UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2026

September Term, 2015

SPRIGG LYNN

v.

CHRISTINA LYNN

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: March 24, 2017

This appeal arises from the October 28, 2015, ruling of the Circuit Court for Montgomery County granting a Judgment of Absolute Divorce to Sprigg Lynn, appellant, and Christina Lynn, appellee. Mr. Lynn presents several questions for this Court's review, which we have reordered and rephrased, as follows:

1. Did the circuit court abuse its discretion in granting Ms. Lynn a $300,000 monetary award?

2. Did the circuit court abuse its discretion in making its child support award?

3. Did the circuit court err or abuse its discretion in awarding Ms. Lynn indefinite alimony?

4. Did the circuit court err in ordering Mr. Lynn to pay attorney's fees?

For the reasons set forth below, we shall affirm, in part, and reverse, in part, the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On June 24, 2000, the Lynns were married. The parties have two children, S.L., who was 13 years old at the time of trial, and J.L., who was 11 years old at the time of trial. On August 26, 2013, the parties separated. Prior to their separation, the parties reached an agreement providing that they would have shared physical custody of the children.

On March 12, 2014, Ms. Lynn filed a complaint for absolute divorce. She sought divorce, custody, child support, attorney's fees, indefinite alimony, and a monetary award. Mr. Lynn subsequently filed a counter complaint for limited divorce, child support and other related relief. The parties later filed amended complaints.

On May 12, 2014, Ms. Lynn filed a Motion for Court Appointed Business Valuation Expert and for Other Appropriate Relief, requesting that an independent expert witness be appointed to perform a valuation of Mr. Lynn's interest in Universal Floors, Inc. ("UFI"), a wood flooring sales and installation business established by his father, and to determine the marital value of his interest. By agreement of the parties, the court appointed David DeJong, to perform the business valuation. On February 20, 2015, Mr. DeJong issued his report, finding that the marital value of Mr. Lynn's 39.51% interest in UFI, as of November 30, 2014, was $491,000.

On July 15, 2014, the court held a hearing on Ms. Lynn's request for *pendente lite* alimony and attorney's fees. The court subsequently awarded Ms. Lynn *pendente lite* alimony in the amount of $3,300 per month and attorney's fees in a total amount of $25,000. The court stated that it had considered Ms. Lynn's obligation toward the children's expenses and lowered the *pendente lite* alimony award in lieu of a child support award to Mr. Lynn.[1] All other requests for relief were deferred until the trial on the merits.

The parties subsequently filed their respective Statements Concerning Marital, Non-Marital and Disputed Property. In Ms. Lynn's statement and amended statement, she designated Mr. Lynn's interest in both UFI and Lynn Realty, Inc. ("Lynn Realty") as marital property. Lynn Realty owned two buildings used by UFI, a showroom and a garage, and was owned 50% by Mr. Lynn and 50% by his brother, South Lynn, Jr. Mr. Lynn disputed that his interests in UFI and Lynn Realty were marital property.

[1] The parties' two children were residing with Mr. Lynn at the time of the hearing.

On November 5, 2014, the parties entered into a Consent Custody Order, which provided for joint physical and legal custody of the children. Despite the agreement and the Consent Custody Order, however, Ms. Lynn did not have any time with her children, as they refused to see her.

On April 20 - 23, and May 12, 2015, the court held a trial on the merits. The court initially ordered the parties to work together to submit a Joint Statement Concerning Marital, Non-Marital and Disputed Property, which subsequently was admitted as Joint Exhibit #1. With respect to UFI, Mr. Lynn asserted that his interest was acquired before marriage, and it was nonmarital property; Ms. Lynn argued that it was marital property. With respect to Lynn Realty, Mr. Lynn asserted that "41st street [was] acquired before marriage and garage [was] acquired with non-marital funds." Ms. Lynn asserted that the property was marital, with a value of $1,310,000.

Ms. Lynn, who was 44 years old at the time of trial, has a Bachelor of Science degree from Virginia Tech in Health & Physical Education, and a Master of Education Degree from the University of Virginia in Exercise Science, Health & Physical Education. Prior to having children, Ms. Lynn worked full time at Mid-Atlantic Medical Services ("MAMSI"), earning approximately $39,000 per year. When she was pregnant with S.L., however, Mr. Lynn, whom Ms. Lynn described as "a very controlling, manipulative person," was "very adamant" that she not work.

Thus, after the birth of her children, Ms. Lynn primarily was a "stay at home mother, wife, caretaker of the home," and she "took care of the children, supported [her] husband in his career, did the cooking, cleaning, basically anything pertaining to the children,

doctor's appointments, anything related to school, volunteering."[2] She also attended all of the children's school meetings and field trips, and she helped Mr. Lynn with health benefits and paperwork for UFI. Ms. Lynn described her non-monetary contributions as taking care of the children, cleaning, doing laundry, cooking, working for UFI, handling all of Mr. Lynn's scheduling of doctor and dental appointments, and preparing Mr. Lynn for business trips. She also hosted "a couple of very large parties for a number of years" for 300 people, so Mr. Lynn could network with customers.

Ms. Lynn testified that Mr. Lynn was the "financial provider. He was the breadwinner," and he wanted Ms. Lynn to be a stay-at-home mother. Mr. Lynn worked very long hours, leaving the house at 6:00 or 7:00 a.m. and getting home at 7:00 or 8:00 p.m. Ms. Lynn stated that Mr. Lynn's job "was always the primary focus of his life," and he was "very proud of his company," working "very hard to make sure that the reputation of the company is stellar." She stated that Mr. Lynn was "always networking," was "very involved with the National Wood Flooring Association," and had taken many courses "to improve his education in the area of wood flooring." Mr. Lynn was "definitely the driving force behind . . . improvements to the company, getting their name out there." UFI had been awarded the Floor of the Year award many times, and Mr. Lynn had been featured in

[2] Ms. Lynn did work intermittently as the benefits administrator for Universal Floors, Inc. ("UFI") until 2010 or 2011, when she obtained a "sporadic" job as a wellness specialist, working approximately two to three hours a week, and earning approximately $50 per month. She also did some dog sitting and boarding at the family home, earning approximately $7,000.

articles in the Washingtonian Magazine and the Washington Post. Mr. Lynn was "absolutely" involved in UFI's day-to-day decisions.

Ms. Lynn described the parties' standard of living during the marriage as "very good," "upper middle class." The parties had a "nice home, investment property, a townhouse, and [they] belonged to a country club." They went on vacations to the Caribbean, the Bahamas, Jamaica, and other resorts. They went "out to nice dinners" and to "lots of nice events." The parties "were very free to spend money." At the time of trial, Ms. Lynn lived in a rental home.

In 2012, Ms. Lynn began working as a personal trainer with one or two clients. At the time of trial, she was employed with Gold's Gym as a personal trainer, where she worked approximately 30 hours per week. She also had five or six private clients who she trained five to six hours per week, and she worked for Foundry Fitness doing administrative work for one or two hours per week. Between all three jobs, Ms. Lynn was working full-time and earning approximately $40,000 per year.

Trudy Koslow, Mr. Lynn's vocational expert, testified that Ms. Lynn has an earning capacity of between $60,000 and $80,000 per year. She stated that Ms. Lynn could do a number of things, including that she "could be a manager . . . . She could be an executive assistant. She's got clerical skills. She's got all kinds of knowledge. She could go back into the insurance industry where she worked before and be a manager again. Any of those kinds of things." Ms. Koslow testified that Ms. Lynn could make up to $109,200 per year doing personal training, although she agreed that this conclusion did not take into consideration unbilled travel time between clients or client cancellations. Ms. Koslow also

agreed that the most Ms. Lynn had ever earned was $39,000 per year. Ms. Koslow did not speak to any of Ms. Lynn's former employers, nor did she specifically look for jobs that Ms. Lynn could obtain.

Mr. Lynn, who was 51 years old at the time of trial, has a Bachelor of Science degree in Political Science from Shephard University. At the time of the marriage, Mr. Lynn worked as a salesman at UFI, and he was a 27.14% owner of UFI.[3] By the time the parties separated, Mr. Lynn's interest in UFI had increased to 39.51%, through stock redemption.

Mr. DeJong testified that, from his review of the corporate records, Mr. Lynn received his interest in UFI prior to the marriage in multiple increments, with the last increment occurring in 1997. He stated that the increase in Mr. Lynn's interest occurred through the "redemption of the interest of certain people no longer involved," and "multiple redemptions" occurred during the marriage. On March 31, 2000, three months prior to the marriage, UFI's gross revenue was $1.864 million. On November 30, 2013, UFI's gross revenue was $4.784 million.

At the time of trial, Mr. Lynn had a base salary of $600 per week, with commissions on jobs that were completed. He also received bonuses. Between his base salary, commissions, and bonuses, along with other various earnings, as compiled by Leslie Leonard, UFI's Certified Public Accountant, Mr. Lynn's yearly income from 2007 through 2013 was as follows: $449,652.50, $435,998.00, $407,322.50, $263,734.50, $287,415.50, $373,490.00, and $418,732.00, respectively.

[3] Mr. Lynn had worked at UFI since the age of 12.

Mr. Lynn testified that he had every degree and certification offered by the National Wood Flooring Association, "taught nearly every class that they offer," "sat on most of their committees and . . . served on their board," and he volunteered and gave lectures with respect to the wood flooring business. He was not required to participate in this association, but if there were any more certifications available, he was "willing to take it and do it," because he "love[s] what [he] does."

Mr. Lynn testified that the parties enjoyed a "comfortable life" during their marriage, but they did not "buy fancy cars, Mercedes or anything. I always drove a pickup truck." They did not eat out a lot, and although they did take some vacations, they usually took a vacation in the summer at his parents' house in Fenwick Island, where they could stay for free. Mr. Lynn described his current standard of living as "hand to mouth just about," explaining that "the money is coming in and I've got a lot of bills going out so I'm . . . adjusting as I am on my feet every day." He stated that he had to borrow money to pay his bills, including $60,000 from his parents, he had "about liquidated everything," and he took approximately $148,000 from his retirement to pay attorney's fees.

UFI paid Mr. Lynn's expenses, including his vehicle, gas, vehicle repairs, part of his country club dues, and health insurance. At the time of trial, Mr. Lynn was living in the family home, which was appraised at $765,000. The home includes a working farm, a hobby.

South Lynn, Jr., Mr. Lynn's brother, testified that he handled UFI's day-to-day management, and Mr. Lynn did not make any day-to-day management decisions. South Lynn, Jr. agreed that Mr. Lynn is a good salesman, brings in a lot of business, and

works "very hard at his job." He stated that sales had increased since 2000, but Mr. Lynn's last year as UFI's top sales producer was 2007. Mr. Lynn has his own customers and does the UFI speaking engagements, such as talks to historic societies and newspaper and television interviews.

Robert Bitner, a former UFI salesperson for approximately 20 years, testified that Mr. Lynn "was the sales manager and the owner of the . . . company," and he ran the office and the sales force. Mr. Lynn had been a salesman, but in the previous 10 to 15 years, he "took on a[] more central role in the company as an owner. And, everyone knew that." At that point, it was either Mr. Lynn or South Lynn, Jr. who handled the company, and the sales team would direct the sales force and make all decisions for them. Mr. Bitner stated that Mr. Lynn handled "[a]nything that had to do with sales of the company or contracts . . . the way they were written up, and had to go through him." Mr. Lynn provided the sales force with leads, and all sales contracts had to "be signed off" by Mr. Lynn.

Ms. Lynn agreed that Mr. Lynn had a "very good reputation in . . . the wood flooring community." Mr. Lynn also represented to his family that he was the "top salesman within the company."

In 1998, South Lynn, Jr. and Mr. Lynn formed Lynn Realty for the purpose of holding title to 4625 41st NW, Washington, DC, a commercial building, which Lynn Realty leased to UFI. Mr. Lynn and South Lynn, Jr. each owned 50% of Lynn Realty. Between 2010 and 2011, improvements were made to the building. In March 2011, a "big grand reopening" was held. Ms. Lynn testified that the renovations were "pretty major," including installation of a herringbone floor in the showroom, custom made cabinetry, pull

out drawers, special samples, a new staircase, paint, lighting, and a television to show pictures of UFI's work.

South Lynn, Jr. stated that the "grand improvement" was "pull[ing] the ceiling out of the showroom." He stated that they "ripped down the ceiling and did some minor improvements."

In 2004, Lynn Realty purchased 4812-4814 41st Street NW, Washington, D.C., a garage/warehouse building, also leased to UFI. Ms. Leonard, the accountant who did the tax returns for the companies owned by Mr. Lynn, testified that no personal funds were used to purchase either building. She stated that the source of money for the purchase of the garage/warehouse was a refinance of the commercial building, 4625 41st Street, which had been purchased pre-marriage.

Joseph L. Donnelly, Jr., Ms. Lynn's commercial real estate appraisal expert, testified that, as of February 11, 2015, the reasonable value of 4625 41st Street was $1,060,000, and the value of 4812-4814 41st Street was $250,000. Mr. Donnelly's firm previously had appraised 4625 41st Street in August 2001, and at that time, the value of the building was $394,000. Both appraisals, along with photographs of the buildings, were admitted into evidence. Mr. Donnelly did not know whether the increase in the value of the property was due to significant capital improvements.

On October 29, 2015, the court issued a Judgement of Absolute Divorce. It ordered, *inter alia*, Mr. Lynn to pay a $300,000 monetary award, $4,500 per month in indefinite alimony, and $40,000 in attorney's fees. It denied Mr. Lynn's request for child support.

DISCUSSION

I.

Monetary Award

Mr. Lynn's first contention is that the trial court erred in granting Ms. Lynn a $300,000 monetary award. Ms. Lynn, by contrast, asserts that "the trial court's monetary award was well within its discretion and was based upon the evidence presented."

In making a monetary award, the court must engage in a three-step process. *Alston v. Alston*, 331 Md. 496, 499 (1993). First, if there is a dispute as to whether certain property is marital property, the court must determine which property is marital property. Md. Code (2015 Supp.) § 8-203(a) of the Family Law Article ("FL"). The court must then determine the value of all marital property. FL § 8-204. Finally, after the court has determined what property is marital property, and the value of the marital property, it considers multiple factors to determine whether to make a monetary award "to rectify any inequity." *Brown v. Brown*, 195 Md. App. 72, 109 (2010); FL § 8-205.[7]

[7] The required factors 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, (continued . . .)

This Court has explained the purpose of a marital award, as follows:

> The monetary award is . . . an addition to and not a substitution for a legal division of the property accumulated during marriage, according to title. It is "intended to compensate a spouse who holds title to less than an equitable portion" of that property. . . . What triggers operation of the statute is the claim that a division of the parties' property according to its title would create an inequity which would be overcome through a monetary award.

Innerbichler v. Innerbichler, 132 Md. App. 207, 227-28 (quoting *Ward v. Ward*, 52 Md. App. 336, 339-40 (1982)), *cert. denied*, 361 Md. 232 (2000). The value of marital property must be decided as of the date on which the divorce is actually entered based on the evidence produced at trial, unless the parties agree on a different date. *Strauss v. Strauss*, 101 Md. App. 490, 508 (1994), *cert. denied*, 337 Md. 90 (2005).

Here, in rendering its opinion, the court noted that it had determined "what is, and what is not, marital property," valued the marital property, and set forth those values in a chart of marital and non-marital property. In that regard, the court considered the parties' real property, investment accounts, bank accounts, furniture, and vehicles. It concluded

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> (. . . continued) 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;
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> (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;
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> (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).

that Mr. Lynn's marital property, titled jointly or titled in his name, was valued at $731,362.75, and Ms. Lynn's marital property, titled jointly or titled in her name, was valued at $127,631.78. Mr. Lynn's total non-marital property was valued at $310,013; Ms. Lynn's at $284,825. The court ordered certain property sold and the proceeds divided.

The court then turned to "consideration of whether a monetary award is appropriate, after analyzing the factors set forth in the statute." The court considered each factor, seriatim. With respect to UFI and Lynn Realty, the court concluded that both properties were "partially marital and partially non-marital," and "the value of each increased significantly during the marriage." Ultimately, the court made a monetary award in favor of Ms. Lynn in the amount of $300,000.

Mr. Lynn contends that this ruling was erroneous for several reasons. We will address each reason in turn.

A.

Standard of Review

This Court has set forth the standard of review of a court's decision regarding a marital award as follows:

> Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property. Findings of this type are subject to review under the clearly erroneous standard embodied by Md. Rule 8-131(c); we will not disturb a factual finding unless it is clearly erroneous. *Noffsinger* [*v. Noffsinger*, 95 Md. App. 265,] 285, 620 A.2d 415, (citation omitted) [*cert. denied*, 331 Md. 197 (1993)]; *Hollander v. Hollander*, 89 Md. App. 156, 175, 597 A.2d 1012 (1991). Md. Rule 8-131(c) states:
>
> > When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence

> unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.
>
> *See Oliver v. Hays*, 121 Md. App. 292, 305-06, 708 A.2d 1140 (1998); *Nicholson Air Servs., Inc. v. Board of County Comm'rs*, 120 Md. App. 47, 66-67, 706 A.2d 124 (1998). When the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous. *Ryan v. Thurston*, 276 Md. 390, 392, 347 A.2d 834 (1975); *Sea Watch Stores Ltd. Liab. Co. v. Council of Unit Owners of Sea Watch Condominium*, 115 Md. App. 5, 31, 691 A.2d 750, *cert. dismissed*, 347 Md. 622, 702 A.2d 260 (1997).
>
> With respect to the ultimate decision regarding whether to grant a monetary award and the amount of such an award, a discretionary standard of review applies. *Alston v. Alston*, 331 Md. 496, 504, 629 A.2d 70 (1993); *Ware* [*v. Ware*, 131 Md. App. 207,] 214, 748 A.2d 1031 [(2000)]; *Gallagher v. Gallagher*, 118 Md. App. 567, 576, 703 A.2d 850 (1997); *Doser* [*v. Doser*], 106 Md. App. [329,] 350, 664 A.2d 453 [(1995)]. This means that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.

Innerbichler, 132 Md. App. at 229-30.

B.

Mr. Lynn's Interest in UFI

Mr. Lynn contends that, in establishing the monetary award, the circuit court erred in determining that his interest in UFI had a marital value of $398,579, for several reasons. First, he argues that his interest in UFI was obtained prior to the marriage, and therefore, it was a non-marital asset unless Ms. Lynn provided evidence of an increase in value due to marital efforts or funds. To do so, he asserts, Ms. Lynn had the burden of producing evidence of both the date-of-marriage value of UFI and the current value of the asset, and she had the burden to produce evidence that any claimed increase in value of the non-

marital property during the marriage was due to Mr. Lynn's efforts or the use of marital funds. He asserts that Ms. Lynn failed to meet her burden in that regard.

Mr. Lynn notes that Ms. Lynn initially called Mr. DeJong to testify only regarding the current valuation of his interest in UFI, and he asserts that her "failure to obtain a date of marriage value prior to trial and attempts to cure this defect during trial caused confusion and fatally damaged" his right to a fair trial. He argues that the court's ultimate reliance on Mr. DeJong's rebuttal testimony, a "guess" regarding the date-of-marriage value, as a "baseline for the monetary award," was an abuse of discretion.[4]

Ms. Lynn contends that the monetary award was based on substantial evidence, and she "clearly met her burden to show that appellant's interest in UFI is a marital asset subject to a monetary award and that any increase in value during the marriage was attributable to appellant's marital efforts and appellee's non-monetary contributions." She argues that the court properly determined that Mr. Lynn's current 39.51% interest in UFI was partially marital and partially pre-marital.

Ms. Lynn acknowledges that Mr. DeJong's testimony regarding Mr. Lynn's pre-marital interest in UFI was an approximation based on UFI tax returns for 1999 and 2000. She asserts, however, that the "only reason" Mr. DeJong could not establish pre-marital value of UFI to the same degree of certainty as the current value was due to Mr. Lynn's failure to provide him with the necessary information to do so. Therefore, if it was her

[4] Mr. Lynn repeatedly refers to Mr. DeJong's pre-marital valuation as an "estimate" or a "guess." Mr. DeJong, however, made it clear during his testimony that, to the extent he ever used those words, "it should have properly been called an approximation and nothing more."

burden to establish Mr. Lynn's pre-marital interest value in UFI, as Mr. Lynn contends, "it was impossible for her to do so because neither [Mr. Lynn] nor UFI had provided Mr. DeJong with the necessary information to do so."

She also asserts that "valuation is not always an exact science," and the court, in its opinion, acknowledged that it does not always "have the luxury of perfect testimony." She contends that Mr. DeJong's testimony regarding the date-of-marriage valuation "was carefully presented, was credible and was persuasive," and the court was within its discretion to determine Mr. DeJong's credibility.

1.

Proceedings Below

On January 28, 2015, prior to trial, Mr. DeJong sent a letter to the court and counsel stating as follows, in relevant part:

> During the course of my work, I learned that the parties were married on June 24, 2000, a date subsequent to when the Defendant, Sprigg Lynn, received stock in the underlying Company through gift. Accordingly, I am taking this opportunity to ask the [c]ourt if it wishes me to prepare an additional valuation proximate to the date of the marriage. While it is highly unlikely that I could obtain the necessary information and include it in an initial Report, with cooperation from the parties, a short Supplemental Report could be made available to the [c]ourt and counsel with sufficient time for review prior to trial.

There was no response by the court to this request.[5]

[5] Mr. Lynn asserts in his brief: "Only Appellant's counsel responded. Appellee chose not to respond to DeJong's letter ignoring her burden of proof. The trial court also did not respond." Mr. Lynn does not provide this Court with a citation to the record where his response can be found. The court indicated in its ruling, *infra*, that it did not receive the letter.

On the first day of trial, Ms. Lynn called Mr. DeJong to testify. He stated that he did a current valuation of UFI as of November 30, 2014, because that was the last date for which he had information to reach a conclusion as to value. He explained in detail the process he used to conduct the valuation.

Counsel asked Mr. DeJong whether he was able to determine whether Mr. Lynn had any premarital valuation interest in UFI, to which Mr. DeJong responded that he "did not have the information necessary to do a conclusion of value." He stated that he had "limited information that might permit [him] to do an estimate, but not with the same degree of certainty as [his] valuation of November 30, 2014." With respect to premarital value, he stated that he "would need at least some information as of or proximate to the date of marriage." In that regard, he stated:

> I was given two tax returns, one with the fiscal year end of March 31, 2000, the other March 31, 2001. As I recall, the date of the marriage was June 24 of 2000. With that information, and I don't recall the source of that information, it can give me an idea as to the valuation on that date. Professionally, I could give an estimate of value with that limited information. I could not do a conclusion of value, which has a higher degree of certainty.

He stated, however, that no one had asked him to give a date-of-marriage value.

Mr. DeJong concluded that the current value of Mr. Lynn's 39.5% interest in UFI was $491,000. Mr. DeJong did not believe that UFI was the "type of business where . . . there was any personal goodwill," so he did not include that component in his calculations. At the end of his testimony, the court excused Mr. DeJong.

The following day, April 21, 2015, counsel for Ms. Lynn informed the court that she might want to recall Mr. DeJong regarding the two tax returns that he had received.

Counsel stated that she had never received, or heard of, those tax returns prior to his testimony, and she would need to recall him to have them admitted into evidence, as Mr. Lynn would not stipulate to them. Counsel for Mr. Lynn objected, on relevance grounds, noting that Mr. DeJong stated that he could not make a "conclusion as to the value at the time of the marriage. He said it was only an estimate." Counsel stated: "This is the right definition of trial by ambush, and his testimony is closed."

Upon questioning by the court, however, counsel for Mr. Lynn indicated that he had seen the tax returns and prior counsel had provided then to Mr. DeJong. When the court asked if counsel for Ms. Lynn had seen them, the following occurred:

> [COUNSEL FOR MS. LYNN]: Your Honor, we just saw them and it turns up, just to address one of the things that you said, which was, why [he] didn't do value at the time of the marriage. It's because he wasn't asked to.
>
> THE COURT: Well, I understand that, too. So this is, as long as we are having this conversation, this is as good a time as any to have it. So, I am, continue to be, very concerned that that letter came to me from Mr. DeJong, except it didn't get to me and that there was no answer to the questions, should he have done this. . . .
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> [COUNSEL FOR MR. LYNN]: Well Your Honor, what I can represent is . . . . opposing counsel saw the letter . . . and did nothing, other than to say that she though[t] the ex parte communications were inappropriate. So, that would have been the time, if they thought they should have done something different, that would have been the time to do it. . . .
>
> THE COURT: Well then, okay, but let's stop here for a second. If Mr. DeJong's possession of the two tax returns from whatever year it was, 2000 or '99 –
>
> [COUNSEL FOR MR. LYNN]: '99 and 2000, Your Honor.
>
> THE COURT: If yesterday was the first time counsel knew he had them, then I don't [know] when before then, they could have made an issue of it.

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> So [Counsel for Ms. Lynn,] you didn't know Mr. DeJong had them until yesterday.
>
> [COUNSEL FOR MS. LYNN]: I did not know that, no.

The court admitted UFI's tax returns for 1999 and 2000 without reopening Mr. DeJong's testimony.

On April 23, 2015, counsel for Ms. Lynn stated that there was an issue whether there was a premarital value in UFI, and Mr. DeJong had testified that he had an estimate, based on the tax returns, which was the first time she had heard that. Counsel stated that, under these circumstances, it was appropriate for her to call Mr. DeJong in rebuttal, or for the court to call him, because "he's let everybody know . . . he could say [the number] within a reasonable degree of certainty in his area of expertise." Counsel represented that Mr. DeJong expressed that to her law partner, and she spoke with him after they left court the previous day. Counsel for Mr. Lynn objected, stating that Mr. DeJong testified that he had "limited information that might permit him to do an estimate," and "he could not reach a conclusion to a reasonable degree of certainty with regard to anything during that time period."

The court then stated as follows:

> Whatever the testimony might be . . . and I don't know whether if it's given it will rise to the level of being persuasive, but what I am concerned about is . . . these parties have spent some number in the range of $250,000 to $300,000 on this exercise, and for me not to have the evidence that I need to say yea or nay about whether what I have right now, which I'll just say would not be a good outcome for one of the parties in terms of what I have for a value on the business – and I obviously haven't heard your case, but at least as it stands right now, the expert testimony about the business valuation,

> which I think I've heard all of, would be very unfavorable to one of you because there's missing evidence. I would hate to have that be the answer. And so I would be very careful about deciding that whatever Mr. DeJong has to offer, which might turn out not to be enough – let's say this, reliable enough to help me make the determination about the mix of marital and nonmarital property. At the moment, as I said, one of . . . these parties is in trouble because of lack of evidence, and I would hate it to be that way if there could be evidence.
>
> This isn't a proceeding where somebody has a burden beyond a reasonable doubt. This is a civil matter. It's a preponderance. And the amount of money that's been spent, I can't really justify saying no, he may not testify, although it's incredibly disorganized . . . .
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> ***
>
> I am inclined to allow the testimony to be complete so that I have what I need to actually determine, instead of having to say, and because . . . I'm missing something this is the answer, if there is a possibility that the person who did the valuation can give me the answer. It doesn't mean the outcome will change, but it does mean I have the evidence, and I think that makes sense under the circumstances.

The court noted that the purpose of the proceedings was to make an equitable distribution of the parties' resources, and it was possible that, because counsel for Mr. Lynn at the time Mr. DeJong sent the letter to the court was not the same counsel as at trial, the parties may have assumed that the court's answer to Mr. DeJong's question about valuation was no, given the court's lack of response. It stated that "the bottom line" was that it needed "to hear from Mr. DeJong if he has an opinion about the date of marriage value." Although Mr. DeJong's valuation "might not change the way things are," the court stated that it "would rather have it go that way than" have a decision on appeal that "we should have done it, and then they have to do it over again, which I don't think is in any way in anybody's interest and is also not appropriate for me to allow to happen if I can avoid it."

Counsel for Mr. Lynn again objected, stating that it was not appropriate to reopen Mr. DeJong's testimony due to Ms. Lynn's failure to meet her burden to prove valuation. The court responded:

> And I understand perhaps that defendant sees itself in a position of strength. I'll just say that part of my concern here is . . . that I think one of the parties is in a particularly difficult spot. If as a result of what Mr. DeJong testifies to, someone would like to change something that they have done, I might very well consider that under the circumstances, given that this is somewhat unusual. But trial by aha in the family law arena where we have spent the time we have spent, and knowing the cost of this, I think, is actually part of what I need to consider in making a determination about whether evidence relevant to the issues that I have to decide should be withheld because while it was available, it wasn't given.
>
> And I will say that regardless of how it came to pass, I think that the [c]ourt . . . as a whole has some responsibility for Mr. DeJong not having the answer to his question. And I'll just say, if it had been asked, I would have said yes, of course, do that. But it didn't get to me. I don't know why not. Clearly a letter was addressed to the [c]ourt – it hasn't moved – so somewhere it got misplaced, and then there was a lot of other stuff that happened, and I'm just not prepared to put these people in the position of getting to the end and making a decision based on less than all of the evidence.
>
> So with that said, I think maybe what we ought to try to do is . . . .
>
> ***
>
> have [Mr. DeJong] testify live here and let everybody have the opportunity to cross-examine. And as I said, if as a result of that there's something the defendant didn't do that they would have done, et cetera, I'll allow that, too, because I think that's fair, under the circumstances, for the plaintiff. . . .
>
> ***
>
> And [counsel for Mr. Lynn] if you need to recall someone as a result of the additional evidence, I would allow that, too. So if there is someone who you did not have testify about – I mean, I think I heard testimony from your witnesses about the valuation at the outset of the merits, and I don't want you to have somebody come back and tell it to me again –
>
> ***

> -- but if there is someone you did not inquire of who you would have, I will allow you to make that request.

Accordingly, the court ruled that it would allow Mr. DeJong to be recalled.

On May 12, 2015, Mr. DeJong returned to court. He testified that he advised Mr. Lynn's former counsel that he would need certain documents, including the tax return for the year ending prior to the marriage, and the year ending subsequent to the marriage. He also asked the court whether he should do a second valuation. To do the valuation, he received two UFI business tax returns, and based on those returns, he was able to approximate the value of Mr. Lynn's pre-marital interest in UFI at $92,421. He stated, however, that this could not be called a "conclusion of value."

Mr. DeJong stated that the date-of-marriage value was "an approximate value and if I were to do a conclusion of value with all of the steps that I took in doing a valuation as of November 30, 2014, I believe it would proximate this number to a reasonable certainty." Mr. DeJong had prepared a schedule relating to his valuation of Mr. Lynn's 27.14% ownership of UFI as of March 31, 2000, a date approximately one month prior to the Lynns' marriage, which was admitted into evidence.

At the conclusion of Mr. DeJong's testimony, counsel for Mr. Lynn moved to strike the testimony, arguing that "the approximation estimate is not to a reasonable degree of certainty, falls below the required standard for the [c]ourt to consider it as an opinion." The court responded that "the fact that it's an approximation" did not make it inadmissible, and although the testimony was not "the same level as the conclusion," the court would "allow it to stand" for "whatever weight it may have."

In its written opinion, the court stated that the parties had vigorously disputed what portion, if any, of Mr. Lynn's interests in UFI was marital property. The court noted that Mr. Lynn was "the co-president and a stockholder of UFI, a family business." It discussed Mr. DeJong's testimony that UFI "was obtained in several increments prior to the marriage." At the time the Lynns were married, "his interest in UFI was 27.14%," but it "increased to 39.51% at the time of the trial, through the redemption of interests of withdrawing shareholders, most notably Husband's Father, the founder of UFI." The court then stated:

> 47. Mr. DeJong testified that the present value of Husband's 39.51% of UFI is $491,000.
>
> 48. Mr. DeJong found no personal goodwill associated with UFI; thus he opined that the goodwill associated with UFI is institutional.
>
> 49. On May 12, 2015, Mr. DeJong testified about the prior to marriage interest, and the value of that interest. He stated that he was unable to reach a conclusion of that value to the same degree of certainty as that of the present value.
>
> 50. Mr. DeJong estimated the value of Husband's 27.14% interest in UFI as of March 2000, three months before the parties' marriage, to be $92,421. He described the process and documentation that he used, including two prior-to-marriage UFI tax returns, and presented a calculation using information gleaned from those records, comparable sales in the US, and making of adjustments due to lack of control and lack of marketability (Plaintiff's Ex. #76).
>
> 51. Defendant's position is that the value of UFI is about the same today as it was when the parties married in 2000. Defendant's brother and business partner, South Lynn, Jr., testified that he didn't think the sales had doubled since 2000. He did not give an opinion about the present value of UFI.
>
> 52. The [c]ourt does not always have the luxury of perfect testimony. Here, the [c]ourt finds Mr. DeJong's testimony persuasive. It was carefully

presented and credible. The marital property value of Husband's interest in UFI is $398,579 ($491,000-$92,421).

2.

Marital Property Value of UFI

Mr. Lynn challenges the court's determination, as part of its analysis in granting a monetary award to Ms. Lynn, that the marital property value of his interest in UFI was $398,579. He asserts that his interest in UFI was obtained prior to the marriage, and Ms. Lynn failed to prove that there was an increase in value of appellant's interest in UFI that was due to marital efforts or funds.

With respect to proof of an increase in value in Mr. Lynn's interest in UFI during the marriage, Mr. Lynn asserts that Ms. Lynn was required to "produce evidence of both the date of marriage value **and** the current value." He asserts that Ms. Lynn initially failed to produce evidence of the date-of-marriage value, taking the position that it was not her burden of proof, and the court erred in allowing her to recall Mr. DeJong for this purpose, after Ms. Lynn's counsel misrepresented to the court Mr. DeJong's level of certainty about that value. Mr. Lynn further argues that the court erred in relying on Mr. DeJong's late "estimate" or "guess" of the date-of-marriage value of his interest in UFI, substituting "speculation for evidence." As explained below, we are not persuaded.

FL § 8-201(e)(1) provides that marital property means "property, however, titled, acquired by 1 or both parties during the marriage." Pursuant to FL § 8-201(e), marital property does not include property acquired before the marriage.

In *Innerbichler*, however, this Court explained:

> Property that is initially non-marital can become marital . . . . *See Brodak v. Brodak*, 294 Md. 10, 26–27 (1982). Moreover, the party who asserts a marital interest in property bears the burden of producing evidence as to the identity of the property. *Noffsinger* . . ., 95 Md. App. [at] 281 . . . . Conversely, "[t]he party seeking to demonstrate that particular property acquired during the marriage is nonmarital must trace the property to a nonmarital source." *Id.* at 283; *see Golden v. Golden*, 116 Md. App. 190, 205, *cert. denied*, 347 Md. 681 (1997) (recognizing that the increased value of property acquired during the marriage is marital property, unless it can be directly traced to a non-marital source). *See also Harper v. Harper*, 294 Md. 54, 69-70 (1982). If a property interest cannot be traced to a nonmarital source, it is considered marital property. *Noffsinger*, 95 Md. App. at 281; *see Melrod v. Melrod*, 83 Md. App. 180, 187, *cert. denied*, 321 Md. 67 (1990).

132 Md. App. at 227 (parallel citations omitted).

Here, Mr. Lynn initially acquired his interest in UFI prior to the parties' marriage. The trial court found, however, that there was a $398,579 increase in value of Mr. Lynn's interest in UFI during the marriage, and therefore, that amount was marital property. The finding of a $398,579 increase in value was not clearly erroneous given the evidence by Mr. DeJong that the value of Mr. Lynn's interest in UFI prior to the marriage was $92,421, and the value at the time of trial was $491,000, a $398,579 increase in value during the term of the marriage.

Mr. Lynn contends, however, that the court abused its discretion in: (1) allowing Ms. Lynn to recall Mr. DeJong as a rebuttal witness to establish the date-of-marriage value of Mr. Lynn's interest in UFI; and (2) in relying on Mr. DeJong's testimony, which he characterizes as an "estimate" of value that "lacked the required degree of certainty." We disagree.

As set forth, *supra*, the circuit court carefully considered the issue whether Mr. DeJong should be permitted to be recalled in the case, noting the confusion regarding the permissible scope of Mr. DeJong's testimony and the importance of testimony regarding the date-of-marriage value for the court's determination. Under the circumstances of this case, we conclude that the circuit court did not abuse its discretion in permitting Mr. DeJong to testify to the date-of-marriage value of Mr. Lynn's interest in UFI.

Nor was there an abuse of discretion in the court's acceptance of this testimony. The court recognized that valuation is not always an exact science. *See Brodak*, 294 Md. at 27 ("We have recognized that appraisal is not an exact science."). Mr. DeJong testified that the date-of-marriage value he provided was "an approximate value and if [he] were to do a conclusion of value with all of the steps that [he] took in doing a valuation as of November 30, 2014, [he] believe[d] it would proximate this number to a reasonable certainty." The court found Dr. DeJong's testimony "persuasive . . . . carefully presented and credible." The court did not abuse its discretion in accepting Mr. DeJong's testimony that the date-of-marriage value of UFI was $92,421.[6]

Mr. Lynn next argues that the court erred in finding that the marital value of UFI was $398,579 because Ms. Lynn "failed to meet her burden of proof that any increase of his nonmarital UFI interest was due to marital efforts or marital funds." He asserts that he

[6] Mr. Lynn also contends that Ms. Lynn had the burden to show the date-of-marriage value of UFI, and she failed to meet that burden when she initially called Mr. DeJong. To the extent that Ms. Lynn had this burden, she satisfied it with the rebuttal testimony of Mr. DeJong.

had "no management role" in UFI and was merely "one of a team of salespeople compensated for jobs sold and he had not been a top producer at UFI for more than 8 years." Moreover, he did not acquire additional stocks in UFI through marital funds or as compensation, but rather, he acquired the additional stock through the redemption of shares. Accordingly, he asserts, there was no evidence in the record, other than speculation, that could "form the basis that any increase in the value of stock, if any, was due to [Mr. Lynn's] work as a member of a sales team for UFI."

Ms. Lynn contends that there was evidence to support the finding by the court that the increase in value of UFI during the marriage was attributable to Mr. Lynn's marital efforts and her non-monetary contributions. She asserts that UFI's income tax returns showed a significant increase in UFI's gross revenues from 2000 to 2013, and the testimony indicated that, not only was Mr. Lynn "an integral part of the increase in UFI's gross revenues," but also that Ms. Lynn's non-monetary contributions, including caring for the children while Mr. Lynn worked long hours, taking care of the home, and taking care of Mr. Lynn's needs, "were also vital in [Mr. Lynn] being able to devote so much time and effort to the growth of the business." We agree.

As noted above, property that is non-marital can become marital. *See Innerbichler*, 132 Md. App. at 207. The "increase in the value of non-marital business assets during the marriage may be considered marital property, when the spouse seeking that consideration shows that his or her non-monetary contribution allowed the other spouse to work harder toward the growth of the business." *Long v. Long*, 129 Md. App. 554, 572 (2000) (citing *Brodak*, 294 Md. at 26-27). In *Long*, similar to this case, there was evidence that the wife

"managed the home and family while Husband worked long hours and that Husband was satisfied with the fact that she did not make a financial contribution to the marriage." *Id.* Under these circumstances, this Court found no error in the court "allocating to marital property the increase in value of" the husband's business. *Id.* at 573.

Here, the circuit court found that "each of the parties made contributions, both monetary and nonmonetary," to the well-being of the family. It found:

> Before the deterioration of the marriage had reached the point of no return, Wife was the primary caretaker of the Children while Husband spent long hours at work. She managed the day-to-day lives of the Children, cooked meals, did laundry, got them ready for school, attended school Individualized Education Program (IEP) meetings, and oversaw the upkeep of the home and the family finances.
>
> Wife worked at MAMSI . . . prior to the marriage and until 2002, when the parties' first child was born. She was not regularly employed outside the home thereafter, but did some part-time work once the Children were in school, in a variety of jobs including wellness specialist at health fairs and providing dog sitting services in the family home.
>
> Husband was primarily responsible for the care and upkeep of the property. He worked long hours furthering and increasing the business of UFI and thus his family's economic wellbeing. He was a top sales person at UFI, and was very involved in professional associations, including a term as the president of the National Wood Flooring Association. At times, Ms. Lynn would assist UFI with health benefits and insurance enrollment paperwork. But Husband has been and is the economically dominant spouse in all respects.

The evidence supported the court's conclusion that Ms. Lynn's nonmonetary contributions allowed Mr. Lynn to work "long hours furthering and increasing the business of UFI." Ms. Lynn testified that Mr. Lynn's job was his primary focus in life, and he worked very long hours, expecting her to take care of the children and other household responsibilities. Mr. DeJong testified that, according to income tax returns from 2000 to

2013, UFI's gross revenues increased from $1.864 million to $4.784 million. Ms. Leonard, UFI's accountant, produced a document showing that, between 2007 and 2013, Mr. Lynn's income, which is largely based on commissions and performance based bonuses, averaged approximately $375,000 per year. In 2013, just prior to the parties' separation, appellant earned $418,732, of which $186,063 was attributable to his commissions and $187,601 was attributable to his performance-based bonuses.

Despite Mr. Lynn's assertion that he "had no management role," in UFI, Ms. Lynn testified that Mr. Lynn was involved in the day-to-day business decisions of the business, and her testimony was corroborated by Mr. Bitner. Mr. Lynn also represented to his family that he was the top salesman of the company. Even Mr. Lynn's brother testified that sales had increased since 2000, that Mr. Lynn was a good salesman, and that he worked very hard to bring in business. Mr. Lynn further testified that he does all of UFI's speaking engagements, and he has taken every class he can to enable him to excel at the wood flooring business.

The testimony and evidence, the credibility of which was for the trial court to determine, supported a finding that Ms. Lynn's non-marital contributions were vital in allowing Mr. Lynn to devote his time and effort to increasing UFI's business. We perceive no error or abuse of discretion in the court's ruling in this regard.

3.

Rebuttal Testimony of Mr. Pennington

Mr. Lynn next argues that the circuit court "erred by refusing to allow appellant to call a rebuttal expert and banning the expert from the courtroom." He asserts that, when

the court allowed Ms. Lynn to recall Mr. DeJong to testify regarding a date-of-marriage value of UFI, it stated that Mr. Lynn could call a rebuttal witness to address any issue that arose as a result of Mr. DeJong's testifying beyond the scope of his initial testimony. When he sought to offer his expert, Walter Pennington, as a rebuttal witness, however, the court not only refused to allow Mr. Pennington to testify, it banned him from the courtroom without cause.[7] He asserts that the court's disregard of Maryland Rule 5-615 and refusal to allow him to call his rebuttal witness fundamentally prejudiced his right to a fair trial.[8]

Ms. Lynn contends that the court properly exercised its discretion in declining to allow Mr. Pennington to testify. She notes that Mr. Lynn had advised that Mr. Pennington would not be testifying at trial, and based on that representation, she did not depose Mr. Pennington. She asserts that, in light of those facts, the court properly determined that it "would be improper and prejudicial" for Mr. Pennington to testify. Additionally, Mr. Lynn had not provided Ms. Lynn with any information regarding Mr. Pennington's expected testimony with respect to the pre-marital value of Mr. Lynn's interest in UFI.

After extended discussions regarding whether Mr. Pennington would be allowed to testify, the court stated:

> Okay. Under all the circumstances I'm not inclined to allow Mr. [Pennington] to testify, again no disrespect to him, but I think there's three problems here. The first is that Mr. [Pennington] was designated and

[7] Mr. Pennington is identified as Mr. Paddington in the transcript.

[8] Maryland Rule 5-615(b) provides, in pertinent part, that a court shall not exclude from the courtroom during testimony: "(3) an expert who is to render an opinion based on testimony given at the trial," and "(4) a person whose presence is shown by a party to be essential to the presentation of the party's cause, such as an expert necessary to advise and assist counsel."

> then withdrawn as an expert so to the extent that he had something to say earlier in the case that didn't happen, but moving on past that then Mr. [Pennington] is going to testify about that which Mr. DeJong has testified and we're in agreement that he too, Mr. [Pennington], will testify that this is an approximation so that he's going to give a different approximate number than Mr. DeJong did being, I'm sure, as careful as Mr. De Jong was to make distinction between conclusion and approximation, and the third thing is that having said all this plaintiff wasn't provided with whatever it was Mr. [Pennington] was going to say about today, about the approximation of value today.
>
> I recognize that there hasn't been lots of time in between, but at the very least that would have been a reasonable thing to expect, as the plaintiff it's also something I would have expected and I think to ask the plaintiff to absorb it while it's happening on the stand is just not appropriate.

Generally, "[w]e review the trial court's decision to exclude expert testimony for abuse of discretion." *Streaker v. Boushehri*, 230 Md. App. 101, 111 (2016). An abuse of discretion will be found when "'no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles.'" *Bord v. Baltimore Cnty.*, 220 Md. App. 529, 566 (2015) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

Here, the trial court noted that Ms. Lynn had no opportunity to depose Mr. Pennington and had not even been advised regarding the substance of his testimony. Under these circumstances, the circuit court did not abuse its discretion in determining that it would be unfair to allow Mr. Pennington to testify.

We turn next to Mr. Lynn's argument that the court's ruling, precluding Mr. Pennington from being present in the courtroom during Mr. DeJong's testimony, violated Rule 5-615(b). Maryland Rule 5-615, which addresses the exclusion of witnesses during other witness testimony, provides that the court shall not exclude: "(3) an expert

who is to render an opinion based on testimony given at the trial," and "(4) a person whose presence is shown by a party to be essential to the presentation of the party's cause, such as an expert necessary to advise and assist counsel."

Because Mr. Pennington was not an expert who would be rendering an opinion at trial, the court did not, as Mr. Lynn argues, violate Md. Rule 5-615(b)(3). And with respect to Rule 5-615(b)(4), Mr. Lynn makes no argument, other than citing the rule, in support of his position, nor does he explain how he was prejudiced by the court's ruling. Under these circumstances, he states no claim for relief in this regard. *See Barksdale v. Wilkowsky*, 419 Md. 649, 660 (2011) (in civil cases, reversible error will be found only if the appellant shows error and prejudice); *In re: J.J.*, 231 Md. App. 304, 337 (2016) (same). We perceive no abuse of discretion by the trial court based on its decisions regarding Mr. Pennington.

4.

Lynn Realty's Commercial Buildings

Mr. Lynn next asserts that the court erred in determining that the "increase in value of appellant's non-marital interest in commercial property was marital where there was no evidence that the increase in value was active appreciation." In this regard, he refers to the property owned by Lynn Realty, 4625 41st Street NW, Washington, D.C., the commercial building used as UFI's showroom, and 4812-4814 41st Street NW, Washington, D.C., the warehouse/garage used by UFI. He asserts that there was no evidence to show that any increase in value in these commercial properties "was anything more than passive in nature" or that appellant's efforts contributed to any increase in value.

Ms. Lynn contends that she "clearly met her burden in identifying certain commercial property as marital property subject to a monetary award." With respect to the UFI warehouse/garage, she argues that the court properly determined that the property was marital because it was purchased during the parties' marriage and Mr. Lynn did not provide any evidence to support his contention that it was purchased with non-marital funds. With respect to the UFI showroom building, Ms. Lynn asserts that the court properly determined that it was marital property because improvements had been made to the building during the marriage, and those improvements were due to Mr. Lynn's marital efforts.

In its written opinion, the court found that the "total marital property value of Lynn Realty was $302,850." With respect to the warehouse/garage, it found that it was purchased during the marriage and the value of Mr. Lynn's interest was $75,505. Because there was no evidence to establish a non-marital portion, the court treated the entire amount as marital property. This finding is supported by the record.

As noted previously, a party seeking to demonstrate that an asset acquired during the marriage is non-marital bears the burden to trace the asset to a non-marital source; otherwise, the asset is considered marital property. *Innerbichler*, 132 Md. App. at 227. Here, it was undisputed that the property was purchased during the marriage. Although Mr. Lynn contended in the Joint Statement Concerning Marital, Non-Marital and Disputed Property that the warehouse had been purchased with non-marital monies and was non-marital, he did not produce any evidence to support that contention. Accordingly, the court properly concluded that the building was marital.

With respect to the showroom building, the court determined that the value of Mr. Lynn's interest was $223,345, which represented his share of the increase in value of the property.[9] Its finding that this was marital property is supported by the record based on evidence that improvements were made to the building during the marriage and those improvements were due to Mr. Lynn's marital efforts.

II.

Child Support

Mr. Lynn contends that the court abused its discretion in failing to award him child support because the parties' two minor children are in his primary residential custody. He asserts that the court abused its discretion by "failing to calculate and require child support, or make a finding how requiring no child support was in the children's best interests." Indeed, he contends that the court "utterly failed to identify the children's financial needs." Rather, Mr. Lynn asserts, the court "seemed to focus on the parties' convenience," and "[e]ven if the trial court was presumed to be correct, that [Ms. Lynn's] payment of monthly child support would increase [his] alimony payment to her, the law still requires the . . . court to order that result." Mr. Lynn contends that this was an "above guidelines case," and pursuant to *Voishan v. Palma*, 327 Md. 318, 323-24 (1992), the rebuttable presumption was that the child support award under the schedule, which for two children is $2,847 per month, was the minimum that should be awarded. He asserts: "With the trial court's findings as to the parties' respective incomes, and the adjustment for the indefinite alimony

[9] The evidence showed that the building had increased in value from $394,000 in 2001 to $1,060,000 in 2015

award, [Ms. Lynn's] respective share of the parties' total monthly income is 41.5%, and her monthly payment would be $1181.51," but the "court ordered $0," requiring reversal.

The circuit court stated, and the parties agree, that this is an "above guidelines" case, i.e., the parties' combined incomes exceed the top of the guidelines. In *Voishan v. Palma*, 327 Md. 318, 322 (1992), the Court of Appeals explained that it based Maryland's Child Support Guidelines on the "Income Shares Model," the "conceptual underpinning of" which "is that a child should receive the same proportion of parental income and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together." Thus, to establish child support, the initial step is for the court to "first determine whether the parents' combined adjusted actual income falls within, above, or below the schedule range." *Id.* at 330.[10] If, as here, the combined adjusted income is greater than the range found in the schedule in FL § 12-204(e), the court "'may use its discretion in setting the amount of child support.'" *Id.* at 324 (quoting FL § 12-204(d)).

Although there is no statutory requirement that "the judge divide the child support obligation 'between the parents in proportion to their adjusted actual incomes,' this principle certainly underlies the Income Shares Model," and the court should "give some consideration" to that "method of apportioning the child support obligation." *Id.* at 330-32. Moreover, the "guidelines do establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases

[10] Adjusted actual income is the party's actual income minus "(1) preexisting reasonable child support obligations actually paid; and (2) except as provided in § 12-204(a)(2) of this subtitle, alimony or maintenance obligations actually paid." Md. Code (2015 Supp.) § 12-201(c) of the Family Law Article.

above" the guidelines. *Id.* at 331-32. "Beyond this the trial judge should examine the needs of the child in light of the parents' resources and determine the amount of support necessary to ensure that the child's standard of living does not suffer because of the parents' separation." *Id.* at 332. *Accord Reichert v. Hornbeck*, 210 Md. App. 282, 316 (2013) (When the circuit court exercises discretion with respect to child support in an above guidelines case, it "'must balance the best interests and needs of the child with the parents' financial ability to meet those needs.'") (quoting *Smith v. Freeman*, 149 Md. App. 1, 20 (2002)).

Here, as indicated, this was an above guidelines case, and therefore, the amount of child support rested in the discretion of the circuit court. Because of the rebuttable presumption set forth in *Voishan*, however, "it was incumbent upon the court to fully explain the reasoning for its decision as to the amount of child support, because the amount awarded was below the maximum support award under the guidelines." *Otley v. Otley*, 147 Md. App. 540, 562 (2002).

The circuit court explained its reasoning in declining to award child support, as follows:

> The [c]ourt will not order Ms. Lynn to pay child support at this time, in the consideration of the parties' relative economic circumstances as the result of the orders that will be made pursuant to this Opinion. Specifically, the alimony award meets Ms. Lynn's needs in the context of Mr. Lynn's ability to pay. An order directing Ms. Lynn to pay child support while meeting her own needs would result in an increase in Mr. Lynn's alimony payment to Ms. Lynn. The [c]ourt sees no benefit to this approach.[11]

[11] At the *pendente lite* hearing, the court stated as follows regarding its order of no child support:

Although we understand the reasoning behind the circuit court's decision in addressing the financial circumstances of the parties, this Court previously has disapproved of this type of resolution. In *Woodall v. Woodall*, 16 Md. App. 17, 27 (1972), we noted that the factors to be considered in awarding alimony and child support are not the same. For example, the duration of alimony and child support are not the same. "Child support continues until a child becomes 21 years of age, is emancipated or becomes self supporting while alimony continues until one of the parties dies." *Id.* at 28. Additionally, "the significance of alimony and child support from an income tax standpoint is not the same." *Id.* For these reasons, this Court held that "the amount awarded as alimony should be separated from the amount awarded for child support." *Id.* Additionally, the resolution here, combining the alimony and child support into one award, as opposed to separate amounts for each, could cause difficulties later, i.e., if either of the parties subsequently

> [T]his is a case where the parties' combined income exceeds the mandatory application of the guidelines and so I did run some guidelines calculations, and no matter how I did it what happened was, if Ms. Lynn paid child support to Mr. Lynn, the alimony had to go up because Ms. Lynn needed to have money to meet her expenses. It didn't make very much sense to have that circle.
>
> So, I think the way I resolved this in my mind is that the amount of alimony that I'm going to award it, takes in to consideration Mr. Lynn's ability to pay which I find he does have and Ms. Lynn's obligation to contribute to child support which I find she does have, but as a practical matter, can't – well, it made no sense to me at all to have the parties transferring the same money back and forth to each other at this point.

seeks a modification of alimony or child support. Accordingly, we reverse the order of the circuit court regarding alimony and child support and remand for further proceedings.

Because we are reversing the alimony and child support awards, we shall vacate the award for counsel fees as well. Because the factors underlying an award of attorney's fees and alimony are so intertwined, a reconsideration of one requires the court to reconsider the other. *Doser*, 106 Md. App. at 335 n.1. *Accord Turner v. Turner*, 147 Md. App. 350, 413 (2002) (after vacating alimony award, court vacated award of attorney's fees, "so that the court may consider the issue of attorney's fees based on accurate factual underpinnings").

JUDGMENT AFFIRMED, IN PART, REVERSED, IN PART. ORDER FOR MONETARY AWARD AFFIRMED. JUDGMENT OTHERWISE VACATED. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY APPELLEE.