Circuit Court for Baltimore County
Case No. 03-C-18-001435

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 57

September Term, 2020

TREVOR MICHAEL DENTZ

v.

SUMITHRA RAGHU DENTZ

Friedman,
Wells,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.
Dissenting Opinion by Friedman, J.

Filed: January 4, 2021

In 2018, Trevor Dentz ("Father") and Sumithra Raghu Dentz ("Mother") began the process of ending their marriage after almost a decade together. The couple had their ups and downs, and finally gave birth to a child, P., in August 2017. P. spent her first few months in the hospital. Once she was released, Mother took her on a trip to New York to visit family. The trip lasted longer than Mother initially planned. Tensions flared, which led to both parties filing various divorce and custody motions.

The next two years were filled with hearings, negotiations, and tense conversations before a trial court granted a Judgment of Absolute Divorce in February 2020. Disappointed with some provisions, Father appealed.

Father presented us with four questions on appeal:

1. Did the trial court err in ordering Appellant to pay a monetary award of $66,964.27?

2. Did the trial court err by ordering Appellant to pay all mortgage expenses and the cost of maintenance, insurance, assessments, and taxes during the one-year period of use and possession?

3. Did the trial court err in its determination of the income figures it used to determine child support and in the calculation of child support arrearages?

4. Did the trial court err in granting tie-breaker status to Appellee?

As explained below, we reverse on question one and affirm on the remaining questions.

FACTS AND PROCEDURAL HISTORY

Mother and Father met in 2003 as many couples do—through work. Although she lived in New York, Mother moved in 2007 to live in Maryland with Father. Just a few

months later, the parties became engaged. The two then purchased their first home together in late April 2008. In July of the following year, Mother and Father had a storybook wedding at a Long Island castle.

Unfortunately, they did not get their fairytale ending. After a few weeks of marriage, Father discussed divorce and went so far as to send Mother links to divorce forms. The two argued, and Mother complained of name-calling and verbal abuse. In another blow, Father lost his job in 2009, and worked part time for the next few years while Mother was the primary breadwinner and bore the bulk of their expenses.

By early 2017, the two were ready to have a serious conversation about the future of their marriage. Instead, Mother discovered that she was pregnant in February 2017. The parties were overjoyed at the news, but her prior health conditions made it risky. Mother's pregnancy was not easy, and she gave birth to their daughter, P., in early August—more than two months before her due date. P. spent her first five weeks at Johns Hopkins Hospital. She then spent almost three months at Mt. Washington Pediatric Hospital. Mother and Father visited P. in the hospital almost every day.

Finally, in December 2017, Mother passed the hospital's feeding test, so P. could come home. A month later, Father agreed that Mother would to take P. up to New York for a few weeks to visit Mother's family. After arriving, Mother encountered some health problems and could not return in early February as planned. Father began to worry that Mother planned to keep P. in New York and started talking about divorce.

Mother officially filed for divorce on February 9, 2018. Father filed various motions for immediate custody and to have P. returned to Maryland in February and March. After tense negotiations, the two agreed to a Consent Pendente Lite Order in May 2018. The Consent Pendente Lite Order stated, among other things, that Mother would return to Maryland and reside in the marital home with P. until at least August 2018, and that the parties would have joint legal custody. Mother agreed to continue paying the mortgage on the home until August 2018.

As things began to look up, Mother lost her job in April 2018. She continued to pay most of the expenses until October 2018, when the parties agreed that Father would take over mortgage payments. The two agreed that funds *could* come from their marital Ameritrade account ending in x6097, but Father thought it was assured, while Mother believed it was only if he could not pay on his own. Mother and P. continued to reside in the home, and Father stayed in an apartment.

The parties could not agree on a Joint Statement of Parties Concerning Marital and Non-Marital Property, so each prepared theirs separately. There was one main contention: Mother accused Father of dissipating over $100,000 of a marital asset—the x6097 Ameritrade account in his name. At trial, both parties sought, among other things, physical custody changes, joint legal custody with tie-breaker authority, alimony, monetary awards, and child support.

The trial court granted the parties an absolute divorce. Mother received primary physical custody of P. The court awarded joint legal custody to the parties and gave Mother

tie-breaking authority. It provided Mother with a one-year use and possession period of the marital home. The court ordered Father to pay the mortgage and other related fees for the marital home. At the conclusion of Mother's use and possession period, they would sell the home and divide the net proceeds equally. The court ordered Father to begin paying child support, but it decreased the rate while he was paying the expenses for the marital home. In addition, it charged Father with almost $20,000 of child support arrearages and a monetary award of almost $67,000 based on Mother's dissipation claim and non-marital contribution to the marital home. This appeal followed.

DISCUSSION

Question 1: Monetary Award

For factual findings underlying monetary awards, "the findings are not clearly erroneous" if supported by substantial evidence. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). We look at the ultimate award under "a discretionary standard of review," which means "that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result." *Id.*

Father's first challenge to the monetary award is that the trial court failed to follow the required three-step process. He asserts that the court failed to (1) determine what is marital property; and (2) determine the value of all marital property. Mother disagrees and argues that the court made appropriate findings because their separate Joint Statements have nearly identical figures despite a few large disputes, and the trial court must only make explicit findings for assets with disputed natures.

Judge Hollander delineated the three-step analysis for this Court:

> First, for each disputed item of property, the court must determine whether it is marital or nonmarital . . . . Second, the court must determine the value of all marital property . . . . Third, the court must decide if the division of marital property according to title will be unfair; if so, the court *may* make a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled.

Id. at 228 (emphasis in original) (cleaned up).

Father and Mother had three primary areas of disagreement between their drafted Joint Statements for trial: (1) Mother's pre-marital contribution to the marital home; (2) the value of the x6097 Ameritrade account; and (3) Mother's Janus Roth IRA. Neither party disputed that the x6097 Ameritrade account was marital. Most other marital property values were within a few dollars of each other.

The trial court made findings regarding each of these primary disputes. It awarded Mother $16,587.58 for her pre-marital contribution to the marital home, implicitly finding that her contribution was non-marital. In analyzing the dissipation of the x6097 Ameritrade account, the trial court found that Father dissipated $100,753.38 of marital assets, which represented the trial court's valuation of the marital funds in the account. The trial court found that the marital portion of Mother's Janus Roth IRA was $110,071.

Although Father argues that the trial court failed to make a valuation of all marital property, the trial court made specific findings as to the marital items in dispute. We see no error in the court's valuation of marital property. We believe that there was more than

enough evidence to support these findings based on ample exhibits submitted by both parties during trial.

In the same vein, Father challenges the trial court's award of $16,587.58 for Mother's pre-marital contribution to the marital home. He argues that he would, at best, owe her one-half of her pre-marital contribution, and that the court's requirement for him to pay it within six months of the decision instead of from the proceeds of the sale of the house was an abuse of discretion. Mother disagrees and reminds Father that the court "could not have ordered that the reimbursement be made from the proceeds of the sale of the house" because reimbursements of non-marital property must be made through a monetary award if proper.

We previously addressed non-marital contributions to the marital home in *Gordon v. Gordon*, 174 Md. App. 583 (2007). There, the wife contributed $30,000 of her own non-marital funds to the purchase of the marital home. *Id.* at 630. The trial court awarded her the entire amount as a credit when the house was sold. *Id.* at 629. We reversed because the court did not "consider[] all of the statutory factors, as it was required to do." *Id.* The parties "chose to title the home as tenants by the entirety . . . ." *Id.* at 630. The home was marital property, so "a monetary award [was] the only vehicle by which the court could 'reimburse' [wife] for her nonmarital contribution." *Id.* The award is not automatic, and the court was required to consider the rest of the statutory factors "before making a monetary award." *Id.* The statutory considerations include analysis of the parties'

contributions to the family, property interests, economic circumstances, and more. Md. Code (2005, 2019 Repl. Vol.), § 8-205(b) of the Family Law ("FL") Article.

Here, the trial court analyzed all eleven statutory factors from § 8-205(b) and properly awarded Mother her pre-marital contribution by recognizing that the two "primarily relied on [Mother's] pre-marital assets to purchase the house," and that, "[f]or most of their marriage, she paid the mortgage and the bulk of the parties' living expenses."

Courts have the authority to "reduce to a judgment any monetary award . . . to the extent that any part of the award is due and owing." FL §8-205(c). The trial court accounted for Mother's pre-marital funds through its analysis under § 8-205. We see no error in ordering the funds as a monetary award separate from the proceeds of the sale.

Dissipation

Finally, Father challenges the court's finding of dissipation of marital assets. In his dissipation argument, Father asserts that the trial court made "no finding of which Ameritrade account was marital or the marital value" of the accounts.[1] He also argues that the trial court overwhelming relied on Mother's summary entitled "Dissipation" which was admitted at trial over his objection, and that Mother did not have the requisite knowledge

[1] Father also takes issue with the trial court's statement that he "transferr[ed] assets from joint accounts to accounts to which only he has access." He is correct in that the court erred by describing the x6097 Ameritrade account as a joint account when it was titled solely in his name. This error was harmless because both parties agreed that it was a marital account, and the dispute was not about whether the account was marital, but the recent depletion of its funds.

to testify about Father's accounts.[2] Mother counters by pointing to Father's "own testimony that he had transferred those funds into his sole name" for reimbursements to himself for mortgage payments and to his mother for attorney's fees. She asserts that Father "cannot argue that it was clearly erroneous for the trial judge to have not been persuaded by his testimony that the funds were used for appropriate purposes."

We review a trial court's finding of dissipation 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 (2011) (cleaned up). Dissipation occurs when "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.

It is a factually based question, and withdrawals can still be dissipation "on occasions in which . . . the dissipating spouse's *principal purpose* was a purpose other than

[2] We see no merit in Father's argument that Mother could not testify about the x6097 Ameritrade account because it was not in her name. Neither party disputed that it was marital property; they merely disputed the amount available for distribution. *Omayaka v. Omayaka*, 417 Md. 643 (2011) discussed how parties could testify about dissipation. In *Omayaka*, the Court of Appeals held that circuit court had every right to find the wife's testimony credible because the husband questioned her "about how she spent the funds that she withdrew from her bank accounts . . . ." *Id.* at 657. It stated that "[i]f that evidence had been presented through the testimony of other witnesses, or if [husband] had not questioned [wife] about how she spent the money, there would be merit in [husband's] argument that he made out a prima facie case of dissipation." *Id.* (cleaned up). Thus, the Court implicitly agreed that someone other than the account holder could properly testify regarding potentially dissipated funds. We think this paved the way for Mother's testimony on the transfers and withdrawals from the x6097 Ameritrade account in her dissipation claim. We see no error in the trial court allowing Mother to testify about a marital account held in Father's name.

the purpose of reducing the amount of funds that would be available for equitable distribution at the time of the divorce." *Id.* at 651–52 (emphasis in original) (cleaned up). It happens when "marital assets were taken by one spouse without agreement by the other spouse." *Id.* at 652. For this reason, we focus our analysis on the purpose of the alleged dissipator: "what is critically important is the purpose behind the expenditure. The doctrine of dissipation is aimed at the nefarious purpose of one spouse's spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets." *Id.* at 654 (cleaned up).

The initial burden of production and persuasion is on the party alleging dissipation. *Id.* at 653. If that party satisfies the burden, it then shifts "to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate." *Id.* at 656–57 (cleaned up).

The Court of Appeals looked in depth at dissipation in *Omayaka v. Omayaka*. There, the husband sought to prove dissipation after the wife made withdrawals of approximately $80,000 from accounts only in her name. *Id.* at 648–49. She denied any dissipation, and the trial court accepted her testimony that she spent her money for "household goods, mortgages, clothes, to pay off credit card debt," and other family purposes. *Id.* at 649–50. It found that the husband did not meet his burden for proving that

the wife spent the money for "her own benefit or purpose unrelated to the marriage at the time when the marriage is undergoing an irreconcilable breakdown." *Id.* at 650.[3]

The Court applied the familiar appellate adage that the trial court "was entitled to accept—or reject—*all, part,* or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Id.* at 659 (emphasis in original). It upheld the judgment because the circuit court "was entitled to find that [wife] had explained adequately where the funds that she had withdrawn from her bank accounts in 2005 went . . . ." *Id.* (cleaned up).

In the present appeal, Father focuses on Mother's "Dissipation Chart", even though she presented other evidence of his withdrawals and transfers from the x6097 Ameritrade account.[4] Regarding dissolution, Mother introduced into evidence three of Father's brokerage statements: an October 2018 statement showing a $6,500 cash withdrawal; a May 2019 statement showing over $44,000 of delivered securities from the x6097 account to a different account; and a December 2019 statement totaling almost $50,000 in transfers to a different account. These figures, which all came from Father's own Ameritrade

[3] The husband appealed, and the Court of Appeals "issued a writ of certiorari on its own initiative" prior to oral arguments at the Court of Special Appeals. *Omayaka*, 417 Md. at 646.

[4] Father argues that the trial court made its entire decision and decided the dollar amount from the chart—and its allegedly misleading name. Father objected at trial to the name of the chart, to which the court responded: "[y]ou know, if this were a jury trial, I'd be more concerned about the labeling of what it is, but I think I'm capable of determining at the conclusion of the evidence whether or not there was dissipation, and I'm not going to be swayed by 'dissipation' being at the top of the chart." We take no issue with the trial court's decision.

statements, were relied on by the trial court in its $100,753.38 dissipation finding. These transfers occurred while the marriage was going through an irreconcilable breakdown.

With this evidence, Mother met her initial burden of production in proving dissipation. *Omayaka* directs that we next analyze whether the court erred in finding dissipation notwithstanding Father's testimony that the money was for marital purposes: attorney's fees and mortgage payments.

Father relies on *Allison v. Allison*, 160 Md. App. 331 (2004) in which we recognized that using marital funds for attorney's fees cannot be dissipation:

> The doctrine of dissipation was developed as a tool to prevent and remedy economic misconduct that could frustrate an equitable distribution of partnership assets. Expenditures for legal services cannot be fairly characterized as economic misconduct. On the contrary, it should be viewed as entirely appropriate for people facing marriage breakdown to obtain the legal advice and assistance needed to equitably distribute marital assets.

Id. at 338 (citing *Spending Marital Funds for Attorney's Fees*, 15 Equitable Dist. J. 85 (1998)). We held that when "a spouse uses marital property to pay his or her own reasonable attorney's fees, such expenditures do not constitute dissipation of marital assets." *Allison*, 160 Md. App. at 339–40.

For the present appeal, we focus on the phrase "frustrate[d] an equitable distribution of partnership assets" in deciding whether a spouse defending against a claim of dissipation must establish that funds moved from a marital account post-separation were *directly* used to pay legal fees. *Id.* at 338. Father testified that he "made two different transfers to [his] mother to reimburse her for legal fees." Certainly, as Mother points out, the trial court was

entitled to disbelieve his testimony. *See Omayaka*, 417 Md. at 659. It is not clear, however, what testimony regarding material facts the court rejected. We see two possibilities.

First, the court theoretically might have rejected as false that he was billed for legal fees in the amount shown on the invoices. For us to assume that, however, would be tantamount to assuming that Father's attorneys, who were officers of the court, committed a fraud on the court by knowingly introducing a false invoice for their own fees. We are unwilling to draw this inference and decline to do so without a clear statement from the trial court that it disbelieved the veracity of the invoice.[5]

Second, as Mother argues, the court might have accepted the invoice but considered that his attorneys' invoice alone was insufficient to defend against dissipation because he produced no evidence that any of the fees were paid, or, as Mother argued, that his mother advanced the fees, but he had no contractual agreement with his mother to repay the fees.[6] We are not persuaded, however, that the burden of production imposed on the alleged dissipating spouse is quite so strict. When one spouse has proven an obligation to pay reasonable legal fees, he may transfer marital funds to pay them—free of a dissipation

[5] The court never reached the question of the reasonableness of the fees.

[6] Mother provided the trial court with a detailed accounting of her attorney's fees payments initially coming from her non-marital Citibank account. She then received money from her parents on loan and included their promissory note in the amount of $164,216.91. Father asserted in his Joint Statement that the Citibank account was marital, and alleged dissipation of the account "because [Mother] is claiming dissipation of the Ameritrade account." His Joint Statement agreed that "[e]ach party had these funds in their own name and used the funds for expenses—largely legal expenses." There is no mention of Father's dissipation claim in the trial court's order.

claim. *See Allison*, 160 Md. App. at 339–40. If a spouse's parents have paid the fees, the transfer of marital funds is still legitimate without also proving reimbursement to those parents. A spouse's arrangement—or lack thereof—with his or her parents regarding reimbursement for such fees, should not dictate otherwise.

The trial court, in its discussion of dissipation, said as follows:

> [Father] has failed to produce evidence sufficient to show that the transfers of funds were appropriate. [Father] dissipated marital assets in the amount of $100,753.38 by transferring marital funds to accounts he opened after the parties separated and using those funds for his own personal benefit, not for any marital purpose. The Court is awarding [Mother] $50,376.69, 50% of the amount dissipated . . . .

We cannot discern from this opinion whether the trial court considered the *Allison* holding that use of marital funds for attorney's is a legitimate expenditure and not dissipation. If the invoice from the attorneys in this case was a legitimate representation of the amount charged, and the charge was reasonable, we see no reason why Father's transfer from his Ameritrade account would "frustrate an equitable distribution of partnership assets."[7] *See Allison*, 160 Md. App. at 338.

We are unwilling to hold that a good defense against a dissipation claim—showing direct withdrawal of marital funds—requires a direct tracing of the marital funds to payment of the legitimate expenditure: in this case, legal fees. Our holding today is

[7] The trial court apparently ruled out Father's mortgage contributions as a justification for his withdrawal from the Ameritrade accounts, although it did not say why. If the withdrawals are not justified by the payment of attorney's fees, the trial court should also determine whether payment of the mortgage was sufficient to justify a portion of the withdrawn amounts.

consistent with the Court of Appeals decision *Omayaka*, which held that in defending against dissipation, it was sufficient for the wife to say simply that her withdrawal of $80,000 from marital funds was spent on "credit cards, her $5,000 loan, her clothing, food, mortgage, [children]" without any more detail, receipts or other documentation supporting her testimony. *Omayaka*, 417 Md. at 651. Accordingly, we partially reverse the judgment below, and remand to the circuit court for reconsideration of the dissipation award consistent with this opinion. In light of its decision on that point, the trial court should, as always, reconsider the overall marital property awards and denial of alimony. *See Turner v. Turner*, 147 Md. App. 350, 400 (2002) ("The factors underlying alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other . . . . Therefore, when this Court vacates one such award, we often vacate the remaining awards for re-evaluation.").

Question 2: Mortgage & Marital Home

The trial court awarded Mother a one-year period of use and possession of the family home. *See* FL § 8-208. In making this award, the court had to consider the following factors:

> (1) the best interests of any child;
> (2) the interests of each party in continuing:
> (i) to use the family use personal property or any part of it, or to occupy or use the family home or any part of it as a dwelling place . . .
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> ***
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> (3) any hardship imposed on the party whose interest in the family home or family use personal property is infringed on by an order issued under §§ 8-207 through 8-213 of this subtitle.

FL § 8-208(b).

The trial court found that the marital home "has served as [P.]'s primary residence since she was born," so it would be in her best interests "to provide stability during what will likely be a difficult transition period." It stated that Mother would be able "to focus her time and effort on obtaining suitable employment, which will be to her benefit and the benefit of [P.]." As for hardship, the court noted that Mother contributed more to the living expenses and household responsibilities while being P.'s primary caregiver. It said that "[e]ven if [Father] experiences some temporary and relatively minor hardship for the benefit of [Mother] and [P.], that does not preclude awarding [Mother] use and possession of the marital home."

Father's argues that Mother "never listed the expenses of the marital home on any of her financial statements," and that Mother "provided no evidence that use and possession was in the best interests of the child." FL § 8-208(b) does not direct the trial court to analyze Mother's marital home expenses in making a use and possession order—only the three factors discussed above. Mother testified at trial that she thought the marital home was the best place for P. after returning from New York: "I wanted to be back here and live with our daughter in the marital home. This was—that was her home. Everything . . . was set up there for her. So I felt it was like best for her too to be in that marital home." Liberal discretion is reserved for the trial court in awarding use and possession. *See Bussell v. Bussell*, 194 Md. App. 137, 159 (2010). At the time of the use and possession order, P. was two years old. At that age, she could be aware of her surroundings. We see no abuse

of discretion in the trial court's determination that P.'s best interests would be served if she and the custodial parent remained in the home.

Father also challenges the court's order requiring him to pay mortgage expenses, cost of maintenance, insurance, assessments, and taxes for the home during Mother's one-year use and possession period. He charges that it was "erroneous as a matter of law and an abuse of discretion."

The trial court has authority to allocate the financial responsibilities of the marital home when awarding use and possession:

> (c) The court may order or decree that either or both of the parties pay all or any part of:
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> (1) any mortgage payments or rent;
> (2) any indebtedness that is related to the property;
> (3) the cost of maintenance, insurance, assessments, and taxes; or
> (4) any similar expenses in connection with the property.

FL § 8-208.

Father contests that the trial court failed to consider whether this would create a hardship for him and what the actual expenses were. We disagree. The court considered his potential hardship when allowing "a downward adjustment of $576 [on his child support obligation] based on his payment of the mortgage and related expenses for the use and one-year use and possession period awarded to [Mother]."

Mother paid the mortgage on the marital home almost every month from its purchase in 2008 until late 2018. Father started paying the mortgage in late 2018 and confirmed at trial that he continued to do so: "[t]he mortgage is paid through February [of

2020] right now through the Ameritrade account." The trial court merely ordered him to continue his payments and reduced his child support payments during that time period. We see no abuse of discretion and decline to adopt Father's argument requiring the trial court to make findings on expenses before ordering a party to pay.

Question 3: Child Support Calculations

Father challenges the trial court's findings to determine child support and arrearages because the court used minimum wage for Mother's income in its calculations. He argues that because the court imputed $100,000 as her income for alimony calculations, it should have used the same income for child support calculations. Mother responds that child support is calculated based on current and past actual income, while alimony is based on future income. Father secondarily asserts that the court erred by ordering him to pay a child support arrearage because there was no "reservation of claims in the Pendente Lite Order for ongoing or retroactive pendente lite awards of alimony or child support." Mother counters that Father's argument "relies on inadmissible settlement negotiations and on his interpretation of the intent behind the Consent Order."

In our review, "we will not disturb the trial court's determination as to child support, absent legal error or abuse of discretion." *See Jackson v. Proctor*, 145 Md. App. 76, 90 (2002) (cleaned up). "Child support orders are generally within the sound discretion of the trial court." *Knott v. Knott*, 146 Md. App. 232, 246 (2002). If the order "involves an interpretation and application of Maryland statutory and case law," we determine, without deference, whether the trial court's conclusions were legally correct. *Id.*

We first address Mother's income. Child support obligations are determined "in accordance with the schedule of basic support obligations" provided in Maryland's guidelines, and "divided between the parents in proportion to their adjusted actual incomes." FL § 12-204(a)(1). Courts can impute potential income "if a parent is voluntarily impoverished . . . ." FL § 12-204(b)(1). Potential income is defined as "income attributed to a parent determined by the parent's employment potential and probable earnings level based on, but not limited to, recent work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community." FL § 12-201(m).

The Court of Appeals has addressed voluntary impoverishment:

> Our review of the language and legislative history of the child support guidelines leads us to conclude that the legislature intended that a parent's support obligation can only be based on potential income when the parent's impoverishment is intentional. In addition to replacing the phrase "unemployed or underemployed" with the word "impoverished," the final version of the guidelines specifically added the word "voluntary" to both instances where a parent's potential income can be calculated based upon the parent's impoverishment.

Wills v. Jones, 340 Md. 480, 494 (1995). The Court held that "a court must similarly ask whether [the parent's] current impoverishment is by [the parent's] own choice, intentionally, of [the parent's] own free will." *Id.* at 496 (cleaned up). A court's job is to "inquire as to the parent's motivations and intentions." *Id.* at 489. In addition, the court's "determination of the actual income received by a parent is ultimately a factual question within the province of the circuit court." *Id.* at 497.

Mother lost her job in April 2018 when her company downsized. She received "nine weeks of severance pay." At trial, Mother opined that similar jobs were "primarily based in the New York, New Jersey, [and] Pennsylvania areas." She "had trouble finding the same opportunity" to work remotely that her last job provided but broadened her search closer to trial to include anything she was "remotely qualified for . . . ." Mother admitted at trial that if she did not get a job offer soon, then she would "just have to go out and look for anything, even if it means working at Barnes & Noble."

The trial court mentioned Mother's "ability to earn at least $100,000 annually" while denying her request for alimony. When calculating child support, the court noted that Mother was not employed, but "imput[ed] minimum wage income to her, making her monthly income for purposes of child support guidelines $1,906.67, because she could have been engaged in some type of employment, especially considering her education and experience." The court did not make a finding that Mother was voluntarily impoverished. In calculating child support, the court accepted Mother's testimony that she was actively applying and interviewing for jobs. Determining minimum wage as Mother's income was a factual question, and well within the discretion of the trial court after weighing her testimony. We see no error.

Next, we address Father's argument that the court erred in ordering him to pay a child support arrearage between February 2018 and 2020. The court can order retroactive child support:

> (1) Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial

> pleading that requests child support pendente lite, the court shall award child support for a period from the filing of the pleading that requests child support.
>
> ***
>
> (3) For any other pleading that requests child support, the court may award child support for a period from the filing of the pleading that requests child support.

FL § 12-101(a).

Mother first requested "child support during litigation and permanently" in her February 9, 2018 Complaint for Limited Divorce. Father relies on the parties' Consent Pendente Lite Order for his assertion that Mother waived the right for retroactive child support. In the parties' Consent Order, they agreed to make "a good faith effort to resolve the issue of *pendente lite* child support and other *pendente lite* financial matters." The Order continued: "the terms of this Order are *pendente lite* only and the parties' agreement to the terms contained herein is without prejudice to any position he or she may take with regard to resolution of the merits of this matter."

We see no language in the Consent Order that precludes Mother from seeking retroactive child support. Mother directly requested child support in February 2018, and the court "may award child support for a period from the filling of the pleading that requests child support" regardless of whether it was pendente lite. FL § 12-101(a)(3). We see no abuse of discretion or legal error here and affirm the award of child support arrearages.

Question 4: Tie-Breaker Order

Father argues that by awarding Mother tie-breaker authority, the trial court relegated him to merely a visiting parent. Mother sees Father's arguments as a challenge to the

court's physical custody determination. She asserts that the record supports the tie-breaker authority because the two have had trouble making decisions regarding P. in the past.

We review the trial court's determination of custody for abuse of discretion:

> This standard of review accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and witnesses.
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> ***
>
> Though a deferential standard, abuse of discretion may arise when no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles . . . . Such an abuse may also occur when the court's ruling is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.

Santo v. Santo, 448 Md. 620, 625–26 (2016) (cleaned up). In reviewing custody determinations, "[t]he paramount concern must always be the best interests of the children . . . ." *Shenk v. Shenk*, 159 Md. App. 548, 560 (2004).

We previously addressed tie-breaker authority in joint legal custody arrangements. In *Shenk v. Shenk*, we recognized the ability of the trial court to tailor custody arrangements to individual parties, as well as its concern "that disagreements about trivial matters might result in renewed litigation." *Id.* We affirmed that our caselaw supports "how the multiple forms of joint custody can be tailored into solutions for each unique family . . . ." *Id.* (cleaned up). We thought the tie-breaker authority properly addressed the parties' testimony and communication styles: "[t]he court credited the parties' testimony that they were willing to discuss decisions involving the children, noting that the mother wanted only to be able to break a tie and the father simply wanted the decisions to be discussed

between the two of them." *Id.* at 561. We saw no abuse of discretion by awarding tie-breaking authority and chose "not [to] second-guess the trial court's assessment of the demeanor and credibility of the witnesses." *Id.*

Later, in *Santo v. Santo*, the Court of Appeals affirmed tie-breaking authority for parents that had "essentially been at war with each other" for years. *Santo*, 448 Md. at 631. The father challenged the authority, claiming that it would promote conflict or be ineffective. *Id.* The Court disagreed:

> In a joint legal custody arrangement with tie-breaking provisions, the parents are ordered to try to decide together matters affecting their children. When, and only when the parties are at an impasse after deliberating in good faith does the tie-breaking provision permit one parent to make the final call. Because this arrangement requires a genuine effort by both parties to communicate, it ensures each has a voice in the decision-making process.

Id. at 632–33.

The same logic applies here. Mother requested primary physical custody and sole legal custody, while Father requested either equal or primary physical custody and joint legal custody with his own tie-breaking authority. The trial court noted that these requests "seem to be motivated by a desire to avoid the challenges of interacting with each other to reach shared decisions for [P.]." In making its decision, the trial court heard testimony from Mother about Father's "verbally abusive behavior and physically threatening behavior directed towards her," and could credit or discredit it accordingly.

Father argues that the "overwhelming majority of factors supported joint legal custody." We agree. The trial court stated that it was "in the best interests of [P.] for the

parties to have joint legal custody, with [Mother] having tie-breaking authority." Mother and Father demonstrated an inability to make joint decisions, and the trial court was well within its discretion to award Mother tie-breaking authority. Although we understand that both the legal and physical custody arrangements might be disappointing for Father, we see no abuse of discretion. We affirm the tie-breaker authority.

CONCLUSION

For the reasons stated above, we reverse and remand for proceedings not inconsistent with this opinion on the monetary award and related issues, and affirm the use and possession period, child support award and arrearages, and custody arrangement.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED TO CIRCUIT COURT FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID THREE-FOURTHS BY APPELLANT, AND ONE-FOURTH BY APPELLEE.

Circuit Court for Baltimore County
Case No. 03-C-18-001435

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 57

September Term, 2020

TREVOR MICHAEL DENTZ
v.
SUMITHRA RAGHU DENTZ

Friedman,
Wells,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Friedman, J.

Filed: January 4, 2021

I.

I dissent. In my view, the trial court did not abuse its considerable discretion in disbelieving Mr. Dentz's testimony that he used marital funds to pay his legal fees.