000) (quoting *Digges v. Digges*, 126 Md. App. 361, 386, *cert. denied*, 356 Md. 17 (1999)).

In *Bryant v. Bryant*, we explained the specific steps we take in our review of a trial court’s award of indefinite alimony:

We review indefinite alimony awards at more than one level. First, we review the trial court's findings of fact as to questions such as what a party's income is (referred to as “first-level” facts) and reverse them only if clearly erroneous. *Wenger v. Wenger*, 42 Md. App. 596, 607, 402 A.2d 94 (1979). Second, while the question of whether the standards of living between spouses will be unconscionably disparate is a factual one as well, *Whittington v. Whittington*, 172 Md. App. 317, 337, 914 A.2d 212 (2007), it is not a “first-level” fact. [. . .]

Whether or not economic disparity will exist in the future requires the trial court to “projec[t] 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, 853 A.2d 839 (2004)

220 Md. App. 145, 160 (2014) (Citation omitted); *see also* Md. Rule 8–131(c).

The trial court’s analysis of whether to award alimony and the amount awarded necessarily includes the factors described in Md. Code (1984, 2012 Repl. Vol.) Family Law Article (FL), § 11-106(b):

- (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) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

The trial court may award indefinite alimony under two circumstances detailed in § 11-106(c):

- (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
- (2) 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.

Because Wife was thirty-nine years old at the time of trial and the court found explicitly that “[n]either party ha[d] any physical or mental condition that affected their ability to earn,” the provision that applies to our analysis is § 11-106(c)(2). Pursuant to subsection (c)(2), the trial court’s first task is to determine at what point Wife will have made as much progress toward becoming self-supporting as can reasonably be expected. Next, the trial court must project into the future and compare the two parties’ likely standards of living to determine if they will be unconscionably disparate.

In *Francz v. Francz*, we said that in order to determine whether a party meets the subsection (c)(2) standard, the trial court must “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.” 157 Md. App. 676, 692 (2004) (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 146 (1999)). To be

“unconscionable,” there must be a “gross inequity” in standards of living. *Whittington v. Whittington*, 172 Md. App. 317, 339 (citing *Brewer v. Brewer*, 156 Md. App. 77 (2004)).

In its December 4, 2014 Memorandum Opinion, the trial court listed as subheadings each factor required by FL § 11-106(b). Below each subheading, the court provided an explanation of its consideration of each factor.³ The court’s analysis included the following:

1. The ability of Wife to be wholly or partly self-supporting.

Appendix 1 to this Opinion sets forth Wife’s reasonable monthly expenses, which total \$4,925. For tax years 2009-2013, Wife has averaged income exclusive of depreciation and auto deductions in the average amount of \$2,398 per year.

* * *

Wife currently works as a face painter and a part time photographer. Although she left Husband on two prior occasions, she has done nothing to prepare herself for life after this marriage. Wife has an Associates Degree from Carroll Community College and is capable of earning at least \$12.00 per hour at a full time job. Even with such a job, Wife does have a need for alimony.

2. The time necessary for Wife to gain sufficient education or training to enable her to find suitable employment.

No reliable evidence was produced on this point.

* * *

5. The contributions, monetary and nonmonetary, of each party to the well-being of the family.

Monetarily, Wife has worked as a face painter and a part time photographer. Husband was the breadwinner of the

³ We look at both the 2014 Memorandum Opinion and the 2016 Supplemental Memorandum Opinion to assess the correctness of the circuit court decision before us.

family. Husband spent more freely on his own interests than he did on family support.

From a nonmonetary standpoint, Wife was primarily responsible for raising the children of the parties and taking care of the house, except for the period of September 2013 through June, 2014. Husband's nonmonetary contributions have been much less than that of Wife

* * *

9. The ability of Husband to meet his needs while paying alimony.

Husband earned \$89,085 in 2013 and his projected income in 2014 is \$90,182. Husband's reasonable monthly expenses are \$3,053, as set forth on Appendix 2 to this Opinion. Thus, Husband has the ability to pay alimony.

* * *

11. The financial needs and financial resources of each party.

* * *

(ii) Any award made under § 8-205 and § 8-208 of this Article.

None except family use personal property detailed in Section F.

At the conclusion of the court's checklist, it stated, "Based on the factors above, the Court will award alimony to Wife from Husband in the amount of \$2,000 per month."

Thereafter, the court discussed Wife's request that alimony be awarded indefinitely.

Wife seeks this alimony for an indefinite period, but Husband seeks to limit it to a rehabilitative period. [. . .] While 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. The Court finds that \$12.00 per hour is what can be reasonably expected of Wife, and that at such level she will have made as much progress toward becoming self-supporting as possible. Therefore, the

respective standards of living of the parties is, and will remain, unconscionably disparate. Accordingly, the aforesaid award will be payable as indefinite alimony.

On appeal to this Court, we reversed the circuit court’s ruling on the issue of alimony and remanded for the court to provide an explanation of its considerations in primarily two respects: First, the court’s explanation of its projection of Wife’s ultimate earning capacity -- a significant component of her standard of living -- was not clear. The court merely noted the lack of evidence regarding Wife’s aptitude and experience and found that a \$12.00 per hour job is all that can reasonably be expected of her. Moreover, the court assumed that Wife could begin making that amount immediately. Second, the circuit court neglected to provide any explanation as to how its monetary award and Husband’s substantial credit card debt affected its determination of Husband’s ability to pay alimony.

I. The Trial Court’s Projection of Wife’s Future Earning Potential was Sufficient to Determine Whether to Award Indefinite Alimony.

In our prior opinion, we explained that the court’s projection of Wife’s future potential was insufficient. We noted that “the record contained sufficient evidence to determine Wife’s current ability to support herself [and] the court’s findings about her *current* prospects were supported by the record.” Indeed, the circuit court attributed a yearly income of \$24,000 based on its determination that, without any further education or training, Wife could begin working full-time making \$12.00 per hour. As we said, “[t]he court’s findings about her ultimate earning capacity raise different issues.”

The circuit court’s Memorandum Opinion did not clarify “whether and how the court projected Wife’s earnings ceiling for purposes of determining any unconscionable

disparity.” We said “the court’s findings as to Wife’s future earnings, and her ability to become self-supporting, are difficult to discern.” This confusion stemmed, in part, from the court’s determination for child support purposes that Wife had voluntarily impoverished herself and imputed to her an annual income of \$24,000. This imputation assumed Wife could begin earning wages of \$12.00 per hour, forty hours per week. Contrarily, the court later equated the same \$24,000 figure with Wife’s *maximum* earning potential. We asked, “if Wife could begin making \$24,000 per year right away (or soon) were she to begin full-time [work] . . . , how can that same figure (or ballpark) represent her ultimate progress toward self-support?” Because of this discrepancy, we required the circuit court on remand to “connect [the] dots explicitly,” and to provide “a discernible projection of her future maximum earning potential.” After making that projection, the circuit court will reconsider whether “that leaves her with an unconscionably disparate standard of living for an indefinite period of time.”⁴

In response to our instruction, the court on remand considered Wife’s earning potential in greater depth, describing various possibilities that Wife might pursue in an effort to becoming self-sufficient. First, the court addressed and disregarded Wife’s testimony that she could earn a net income of between \$20,000 and \$25,000 per year if she worked to grow her photography business full-time.

⁴ As we have previously noted, “[t]he mathematical comparison of incomes of the parties, including projected future incomes ‘is the starting point of the analysis’ but ‘is never conclusive.’” *Francz*, 157 Md. App. at 702 (quoting *Blaine v. Blaine*, 336 Md. 49, 71 (1994)).

At trial, Wife testified that she hoped to pursue her passion in photography and grow her small side business over the next few years, but also remain available for the parties' children since she will continue to be primarily responsible for their care. The court found that Wife's testimony was "no better than a guesstimate," however, and did not meet her burden to show that \$20,000 to \$25,000 would be Wife's likely maximum annual income. Next, the court discussed Wife's prior experience working as a preschool teacher, and noted her aptitude and interest in that occupation. Moreover, although Wife no longer met the minimum education qualifications, the court observed that preschool teachers averaged a median income of approximately \$27,130 in 2012, according to the Bureau of Labor Statistics. This salary, the court pointed out, would still only provide Wife with thirty percent of what Husband already currently makes. In both the Memorandum Opinion and the Supplemental Memorandum Opinion, the court posited that Wife could begin working full time at a wage of \$12.00 per hour, which would amount to \$24,000 per year. Neither Wife's hypothetical full-time job earning \$12.00 per hour, nor the possibility that Wife could start working as a preschool teacher after obtaining additional training, refer to Wife's maximum earning capacity.

The more critical portion of the court's analysis, therefore, is its projection of Wife's maximum earning capacity and, based on that, her standard of living several years into the future after she obtains additional education and training. The court assumed that Wife could begin making \$24,000 immediately, as it did for child support purposes. It concluded, however, that it would be difficult for Wife to earn any significant salary increases without further training and education. Extrapolating from evidence of Wife's

aptitude for teaching preschool, the circuit court provided a “best case scenario” in order to project Wife’s maximum earnings ceiling. In reaching its decision on remand, the court considered Wife’s difficulty in obtaining her bachelors degree, given her responsibility for the parties’ three children, while also maintaining at least part-time employment. For that reason, the court concluded that Wife could begin to pursue her bachelor’s degree when the parties’ youngest child reached the age of fourteen and the children would require less supervision.

During the subsequent four years, the court reasoned that, ideally, Wife could complete her degree to become employed full-time as a teacher in Carroll County. The court explained that “[u]pon attaining her college degree, [Wife] would be expected to earn at least \$43,000 per year, the current starting salary for a Carroll County Public School teacher or 47.7% of [Husband’s] 2015 earnings.” The court added, “Thus, even when [Wife] has made as much progress towards being self-sufficient, the income levels of these two parties will be unconscionably disparate.” This is particularly so, given the court’s prior observation that Husband has greater potential for salary increases in the future. Having reconsidered the parties’ marital property and debts, as well as recalculating child support due to an error in the previous calculation, the court awarded to Wife from Husband \$1,500 per month in indefinite alimony -- \$500 less than it awarded in 2014.

Under these circumstances, the circuit court had the difficult task of determining Wife’s future earnings ceiling with little to go on to determine her path to self-sufficiency, other than Wife’s projections of her net income once she built her photography business. As the court noted in its original Memorandum Opinion, it had “[n]o reliable evidence”

regarding the time and expense required for Wife to obtain education or training that would increase her chances of becoming self-sufficient. Even so, the circuit court’s projection of Wife’s earnings ceiling acted as a “best case scenario” for Wife in comparing her future standard of living to Husband’s.

The record shows that Wife’s part-time work in photography and face-painting had allowed her to provide care for the parties’ children and saved the family the expense of some daycare costs. Meanwhile, Husband contributed to the family only as the breadwinner, and abused that role by seeking to use it to control Wife. The circuit court found that even when Husband came home from work, he provided no nonmonetary contributions to the family. Husband often retreated to the bedroom or went out without the family while Wife continued to care for the children. This provided her little opportunity during the marriage to pursue her part-time work in photography, become employed elsewhere, or obtain higher education. During that time, Husband was able to gain valuable years of experience, gradually increasing his salary over the years. Wife will be starting anew, with no such experience and she would require several years of education before she could apply for a teaching position.

Having made this prediction, the circuit court then examined Husband’s likely income. The court explained that Husband’s annual earnings had continually moved upward over the previous five years, noting that Husband had earned approximately \$95,000 in 2015, a significant amount more than the court had previously attributed to him. The court concluded that an unconscionable disparity between the parties’ would exist for

an indefinite period, even if Wife were able to complete her bachelor’s degree several years into the future.

In explaining Wife’s potential earnings ceiling, for which the circuit court predicted an ideal outcome, the court fulfilled its task of explaining the basis for its conclusion that an unconscionable disparity would exist indefinitely.

II. The Trial Court Adequately Considered Husband’s Earning Potential, Outstanding Debts, and the Marital Award For Purposes of Determining Husband’s Ability to Pay and in Calculating the Award.

Regarding the court’s decision to award alimony and the amount, we limited our instructions on remand to primarily two issues. First, we said that the circuit court must provide an explanation of its consideration of Husband’s debts. Second, we instructed the court to explain “whether or how [it] considered the \$13,500 marital award in its alimony analysis.” The circuit court was required to consider these factors pursuant to FL § 11-106(b)(11), which requires the court to consider the needs and resources of the parties. The court was not required on remand, however, to articulate its consideration of every other factor required by FL § 11-106(b)(11), except to the extent that its supplemental analysis affected those considerations. We made this clear in our prior opinion:

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.

After providing a more thorough review of the gaps in these areas, we reiterated, “Husband attacks several other elements of the alimony equation, but to no avail.” We determined that Husband’s debt and the marital award were the only two areas in which the circuit court’s analysis was insufficient regarding Husband’s ability to pay alimony.

On this appeal, Husband argues that the trial court failed a second time to properly balance the needs of Wife with Husband’s ability to provide the support. Husband avers, “While the needs of the recipient are satisfied by the trial court’s analysis, the ability of the payor is not, thus creating an inequitable award.” In this regard, Husband advances two arguments, both of which fail. First, Husband asserts that the court’s award of \$1,500 in alimony is in error because it does not permit Husband to cover all of his expenses. He argues that “[s]etting alimony at \$1,500 per month will create a monthly shortfall for Husband of \$317, not including payment on credit card debt.” Second, Husband takes issue with the circuit court’s consideration of his total annual income in previous years, which included overtime pay, in projecting Husband’s future income. He argues, therefore, that the circuit court “overestimate[ed]” his future income. As we discuss below, we have already addressed, in our prior opinion, and rejected both of Husband’s arguments on the issue of his ability to pay alimony.

A. The trial court adequately explained its consideration of Husband’s outstanding credit card debts and the monetary award in its determination of Husband’s ability to pay alimony.

Two areas for which the circuit court was required to supplement its prior Memorandum Opinion were the effects of Husband’s credit card debt and the monetary

award on the court’s determination of Husband’s ability to pay the amount of alimony it awarded. Regarding Husband’s credit card debt, we said:

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 . . . the court should explain the role, if any, Husband’s debt plays in its alimony calculation.

In its Supplemental Memorandum Opinion, the circuit court considered Husband’s credit card debt, stating the following:

In addition to his monthly deficiency, the Plaintiff faces credit card debt of about \$20,000. While this credit card debt was incurred by the Plaintiff during the marriage, it appears that most of it was incurred to benefit the Plaintiff, rather than his family. His increase in pay since the original trial can be used to pay down these obligations. The priority must be the support of these children.

Husband argues that the court focused, erroneously, on the support of the minor children in deciding not to account for Husband’s credit card payments in determining the amount of alimony awarded. The circuit court’s statement regarding the children, however, was in support of its factual finding that “most of [the credit card debt] was incurred [by Husband] to benefit [Husband], rather than his family.” Throughout both of the circuit court’s memorandum opinions, it pointed out that Husband had spent the family’s money

more freely on his own needs than on his family, and that he often withheld money from Wife as a means to control her even to the detriment of his children. By mentioning the priority of the children within its discussion of Husband’s credit card debt, the court did not undo its prior analysis of Husband’s ability to pay. Rather, the circuit court emphasized the need to prioritize the children’s primary household in explaining the extent to which Husband’s credit card debt affected the his ability to pay alimony.

In our prior opinion, we clarified that “[t]he fact that an alimony obligation . . . leaves Husband unable to make even the minimum payment on one of his three cards is not dispositive” The missing piece of the Memorandum Opinion in this regard was “how the court considered Husband’s debt in reaching its alimony figure.” We required, therefore, that “on remand . . . the court should explain the role, if any, Husband’s debt plays in its alimony calculation.” In its Supplemental Memorandum Opinion, the circuit court explained the role that Husband’s credit card debts played in its consideration of Husband’s ability to pay. The court reasoned that, although Husband would endure a monthly shortfall based on his reported monthly expenses and income, most of the debts incurred had served to benefit Husband alone, rather than the family. The court added that “[Husband’s] increase in pay since the original trial can be used to pay down these obligations.”

The circuit court was within its discretion to require Husband to find some other way to pay off these debts, such as by decreasing his expenses. The circuit court found that, throughout the marriage, Husband had prevented Wife from having access to the family’s financial accounts and that he, instead, gave her a weekly allowance. When that

allowance did not cover all of the family’s needs, Wife either used her own supplemental income, covered it with her own credit card, or found other creative ways to ensure the children were provided for. The court noted one instance in which Husband had refus[ed] to properly support his family, to repair the family car to punish Wife, among other acts,” and these bad acts “reveal a misplaced priority whereby [Husband] will sacrifice the needs of the children to get back at Wife.”

The court was not required to reduce the alimony award by the amount of Husband’s minimum credit card payments. Husband incurred these debts for himself and Wife had little to no impact on family financial decisions. We required, only, that the court clarify the extent to which it considered Husband’s debts in its alimony determination. We are satisfied that it did.

Secondly, we instructed the circuit court to explain its consideration of any monetary award to Wife in its alimony analysis as is required by FL § 11-106(b)(11)(ii).

We said the following:

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(11)(ii), which requires the court to consider any award made under FL § 8-205 and FL § 8-208.[] 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.

(Citations omitted) (Footnote omitted). The court’s consideration of the marital award should have been explained in its Memorandum Opinion when the court discussed its consideration of family use property.

On remand, the circuit court explained that it would factor its alimony award into its “decision as to whether to grant a monetary award.” The court reconsidered certain marital debts, which were incurred to pay for the parties’ vehicles, as well as Husband’s monthly deficiency created by his support obligations and monthly expenses. Thereafter, the court decided not to enter a monetary award in dividing the parties’ marital property. Neither party claims the court erred in this respect. We hold that the circuit court sufficiently addressed the only two areas related to Husband’s ability to pay for which we required further explanation.

Husband assumes the circuit court’s task of balancing the needs of the recipient with the payor’s ability to pay prevents the court from imposing any monthly shortfall on the payor. Again, “the negative answer doesn’t make the math wrong” in these circumstances. It was within the circuit court’s discretion to reach an alimony award that may force Husband to further constrain his spending and “to be more frugal than [he] ha[s] [been] in the past,” regardless of whether his regular expenses are otherwise reasonable. Further, the court was free to make the equitable determination that Husband’s credit card debt was

his own cross to bear, particularly given the court’s elimination of any monetary award to Wife in its division of marital property.⁵

B. The Circuit Court’s Projection of Husband’s Annual Income was Not Clearly Erroneous.

As in Husband’s previous appeal to this Court, he argues that the trial court should not have considered overtime pay in its determination of his annual income of \$90,000. Previously, Husband argued that his overtime pay should not have factored into the court’s projection of his future income because his overtime pay is not guaranteed. This time around, Husband argues that he “cannot be expected to both work more hours and spend time with his minor children.” Husband avers, therefore that the court’s consideration of his overtime pay was clearly erroneous, and for the second time, we disagree.

In our prior opinion, we explained:

Husband argues . . . 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.

The circuit court relied on Husband’s overall annual income from previous years in determining his future earning potential. Indeed, when the circuit court issued its Supplemental Memorandum Opinion, Husband had earned more than \$90,000 during the

⁵ Additionally, Husband’s alimony payments are tax deductible, reducing his actual cost of alimony by lowering his combined Federal and State income tax obligations.

prior year. Husband has not advanced any meritorious reason why our analysis of the trial court's projection of his income should change. Instead, Husband merely reiterates that he disagrees with the circuit court's prediction of his future income, which is a factual conclusion. The record contained more than sufficient evidence for the circuit court to determine that Husband's income will maintain the same upward trend, mirroring the years leading up to the divorce. Additionally, it was within the discretion of the circuit court to make determinations of credibility, such as whether or not Husband will forego overtime pay in order to spend time with his children pursuant to the court-awarded visitation schedule.

The record contained sufficient evidence to support the circuit court's projection of Wife's earnings ceiling, which would not begin until the demands of caring for the parties' children are reduced and she has obtained a bachelor's degree. The circuit court found that even after she reaches that point, the parties' respective standards of living will be unconscionably disparate and indefinite alimony is warranted. However, the court left the Husband an out when it said that when all the children are emancipated, Husband would be entitled to a review and possible reduction of indefinite alimony. Further, the court was within its discretion to find that, in considering Husband's ability to pay alimony, he could reduce his spending or find some other way to pay off his credit card debts. Accordingly, we hold that the circuit court did not err in awarding indefinite alimony to Wife and properly reconsidered its child support and marital property rulings. Therefore, we affirm.

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