

Circuit Court for St. Mary's County
Case No. C-18-FM-18-000799

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0153

September Term, 2020

Asif I. Balbale

v.

Houria H. Balbale

Fader, C.J.
Leahy,
Reed,

JJ.

Opinion by Reed, J.

Filed: September 10, 2021

*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.

Asif I. Balbale (“Appellant”) and Houria Balbale (“Appellee”) were married in Morocco on April 14, 2006. Thereafter, Appellant and Appellee had four (4) children together between May 2008 and August 2017. On July 27, 2018, the couple voluntarily separated. On September 17, 2018, Appellee filed a complaint seeking *inter alia*, absolute divorce, or in the alternative limited divorce, on the grounds of adultery, cruel and vicious conduct, desertion, and voluntary separation. During the divorce proceedings, an issue arose over the classification of a California home (“California Residence”) as either marital or nonmarital property. At a hearing on the issue, an Interspousal Grant Deed (“The Deed”) was introduced, which granted all of Appellee’s interest in the California Residence to Appellant. Thus, the trial court determined that The Deed rendered the California residence Appellant’s nonmarital property. Additionally, the trial court determined that Appellant’s Thrift Savings Plan (“TSP”) was marital property and awarded Appellee half of the TSP’s value (\$22,647.00). Moreover, after determining that the California Residence was nonmarital property, the trial court nonetheless granted Appellee a monetary award from that property after concluding that the mortgage paid on the home (totaling \$208,000) was paid with marital funds. Thus, the trial court granted Appellee an award equaling half of the marital funds paid towards the mortgage (\$108,000). Finally, without explanation, the trial court ordered that Appellant pay 75% of Appellee’s legal fees. Appellant timely appealed the trial court’s monetary award and allocation of attorney’s fees.

In bringing his appeal, Appellant presents two questions for appellate review which we have rephrased for clarity:¹

- I. Did the trial court abuse its discretion by granting a monetary award that exceeded the total value of marital property?
- II. Did the trial court abuse its discretion by ordering Appellant to pay 75% of Appellee’s attorney’s fees without any explanation?

Finding that the trial court abused its discretion by granting a monetary award that exceeded the total value of marital property at issue; we vacate the court’s grant of a monetary award and remand for further proceedings to recalculate an appropriate award. Further, without reaching an ultimate determination on the second issue (attorney’s fees) raised by Appellant on appeal; we request that, on remand, the trial court provide reasoning for the allocation of attorney’s fees between the parties.

FACTUAL & PROCEDURAL BACKGROUND

As stated previously, Appellant and Appellee were married in Morocco on April 14, 2006. They had four (4) children together between 2008 and 2017. On July 27, 2018, the couple voluntarily separated. On September 17, 2018, Appellee filed a complaint seeking *inter alia*, absolute divorce, or in the alternative limited divorce, on the grounds of adultery, cruel and vicious conduct, desertion, and voluntary separation. Additionally, Appellee

¹ Appellant presented the following questions for review:

1. Did the trial court abuse its discretion by granting a monetary award to Appellee/Plaintiff?
2. Did the trial court abuse its discretion by ordering Appellant/Defendant to pay 75% of Appellee/Plaintiff’s attorneys fees, without any explanation?

sought relief including: (1) sole legal and physical custody of the minor children in pendente lite and permanently; (2) child support in pendente lite and permanently; (3) indefinite and rehabilitative alimony in pendente lite and permanently; (4) continued medical insurance coverage for Appellee/Plaintiff and the minor children; (5) possession of the family home for not less than three (3) years from the date of the divorce; (6) reasonable contribution toward Appellee’s counsel fees; (7) and an order granting a monetary award.

In response, on October 12, 2018, Appellant filed a counter complaint requesting, *inter alia*, legal and physical custody of the minor children, and asking the trial court to settle the parties’ disputes regarding the status of certain property as marital/nonmarital. Following a hearing on June 10, 2019, the trial court granted a Consent Order for Custody and Pendente Lite Support (“Consent Order”). Under the Consent Order, Appellee was awarded physical custody of the minor children, whereas Appellee and Appellant were awarded joint legal custody of the minor children. Moreover, the court ordered Appellant to pay Appellee both alimony (\$744.00) and child support (\$1,780.00) in pendente lite. During a subsequent hearing on August 12, 2019, Appellant stated that he would not challenge the Consent Order entered on June 10, 2019.

During a hearing on December 11, 2019, Appellant and Appellee presented evidence and testimony relating to the parties’ remaining property disputes. Relevant to this appeal were disputes over the marital/nonmarital status of three items of property: (1) the California Residence; (2) Appellant’s TSP; and (3) Appellant’s Federal Pension (“Federal Pension”).

The parties' acquired the California Residence during their marriage, but it no longer served as the principle family residence at the inception of this divorce proceeding. At the hearing on December 11, 2019, Appellee introduced The Deed, an Interspousal Grant Deed which was signed by both parties' immediately after purchasing the California Residence. The Deed granted all of Appellee's interest in the California Residence to Appellant as his "sole and personal property." However, Appellee asserted that The Deed was invalid because she did not know what she was agreeing to when she signed The Deed.

On December 18, 2019, the trial court entered judgment of absolute divorce ("Divorce Judgment"), but left certain issues unresolved:

the Court retains under advisement the issues pertaining to the real property located in the State of California and titled in the Defendant's name, the final child support award, any award of final alimony and any award of attorney's fees in this case, and specifically retains jurisdiction to address these issues

Thereafter, on March 10, 2020, the trial court entered an Amended Judgment of Absolute Divorce ("Amended Judgment") to supplement the original Divorce Judgment. In the Amended Judgment the trial court determined that the California Residence was Appellant's nonmarital property:

the property located at 30449 Savoie St, Murietta, California 92563 is determined to be nonmarital property as a result of the Interspousal Individual Grant Deed; but it is, instead, the property of the Defendant, Asif Balbale

After determining the California Residence was nonmarital property, the trial court nonetheless granted Appellee a monetary award from the value of the home after noting that marital funds were used to pay down the mortgage on the home:

[Appellant] having paid the mortgage on the California residence with

marital funds, [Appellee] is hereby granted a monetary award of one hundred four thousand dollars (\$104,000.00) to be paid by Defendant within sixty (60) days, as testimony shows two hundred eight thousand dollars (\$208,000.00) was paid toward the mortgage, half of which is her share of the marital funds

Aside from the California Residence, the trial court's Amended Judgment designated only two additional pieces of marital property:

Defendant's Thrift Savings Plan is marital property of which Plaintiff is awarded twenty-two thousand six hundred forty-seven dollars (\$22,647.00) to be paid within one hundred eighty (180) days

...

Defendant's military pension is marital property of which Plaintiff is awarded fifty percent (50%) of disposable retired pay if, as, and when received

Thus, the trial court determined that Appellant's TSP was marital property and granted Appellee a monetary award of \$22,647.00 (presumably half of the TSP's value). Additionally, the trial court determined that Appellant's Federal Pension was marital property and granted Appellee a monetary award equal to 50% of the pension's value. The trial court granted the award on an "if, as, and when" basis because the total value of Appellant's pension cannot be determined until he retires.

Finally, in the Amended Judgment, the trial court determined the allocation of attorney's fees between the parties:

Defendant shall pay seventy five percent (75%) of Plaintiffs attorney's fees, which amounts to eight thousand nine hundred ninety-two dollars (\$8992.00). Said fees are to be paid within 180 days of the date of this Order.

Following entry of the Amended Judgment, Appellant timely filed this notice of appeal challenging the amount of the monetary award(s) granted by the trial court, and the trial court's allocation of attorney's fees between the parties.

STANDARD OF REVIEW

We review a trial court’s decision to grant a monetary award, and the amount of such an award, under an abuse of discretion standard. *See Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008) (“[T]he ultimate decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of discretion.”); *see also Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (same). Likewise, “[a]n appellate court will not disturb a trial court’s award of attorney’s fees absent an abuse of discretion.” *Brown v. Brown*, 195 Md. App. 72, 122-23 (2010) (citing *Richards v. Richards*, 166 Md. App. 263, 285 (2005); *Collins v. Collins*, 144 Md. App. 395, 447 (2002)). Under that standard, absent an abuse of discretion, “we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). However, a trial court’s discretion is not unfettered; “a trial court must exercise its discretion in accordance with correct legal standards.” *Gordon*, 174 Md. App. at 626 (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)).

DISCUSSION

Monetary Award

Appellant argues that the trial court abused its discretion by granting a monetary award that exceeded the total value of the marital property. In *Innerbichler v. Innerbichler*, 132 Md. App. 207, 302 (2000), we explained the process a trial court must follow before deciding to grant a monetary award:

When a party petitions for a monetary award, the trial court must first follow a three-step procedure. . . . 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.

(internal citations and quotations omitted). Notably, under this approach, the ultimate amount of the monetary award may not exceed the total value of the marital property. See *Choate v. Choate*, 97 Md. App. 347, 355 (1993) (“If parties [have] *marital property* out of which adjustment could be made in form of monetary award, then the trial judge in his or her discretion may adjust for the nonmarital property and determine an amount *not exceeding the amount of the marital property*” after considering the eleven statutory factors specified in FL § 8–205(b)) (emphasis added).

In the case *sub judice*, the trial court clearly granted a monetary award that exceeded the total value of marital property. The only item of marital property that the court assigned a value was Appellant’s TSP, which the court valued at \$45,294.00. Thus, based on the trial court’s marital property determinations, the maximum monetary award the trial court could grant in its discretion was \$45,294.00. Regardless, the trial court granted two separate monetary awards totaling \$126,647.00. In doing so, the trial court seemed to be improperly applying the “source of funds” theory to the California Residence.

Under the source of funds theory, “[i]f an encumbrance upon nonmarital property is reduced by the expenditure of marital funds, the property becomes marital property to the extent of that marital contribution.” *Bangs v. Bangs*, 59 Md. App. 350, 364 (1984). As we explained in *Bangs*, we apply the source of funds theory to determine when property was “acquired” for marital property purposes. *Id.* at 364 (“[W]henever property owned by

one spouse is mortgaged or otherwise encumbered as security for a loan, the proceeds of which were used to acquire or improve the property, the property is not fully ‘acquired’ until the encumbrance thereon is satisfied.”). However, the source of funds theory does not apply to property that is nonmarital by agreement. *See McGeehan v. McGeehan*, 455 Md. 268, 301-302 (2017) (“Absent...an agreement [excluding property as nonmarital], the judge must then consider whether the source of funds for the purchase of [property at issue]... was traceable thereby to [marital] contribution.”). The source of funds theory does not apply in such a case because, when property is determined nonmarital based on a valid agreement, it is immaterial how or when the property was acquired.

In sum, the trial court had discretion to grant a monetary award not exceeding \$45,294.00 – the total value of the marital property. Accordingly, the trial court abused its discretion by granting Appellee a monetary award of \$126,647.00. Thus, we vacate the monetary award granted by the trial court and remand the case for further proceedings to determine an appropriate monetary award in a manner consistent with this opinion.

Attorney’s Fees

Appellant also argues that the trial court abused its discretion by ordering Appellant to pay 75% of Appellee’s attorney’s fees without providing any reasoning for the unequal allocation. Before awarding attorney’s fees in a divorce case, the trial court must consider: “(1) the financial status of each party; (2) the needs of each party; and (3) whether there was a substantial justification for bringing, maintaining, or defending the proceeding.” F.L. § 12–103(b); *see Dunlap v. Fiorenza*, 128 Md. App. at 374 (1999). Moreover, failure of the court to consider the F.L. § 12–103(b) factors constitutes an abuse of discretion.

Carroll County Dept. of Social Services v. Edelmann, 320 Md. 150, 177 (1990) (“Section 12–103(b) *requires* the court, in exercising its discretion, to consider the financial status of the parties, the needs of the parties, and whether there was substantial justification for bringing or defending the proceeding.”) (emphasis added); *accord* F.L. § 12–103(b) (Before a court may award costs and counsel fees under this section, the court *shall* consider the three statutory factors.) (emphasis added).

In this case, Appellant correctly notes that the trial court did not provide any reasoning for its decision to unequally allocate attorney’s fees between the parties. This is not to say that the trial court did not, in fact, consider the required statutory factors in determining the award of attorney’s fees. The trial court may have done so, but that analysis is not provided anywhere in the record. Regardless, because we are remanding this case for a recalculation of the monetary award, we need not decide whether the calculation of attorney’s fees was appropriate at this juncture. Instead, we hold that, on remand, the trial court must provide reasoning for the allocation of attorney’s fees between the parties.

CONCLUSION

We hold that the trial court abused its discretion by awarding a monetary award that exceeded the total value of marital property. Additionally, while we decline to determine whether the allocation of attorney’s fees was appropriate in this case; we request that, on remand, the trial court provide reasoning for its allocation of attorney’s fees. Accordingly, we vacate the monetary award and award of attorney’s fees entered by the trial court in its

Amended Judgment of Absolute Divorce and remand the case for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR ST. MARY'S COUNTY VACATED
AND REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION; COSTS TO BE DIVIDED
BETWEEN THE PARTIES.**