

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2843

September Term, 2015

No. 1110

September Term, 2016

MATTHEW BRUNK

v.

JENNIFER BRUNK

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 15, 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.

Matthew Brunk (“Matthew”) appeals from a judgment of the Circuit Court for Frederick County which granted his former wife, Jennifer Brunk (“Jennifer”), rehabilitative alimony for two years and purported to divide marital property. In a separate appeal, Matthew challenges the circuit court’s denial of his motion to terminate alimony. He presents three issues for our review which we have slightly reworded as follows:

- 1) Did the court err in awarding rehabilitative alimony in the amount of \$2500 per month for two years?
- 2) Did the court err in denying Matthew’s motion to terminate alimony?
- 3) Did the court err in its division of marital property and in granting Jennifer a monetary award?

We answer the first question in the affirmative and therefore need not reach the second.

Because we vacate the alimony award, any monetary award must be vacated as well.

FACTUAL AND PROCEDURAL BACKGROUND

On March 12, 2015, the Circuit Court for Frederick County held a one day merits hearing to decide the issues raised in Matthew’s and Jennifer’s respective complaint and counter-complaint for divorce. The court received testimonial and documentary evidence, but deferred its factual findings and ruling for a separate hearing scheduled for April 14, 2015. In its bench opinion on April 14, 2015, the court found that Jennifer had involuntarily impoverished herself, but awarded her \$2,500 in rehabilitative alimony for two years.

The trial court's ruling was reduced to writing in the Judgment of Absolute Divorce, filed May 20, 2015.¹ In that order, the court granted the parties an absolute divorce, instructed the parties to sell the marital home and equally split its proceeds, and granted Jennifer rehabilitative alimony. The court, however, reserved judgment on a monetary award, the jointly titled personal property, and the division of the parties' daughter's college fund until July 1, 2015 in the hope that the parties could resolve most of these outstanding issues on their own.²

Matthew moved to alter or amend the Judgment of Absolute Divorce in a motion filed on June 1, 2015. In the motion, he argued that the court incorrectly awarded Jennifer alimony in light of the fact that he could not afford the payments and that the court found her to be voluntarily impoverished. Jennifer responded with an opposition filed June 18, 2015.³

Unfortunately, the parties could not resolve the outstanding issues, and on July 1, 2015, Jennifer filed a memorandum/motion concerning the issues reserved in the Judgment of Absolute Divorce, which Matthew opposed.

¹ We note that after its oral ruling, but before the May 20, 2015 Judgment of Absolute Divorce, Matthew filed a motion to revise. The trial court denied this motion in an order dated June 16, 2015.

² The trial court also reserved authority to issue an order dividing Jennifer's retirement benefits on an if, as, and when basis.

³ The trial court did not rule on the motion to alter or amend until June 6, 2016, when it finally resolved all of the remaining issues in the divorce.

The court held hearings on January 19, 2016, and May 5, 2016, where the parties argued the remaining issues and pending motions.⁴ On June 6, 2016, the court issued its order resolving all outstanding issues.⁵ In the order, the court entered several monetary judgments against Matthew, and denied Matthew’s motion to alter or amend the Judgment of Absolute Divorce. Notably, the order did not specifically mention a monetary award. Matthew timely appealed.⁶ We will provide additional facts as needed in the Discussion section.

STANDARD OF REVIEW

“An alimony award will not be disturbed upon appellate review unless the trial judge’s discretion was arbitrarily used or the judgment below was clearly wrong.” *Boemio v. Boemio*, 414 Md. 118, 124 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 196 (2004)). We review the trial court’s factual findings under the clearly erroneous standard. *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003). “Thus, absent evidence of an abuse of discretion, the trial court’s judgment ordinarily will not be disturbed on appeal.” *Boemio*, 414 Md. at 125 (quoting *Solomon*, 383 Md. at 196).

⁴ Matthew failed to provide a transcript of the May 5, 2016 hearing.

⁵ Neither the record nor record extract contain this order. However, Jennifer included a copy in the appendix to her brief.

⁶ After filing his second appeal, Matthew filed a motion in this Court to stay the proceedings pending the resolution of his appeals. We granted that motion in an order filed January 23, 2017.

DISCUSSION

I. The Alimony Award

Matthew and Jennifer were married in Woodbridge, Virginia on July 23, 1988. On January 26, 2014, the parties agreed to separate, intending to end their marriage. Matthew filed his complaint for limited divorce on March 19, 2014. Jennifer responded by filing a counter-complaint for absolute divorce on April 29, 2014. In her counter-complaint, Jennifer sought, among other things, indefinite alimony.

During the marriage, Jennifer worked as a teacher in Montgomery County, Maryland.⁷ While teaching, she earned approximately \$100,000 annually. In March of 2014, anticipating disciplinary action with her supervisor, Jennifer resigned from teaching and planned to move to South Carolina. After her move, Jennifer could not find employment despite applying to several retail and grocery stores and at least one restaurant. She refused to consider teaching again because she found the job too stressful.

The trial court, relying on the factors enumerated in *John O. v. Jane O.*, 90 Md. App. 406, 422 (1992) found that Jennifer had voluntarily impoverished herself. Despite making this finding, the trial court awarded Jennifer \$2,500 a month in rehabilitative alimony for two years. In so doing, the trial court made the following findings of fact:

The Court finds that the Defendant [Jennifer] did voluntarily impoverish herself, for the following reasons:

⁷ Jennifer actually had thirty-two years of service as a teacher prior to her resignation in March, 2014.

Her current physical condition, she claims to have physical issues, but she has had them for some time. Those issues, the Court finds, do not preclude her from working.

Uh, her education, she has a master's degree.

Um, the timing of any change in employment or other financial circumstance relative to the divorce proceeding, the Court finds she quit her job as a teacher pending disciplinary action just before the divorce proceedings.

. . . The Court finds she did very little in her pursuit of employment. Uh, she had not updated her résumé. In fact, her testimony, several times during the course of this, is [sic], "I need to update my résumé." And there was some questions [sic] about jobs that were open, and she had not applied for them because she, quote-unquote, needed to update her résumé. Um, she had -- the Court finds she had just not done enough to find and retain employment.

Um, her efforts to secure retraining, there was [sic] none.

. . . Uh, her past work history, she was a teacher with a master's degree. And even though she indicated she was, quote-unquote, burned out on doing that, she does have a master's degree and the ability to teach, or at least the ability to use the master's degree and find something else as far as employment goes.

Um, the area where the party lives, and the status of the job market there, the testimony that the Court heard was that is a fast-growing area. There is lots [sic] of development going up. And I would assume, uh, and the Court finds lots of opportunity [sic] to find a job. She also moved there, uh, to that state -- I think it's in South Carolina, correct? -- voluntarily. Uh, there were no other considerations.

The court concluded,

Uh, the Court considered the time necessary to gain sufficient education or training, to enable her to find suitable employment. The wife, again, has a master's degree, so there may not need to be more education or training. The Court finds that the two years for which the Court is awarding alimony -- and I am awarding it for two years -- uh, is sufficient for her to gain education and training, and necessary to find suitable employment.

And the alimony I am awarding, uh, is going to be \$2,500 a month for two years.

Matthew argues that the trial court erred in awarding Jennifer rehabilitative alimony.

We agree. "In Maryland, the principal function of alimony is 'rehabilitation of the

economically dependent spouse.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184 (2016) (quoting *Whittington v. Whittington*, 172 Md. App. 317, 335-36 (2007)). “In other words, ‘alimony’s purpose is to provide an opportunity for the recipient spouse to become self-supporting.” *Id.* at 185 (quoting *Tracey v. Tracey*, 328 Md. 380, 391 (1992)). When making an award for alimony, courts are guided by Md. Code (1984, 2012 Repl. Vol.) § 11-106 of the Family Law Article (“FL”). Section 11-106(b) states that, “In making the determination, the court shall consider all the factors necessary for a fair and equitable award.” Section 11-106(b)(2) requires the trial court to consider, “the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment.” The time necessary to gain the education, training, or employment, “goes to the heart” of rehabilitative alimony and therefore must be considered. *St. Cyr*, 228 Md. App. at 187.

We have previously vacated and remanded alimony awards that did not match the trial court’s own findings of fact. In *Long v. Long*, 129 Md. App. 554, 558 (2000), this Court vacated and remanded a trial court’s decision to grant four years of rehabilitative alimony. There, Mrs. Long, who had monthly expenses of \$1,800 and was at the time unemployed, sought indefinite alimony of \$4,000 per month. *Id.* at 579-580. The trial court made findings of fact—including Mrs. Long’s potential income upon finding a suitable job—but failed to sufficiently explain its alimony award. *Id.* at 581. In remanding the alimony award to the trial court, we stated,

We take issue with . . . the chancellor’s findings as they stand. First, his opinion does not tell us why he reached specific findings. For example, we

cannot ascertain from whence his determination on duration of alimony came, because he does not specifically treat the mandatory factor in section 11-106(b)(2), the time required for [Mrs. Long] to become wholly or partially self-supporting.

Id. at 581-82. We explained why such an error required us to vacate and remand,

Most of the facts [the chancellor] cited seem to point in the opposite direction of his judgment. A four-year alimony award might make sense, for example, if Wife was mid-degree program and needed time to finish a course of studies The facts of the story as determined by the court below do not match the parsimonious award it ultimately granted. *See Benkin v. Benkin*, 71 Md. App. 191, 204 (1987) (“we hold that there must be some relation between the length of the award and the conclusion of fact as to the income disparity made by the court.”). *Because the chancellor failed to draw a solid line between the facts and the remedy, explaining fully how the former justifies the latter, he abused his discretion in our view.*

Id. at 582-83 (emphasis added).

We relied on the holding in *Long* two years later in *Lee v. Lee*, 148 Md. App. 432 (2002). There, the trial court awarded Mrs. Lee, a sporadically employed and unskilled laborer, alimony in the amount of \$1,500 for three years. *Id.* at 433, 435. In vacating and remanding the trial court’s alimony award, we stated that, “most significantly, the chancellor . . . provided an insufficient rationale as to why he selected the period he did for the duration of the rehabilitative alimony.” *Id.* at 446.

The same problem exists here. The trial court gave no explanation for the duration of the rehabilitative alimony it ordered. The court noted that Jennifer does not require further education or training to obtain employment when it stated, “The wife, again, has a master’s degree, so there may not need to be more education or training.” The court also found that Jennifer lives in an area with “fast-growing” opportunities to find work.

Nevertheless, the court awarded Jennifer alimony for two years because it “is sufficient for her to gain education and training, and necessary to find suitable employment.” The record is absent as to what education or training the court contemplated and how it would allow Jennifer to find suitable employment. In addition, the court provided no rationale for its decision to grant Jennifer \$2,500 per month. We note that the *Lee* Court’s observation “that the duration of the rehabilitative alimony appears to have been pulled out of ‘thin air’” is equally applicable here. *Id.* at 447. The trial court, therefore, abused its discretion.

In resolving Jennifer’s alimony claim on remand, the trial court should consider all of the factors enumerated in FL § 11-106(b).⁸ While a court is not required to use a formal checklist when making its alimony determination, a sound decision in this case will, at the very least, include an explanation for the amount and duration of any alimony award. As part of that analysis, the court should consider Jennifer’s potential income because it found her to be voluntarily impoverished.⁹ *St. Cyr*, 228 Md. at 179-80.

II. The Monetary Award and Division of Marital Property

Because we vacate and remand the alimony award, we also vacate and remand any monetary award. *Walter v. Walter*, 181 Md. App 273, 295-96 (citing *Campolattaro v. Campolattaro*, 66 Md. App. 68, 75 (1986)) (stating that, “As we have already said, it is because the equitable distribution/monetary award decision and the alimony decision are

⁸ We note that, in its ruling, the trial court did discuss some of the FL § 11-106(b) factors.

⁹ Because the initial alimony award is vacated, the circuit court’s denial of Matthew’s motion to terminate alimony is likewise vacated.

interdependent that the vacation of one on appeal ordinarily will require the vacation of the other.”). We note, however, that despite the trial court mentioning a monetary award in its bench opinion, we see no mention of an actual monetary award amount in either of the two operative orders. We further note that Matthew did not provide a transcript of the May 5, 2016. Therefore, we are only able to address the parties’ contentions to the extent that we can review the record provided.

Matthew argues that the trial court erred in its division of marital property.¹⁰ Specifically, Matthew claims that the court erred: 1) in not finding that Jennifer dissipated marital funds by liquidating a certificate of deposit; 2) in dividing the college fund; 3) in awarding Jennifer one-half of the value of disputed personal property; and 4) in finding that Matthew spent \$25,000 of marital property on his paramour.

¹⁰ Matthew contends in his brief that the trial court lacked jurisdiction to determine marital property more than ninety days after the trial court issued its Judgment of Absolute Divorce pursuant to FL § 8-203. In fact this Court has held the exact opposite:

We have, however, previously considered and soundly rejected the contention that the ninety-day time limitation is jurisdictional. In Brodak v. Brodak, we were asked to determine whether a trial court's failure to comply with Maryland Code § 3-6A-05(a)(1) of the Courts and Judicial Proceedings Article, the predecessor to the present § 8-203(a), divested the court of the power to make a marital property determination. There, we unequivocally held that “the court was not deprived of jurisdiction by its failure to act within the ninety-day period.”

Steinhoff v. Sommerfelt, 144 Md. App. 463, 479 (2002) (emphasis in original).

A. The Certificate of Deposit

Matthew argues that the trial court erred in not finding that Jennifer dissipated funds she received after liquidating a certificate of deposit (“CD”) with Capital One bank.¹¹ The Court of Appeals has explained that, “A trial court’s judgment regarding dissipation is a factual one and, therefore, is reviewed under a clearly erroneous standard. ‘If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.’” *Omayaka v. Omayaka*, 417 Md. 643, 652-53 (2011) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004); *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)). “Dissipation occurs where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown.” *Id.* at 651 (quoting *Sharp v. Sharp*, 58 Md. App. 386, 401 (1984)) (internal quotation marks omitted). Once a trial court finds that a spouse took marital assets without agreement from the “other spouse,” the burden of going forward with evidence shifts to the “other spouse” as to: 1) whether the spouse took the assets without agreement; 2) where the assets are; and 3) whether the spouse used the assets for marital or family expenses. *Id.* at 656 (citing John F. Fader, II and Richard J. Gilbert *Maryland Family Law* § 15-10 (4th ed. 2006)).

¹¹ This CD was apparently titled in Matthew’s sole name. Jennifer testified that she was able to withdraw the funds by simply calling the bank. The record does not disclose how Jennifer was unilaterally able to withdraw funds from an account not titled in her name.

Jennifer testified at the March 12, 2015 hearing that she withdrew \$137,000 – the full amount of the CD – at the end of November, 2014. As of the date of the hearing, the court found that only \$66,000 remained. Jennifer explained that she used the funds for attorney’s fees, credit card bills, several months of rent, car payments, health insurance, electricity, food, water, and a laptop computer. The trial court found that Jennifer used that money “to pay her living expenses.” The court then determined that Matthew and Jennifer would equally divide the \$66,000 remaining from the CD. The court, relying on Jennifer’s testimony, found that she used the money for marital or family expenses; that finding was not clearly erroneous.

In its monetary award analysis on remand, the trial court should identify the CD, now titled in Jennifer’s sole name, as marital property with a value of \$66,000.¹² We do not condone the division of marital assets on an *ad hoc* basis. Any monetary “adjustment of the equities and rights of the parties concerning marital property” (FL § 8-205(a)) should be made as a *single* monetary award. *See Ward v. Ward*, 52 Md. App. 336, 343 (1982) (stating that “the statute contemplates but one monetary award – or none – but certainly not two.”).

B. The College Fund

In the Rule 9-207 statement, footnote six states that “the parties have agreed: (a) they will equally divide their daughter’s [sic] Kathryn’s college fund such that they will

¹² We reject Matthew’s contention that the marital value of the CD is its full maturity value of \$180,000.

each be custodian of 50%, and (b) they will be bound to each pay one-half of Kathryn’s college tuition.” Matthew disputes that this footnote constitutes an enforceable agreement, and argued before the trial court that a misunderstanding between his prior trial counsel and Jennifer’s trial counsel created the false impression that the parties had reached an agreement. We see nothing in the record to indicate how the trial court resolved this issue. On the Rule 9-207 statement, the parties stipulated that the college fund is jointly-titled non-marital property with a value of \$68,401. Accordingly, in the absence of an agreement to the contrary, the college fund should be divided equally according to title. Because the college fund is non-marital property, it cannot serve as a basis for a monetary award to adjust the equities of the parties concerning marital property. On remand, the court should determine: 1) whether the parties agreed to hold these funds for the benefit of Kathryn; and 2) whether there is an enforceable agreement for each party to pay one-half of Kathryn’s college tuition.

C. Disputed Personal Property

In the June 6, 2016 order, the trial court granted a judgment in Jennifer’s favor for \$4,400 for “one-half of the value of the jointly titled personal property.” Inferentially, this \$4,400 comes from the disputed personal property in the Rule 9-207 statement. The third category of property itemized in the Rule 9-207 statement appears, in pertinent part, as follows:

3. The parties are not in agreement as to whether the following property is marital or non-marital

Description of Property	Title		Marital Value	
	Matthew's Assertion	Jennifer's Assertion	Matthew's Assertion	Jennifer's Assertion
Tiffany Lamp	Joint	Joint	\$2,500	\$2,500
Antique Set of Sterling Silver	Joint	Joint	\$300	\$1,500
Model Train Collection	Joint	Joint	\$2,000	\$2,200
Collectible Book Collection	Joint	Joint	\$4,000	\$4,000

Matthew values the property at \$8,800 whereas Jennifer values the property at \$10,200.

At the March 12, 2015 hearing, Jennifer's counsel told the court, with reference to the disputed personal property, that,

[I]n preparing for trial I realized that . . . in writing the parties actually reached an agreement that that property would be [Matthew's]. So that where we said, under the marital property statement, that that's joint, that's not correct. We actually reached an agreement that that property would be [Matthew's], but that the values would be attributed to him in this case. Apparently, he is going to claim that these are not marital. . . . My client is going to say they were all purchased during the marriage.

This statement explains why Matthew kept the property, but we see nothing in the record to explain how the trial court arrived at a \$4,400 judgment in Jennifer's favor. We presume the trial court made its decision based on the May 5, 2016 hearing. Without the transcript, however, we cannot review what findings, if any, the trial court made. While it appears that the court determined these items to be marital property, there is nothing in the record to substantiate why the court made that determination. Unless it has already done so, on remand, the trial court must: 1) articulate how it determined the personal property to be marital; 2) explain why it relied on Matthew's assertions of value rather than Jennifer's; and 3) assuming that the property is Matthew's, place the value of the property in

Matthew’s column in its monetary award analysis. We note again that there should be only one monetary award. *Ward*, 52 Md. App. at 343.

D. The \$12,500 Credit to Jennifer

At trial, Jennifer alleged that Matthew dissipated \$25,000 in marital funds by spending that money on his paramour. Agreeing with Jennifer, the trial court stated that, “it [would] make a monetary award in this case in the amount of \$12,500.” Matthew argues that the trial court erred in finding that he spent \$25,000 because the finding was not supported by the evidence. Again, we apply the clearly erroneous standard to the trial court’s factual findings. *Omayaka*, 417 Md. at 654.

Jennifer’s counsel introduced numerous bank statements and credit card bills purporting to show monies Matthew spent on his paramour. When asked on cross-examination about specific purchases, Matthew admitted that most of those charges were indeed spent on his paramour. The record, however, is devoid of any findings by the court explaining how it reached its conclusion that Matthew dissipated \$25,000 in marital assets. In fact, in reviewing the testimony and exhibits in a light most favorable to Jennifer, we are not able to substantiate \$25,000 in dissipated assets.¹³ The trial court’s finding of \$25,000 in dissipated assets is therefore clearly erroneous. On remand, the trial court

¹³ At oral argument, Jennifer’s counsel directed us to pages 11 and 12 of the Appendix to Jennifer’s brief to support the dissipation claim. It does not appear that this summary of allegedly dissipated funds was admitted into evidence. Further, we note substantial discrepancies between this appendix and the evidence adduced at trial.

should ascertain, based on the evidence, the value of assets dissipated by Matthew and insert that amount in Matthew’s column in its monetary award analysis.

III. Conclusion

On remand, the trial court must reevaluate its alimony award. If it chooses to grant Jennifer alimony, such determination should be based on the court’s consideration of all of the FL § 11-106(b) factors, including Jennifer’s imputed income. We also encourage the trial court to make specific findings of the parties’ recurring expenses. To the extent the circuit court granted a monetary award, it is also vacated. In determining whether to grant a monetary award on remand, the court should follow the three-step process uniformly accepted in Maryland:

First, for each disputed item of property, the court must determine whether it is marital or non-marital. FL §§ 8-201(e)(1) – 8-203. Second, the court must determine the value of all marital property. FL § 8-204. Third, the court must decide if the division of marital property according to title will be unfair; if so, the court *may* make an award to rectify any inequity FL § 8-205(a).

See *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003). Nothing in this opinion, however, should be construed as requiring a monetary award; that decision is left to the discretion of the trial court.

**JUDGMENTS OF THE CIRCUIT COURT FOR
FREDERICK COUNTY VACATED. CASE
REMANDED TO THE CIRCUIT COURT TO
REMOVE THE STAY AND FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS
OPINION. COSTS TO BE PAID BY APPELLEE.**