

Circuit Court for Calvert County  
Case No. C-04-FM-19-000102

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0166

September Term, 2020

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KENNETH D. CAULLEY

v.

DOLORES CAULLEY

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Nazarian,  
Beachley,  
Ripken,

JJ.

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Opinion by Ripken, J.

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Filed: July 29, 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.

Kenneth Caulley (“K. Caulley”) appeals from an Order of the Circuit Court for Calvert County granting him an absolute divorce from Dolores Caulley (“D. Caulley”) and awarding her \$45,605.39, of which \$30,000 was reduced to judgment. K. Caulley challenges the circuit court’s calculation of the monetary award as contrary to the parties’ agreement on the record and faults the circuit court for failing to include the value of the parties’ retirement funds in its consideration of the monetary award. He asks us to remand for the circuit court to reconsider the equitable distribution of marital property and the monetary award

We agree with K. Caulley that the portions of the Order pertaining to the distribution of retirement benefits and the monetary award must be vacated. We are unable to determine how the circuit court factored the agreement into its calculation of the final monetary award and judgment. We shall remand for the circuit court to clarify or reconsider the distribution of retirement benefits and the monetary award through any further proceedings the court deems necessary.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

The parties married in 2004 and separated in 2012. In 2019, K. Caulley filed a complaint for absolute divorce based on the parties’ separation of more than one year. D. Caulley filed a counterclaim for absolute divorce. Each was employed during the marriage. Each earned retirement benefits or a pension from their employment. K. Caulley’s salary was approximately \$30,000 more than D. Caulley’s. There were no children from the marriage.

D. Caulley's counter-complaint and K. Caulley's amended complaint sought a division of marital property, including a monetary award and an interest in the other's retirement accounts. The most significant assets at issue were the former marital home in Lusby, Maryland, owned solely by K. Caulley; a New Jersey home, purchased by K. Caulley and his mother after the separation; and the parties' respective retirement accounts. The parties disputed whether these assets were marital property.

The parties testified at a January 2020 hearing on the merits. K. Caulley testified as follows: he worked for the District of Columbia for thirty years and continued to be so employed at the time of the hearing. He obtained sole title to the Maryland home after a previous divorce. He lived with D. Caulley in the Maryland home until they separated in 2012. D. Caulley contributed to the home before the separation, including through paying bills, buying groceries, and purchasing furniture. K. Caulley obtained a home equity line of credit on the Maryland home in the amount of \$50,000. He paid the mortgage on the home and continued with that responsibility after the separation. In 2015, after the separation, he purchased a home in New Jersey with his mother. The purchase price of the New Jersey home was \$119,000. K. Caulley used \$30,000 from the home equity line of credit for the purchase. K. Caulley made improvements to the New Jersey home following the purchase. At the time of trial, he was uncertain of that home's fair market value.

D. Caulley testified that she worked for Bowie State University for twenty years and continued to do so at the time of trial. She stated that she made contributions to the Maryland home through various household chores as well as paying bills, purchasing

furniture, and funding improvements. She did not offer evidence regarding the value of her contributions.

In closing argument, D. Caulley’s counsel summarized the evidence regarding the parties’ retirement accounts.<sup>1</sup> D. Caulley’s retirement account, with a total value of \$106,405, had a marital fraction of seventy-five percent. K. Caulley’s retirement accounts, with a combined total value of \$97,185.93, had a marital fraction of fifty percent.<sup>2</sup> D. Caulley’s counsel stated, “the gap between the two [marital portions] would be about \$15,605 from her to him.”<sup>3</sup>

K. Caulley’s counsel agreed with that analysis of the retirement accounts. He proposed equitable balancing of retirement accounts through a monetary award, rather than distributing them later through an “if, as, and when” approach in a qualifying domestic relations order (“QDRO”):

[K. Caulley’s counsel]: So really, the only issue at this point is monetary award. And I suggest that the monetary award . . . could incorporate the credit [K. Caulley] would get, with regard to the retirements, into that—and leave the retirements, so we don’t have to do orders on those.

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<sup>1</sup> D. Caulley’s counsel referred to numbers rounded to the nearest thousand; we use the more precise figures stipulated to in the joint statement concerning marital property.

<sup>2</sup> Applying the proffered marital fractions, the marital portion of D. Caulley’s retirement account is \$79,803.75, and the marital portion of K. Caulley’s retirement accounts is \$48,592.96. Based on these figures, the net difference between the accounts is \$31,210.79:  $\$79,803.75 - \$48,592.96 = \$31,210.79$ .

<sup>3</sup> It is initially ambiguous whether D. Caulley’s counsel meant that the “net difference” between the accounts is \$15,605 or that transferring \$15,605 from D. Caulley to K. Caulley would effectively equalize the marital portion of their retirement accounts.

[The Court]: What do you think about that?

[D. Caulley’s counsel]: It does make things easier and prevents the parties from having to put together QA—qualifying orders.

[The Court]: QDROs?

[D. Caulley’s counsel]: Yeah.

[K. Caulley’s counsel]: I just think that’s—

[D. Caulley’s counsel]: That’s not a—

[The Court]: I would only consider that if you all agree that that’s—if I incorporate that into any marital award that happens. In other words, that would be my findings that each of the parties get to keep their retirements, but whatever marital—what, if any, marital award would certainly encompass that \$15,605.39 difference in the value of their—

[D. Caulley’s counsel]: I mean, I think it’s easier to do in a case like this, where you do have retirement savings instruments like the 457 and 401a and the 401k, which all have definite numbers. Much more difficult to do that with a defined benefits pension, of course, I think it could be done here. We would consent.

[K. Caulley’s counsel]: I would consent.

[The Court]: All right. I’ll consider it.

The circuit court set out its judgment in a February 2020 Opinion and Order. The court granted an absolute divorce, determined and distributed the marital property, and made a monetary award. The court organized its analysis to address three types of property in turn: real property, retirement accounts, and other marital property. Beginning with real property, the court determined that the New Jersey home and the Maryland home were marital property. D. Caulley’s lack of ownership interest in the New Jersey property aside, the court reasoned that because K. Caulley used marital funds—the home equity line of credit—to purchase the New Jersey home, it constituted marital property. In determining

the value of the marital real estate, the court found that at least \$30,000 of the home equity line of credit was used to purchase the New Jersey home.

After classifying both homes as marital property, the court considered each factor set out in Maryland Code, Family Law Article (“FL”) § 8-205 (2019 Repl.). The court found that D. Caulley paid certain expenses and shared responsibilities for maintaining the home during the eight years the parties were married and not separated, each party continued to be employed during their separation, K. Caulley made approximately \$30,000 more per year than D. Caulley, the parties were able to support themselves, and the length of the seven-year separation was “substantial” and would factor significantly into the distribution of marital property. The court accordingly allowed K. Caulley to maintain his ownership interests in the Maryland and New Jersey homes, but awarded D. Caulley \$15,000 reflecting her contributions to the Maryland home and an additional \$15,000 reflecting the portion of the marital funds used to purchase the New Jersey home.

Next, the circuit court analyzed the parties’ retirement accounts. The court referenced the standards for allocating property set out in FL §§ 8-202–05 and then considered the stipulation made during closing argument:

When considering retirement [accounts] of the parties, the parties proffered to the Court that the value of the retirement [accounts] of [D. Caulley] would exceed that of [K. Caulley] by \$15,605.39. The parties ultimately came to an agreement on the record that each party shall keep his or her respective retirement [accounts]. In exchange, the parties agree that the net difference of \$15,605.39 in value will be included in any monetary award that [D. Caulley] may receive from the Court. The Court believes that this agreement is fair, equitable, and in the interests of justice, and promotes efficiency and judicial economy. Accordingly, the Court will abide by the agreement stipulated to by the parties on the record and shall include the \$15,605.39 *towards* any monetary award [D. Caulley] may receive. [Emphasis added.]

Finally, in analyzing the remaining category of “other marital property,” the court noted that the parties did not give significant testimony or evidence regarding their vehicles or bank accounts. Accordingly, the court determined that the parties would keep their respective vehicles and bank accounts without any monetary award to either party.

The court entered a monetary award in favor of D. Caulley totaling \$45,605.39. The orders read as follows:

**ORDERED**, that each party is entitled to keep and is awarded the full amount of their respective retirement benefits/pensions/funds; and, it is further,

**ORDERED**, by agreement of the parties that in lieu of granting a [marital] share of the respective retirement benefits/pensions/funds to each party, that the difference of **\$15,605.39** between the respective retirement benefits/pensions/funds shall be included in any monetary award granted in favor of [D. Caulley]; and, it is further,

**ORDERED**, that, in lieu of granting an interest in either real property to [D. Caulley] and based on the agreement of the parties with respect to retirement benefits/pensions/funds, the Court shall grant a total monetary award in favor of [D. Caulley] in the amount of \$45,605.39; and, it is further,

**ORDERED**, that [K. Caulley] pay unto [D. Caulley] the balance owed on the monetary award (after deducting \$15,605.39; representing the differential in the retirement benefits/pensions/funds) in the amount of **\$30,000.00** within 120 days of the date of this Order[.]

K. Caulley filed this timely appeal.

### ISSUES PRESENTED FOR REVIEW

K. Caulley presents two questions for our review,<sup>4</sup> which can be distilled into a single question: Did the circuit court err in its calculation of a monetary award in favor of D. Caulley?

Because the circuit court’s exercise of discretion in setting the monetary award and judgment is not clear from the record—largely due to ambiguity about the court’s treatment of the parties’ agreement—we vacate and remand for the circuit court to clarify or reconsider the monetary award in accordance with this opinion.

### STANDARD OF REVIEW

We review a trial court’s decision to grant a monetary award and the amount of the award for an abuse of discretion. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). “[A] trial judge who encounters a matter that falls within the realm of judicial discretion *must* exercise his or her discretion in ruling on the matter.” *Gunning v. State*, 347 Md. 332, 351 (1997). “That exercise of discretion must be clear from the record,” *id.*, and must be “in accordance with correct legal standards.” *Malin v. Mininberg*, 153 Md. App. 358, 430 (2003).

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<sup>4</sup> K. Caulley’s principal brief presents two questions:

1. Whether the trial court abused its discretion or committed legal error by materially altering the agreement of the parties reached on the record regarding the treatment of the retirement funds of the parties in the equitable distribution of marital property?
2. Whether the trial court abused its discretion or committed legal error by granting a monetary award to Wife without considering the retirement funds of the parties in its review of the factors in Md. Code Ann., Family Law, §8-205(b).



Factual findings are reviewed for clear error. *Kusi v. State*, 438 Md. 362, 383 (2014). “A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it.” *Anderson v. Joseph*, 200 Md. App. 240, 249 (2011) (quoting *Hillsmere Shores Improvement Ass’n, Inc. v. Singleton*, 182 Md. App 667, 690 (2008)). Also, a “finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Kusi*, 483 Md. at 383 (quoting *Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 130 (1952)). “Some of the subsidiary determinations made by a trial court in arriving at its findings and conclusions may well be purely factual or discretionary ones, and, as to them, we will continue to apply a clearly erroneous or abuse of discretion standard.” *Id.* (quoting *State v. Walker*, 345 Md. 293, 325 (1997)).

### DISCUSSION

K. Caulley takes issue with the circuit court’s treatment of the marital portion of the parties’ retirement accounts and its process in determining the amount of the monetary award. He contends that the circuit court abused its discretion by modifying the agreement the parties’ made on the record at the time of the hearing.<sup>5</sup> He relatedly contends that the circuit court abused its discretion by failing to consider the value of the parties’ retirement funds when considering the statutory factors relevant to a monetary award under FL § 8-205(b). D. Caulley agrees that the circuit court was required to consider the difference

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<sup>5</sup> K. Caulley does not challenge the court’s distribution of marital real estate or its analysis of that portion of the marital award.

in value of the retirement funds in making any monetary award, but she argues that it in fact did so.

We first set out the legal framework for the distribution of marital property. Second, we review the court’s calculation of the monetary award. Rather than considering how or whether the circuit court modified the parties’ agreement as K. Caulley suggests, we shall construe the parties’ agreement for ourselves and analyze the court’s determinations supporting the monetary award and judgment in light of the agreement. In so doing, we hold that the court abused its discretion in making the monetary award. Last, we offer guidance for remand.

## **I. LEGAL FRAMEWORK**

The fundamental aim in Maryland law is equitable—not equal or even—distribution of marital property: “The Maryland Legislature specifically rejected the notion that marital property should presumptively be divided equally.” *Alston v. Alston*, 331 Md. 496, 508 (1993). “When a party petitions for a monetary award, the trial court must first follow a three-step procedure.” *Innerbichler*, 132 Md. App. at 228; FL § 8-202–05. First, it must classify disputed property as either marital or nonmarital. FL § 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 a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled.” *Innerbichler*, 132 Md. App. at 228 (internal quotation marks omitted); FL § 8-205(a). In determining whether to make a monetary award and in setting the amount of any award, the court considers the eleven factors in FL

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§ 8-205(b).<sup>6</sup> The monetary award may then be reduced to a judgment, “to the extent that any part of the award is due and owing.” FL § 8-205(c).

Unlike other marital property, the trial court may value and distribute pension and retirement plans on an “if, as, and when” basis. This approach delays the valuation and distribution of benefits until the primary beneficiary receives those benefits. FL

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<sup>6</sup> FL § 8-205(b) states: The court shall determine the amount and the method of payment of a monetary award . . . after considering each of the following factors:

- (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, 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;
- (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;
- (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.

§ 8-204(b)(1).<sup>7</sup> It is ultimately within the trial court’s discretion to select an appropriate approach for the distribution of retirement accounts. *Deering v. Deering*, 292 Md. 115, 131 (1981).

**II. THE CIRCUIT COURT’S ADDITION OF \$15,605.39 TO D. CAULLEY’S MONETARY AWARD AND LATER DEDUCTION ARE NOT ADEQUATELY EXPLAINED.**

We first review the parties’ agreement. Second, we consider the court’s calculation of the monetary award, concluding that the \$15,605.39 addition to and deduction from D. Caulley’s monetary award was not adequately explained. Third, in the absence of such an explanation, we cannot determine whether the circuit court exercised its discretion to adjust the monetary award to reflect an equitable distribution of marital retirement funds.

**A. The Parties’ Agreement**

We note at the outset that the terms of the parties’ agreement were not carefully defined. Their agreement consisted of counsel assenting to the circuit court’s statement that “[i]n other words, that would be my findings that each of the parties get to keep their retirements, but whatever marital—what, if any, [monetary] award would certainly encompass that \$15,605.39 difference in the value of their . . . .” The transcript shows that counsel interjected and cut the circuit court’s statement short without follow up on details, including whether or how the monetary award would “incorporate” some equitable “credit” K. Caulley might get from the as-is distribution of marital retirement funds. Nonetheless,

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<sup>7</sup> Under the “if, as, and when” approach, “it is unnecessary to determine the value of the pension fund at all.” *Deering v. Deering*, 292 Md. 115, 131 (1981). “The court need do no more than determine the appropriate percentage to which the non-employee spouse is entitled.” *Id.*

the circuit court found—and the parties maintain on appeal—that the parties reached an agreement.

The stipulation on the record is akin to a contract, which we interpret according to the law of objective contract interpretation. *See Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 135–36 (2000). In the conversation on the record, the parties affirmed that (1) they accepted D. Caulley’s counsel’s analysis in closing statements of the marital portion of the retirement accounts,<sup>8</sup> (2) the equitable redistribution of retirement funds should be achieved through a monetary award rather than distribution on an “if, as, and when” basis (meaning the parties would keep their accounts), and (3) it remained for the circuit court to make a monetary award equitably accounting for the distribution of the marital property, including the marital retirement funds.<sup>9</sup>

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<sup>8</sup> Although the parties do not raise this issue on appeal, we note the lack of clarity regarding the amount of the “net difference” between the parties’ retirement funds. In the Opinion and Order, the circuit court stated that “the parties proffered to the Court that the value of the retirement benefits/pensions/funds of [D. Caulley] would exceed that of [K. Caulley] by \$15,605.39.” Based on the values listed in the joint statement of marital property, the net difference in the marital portion of the parties’ retirement accounts is \$31,210.79. *See* note 2 above. On appeal, K. Caulley suggests that the parties calculated the “value” of each marital portion by further dividing the marital portion of their accounts in two and that the circuit court relied on that calculation in the Opinion and Order. *See* K. Caulley Br. at 7 n.4. However, the Opinion and Order does not refer to the net difference in half-shares of retirement funds, it refers to the net difference between the parties’ respective retirement funds. *See also Alston*, 331 Md. at 508 (noting there is no presumption that marital property is to be divided evenly).

<sup>9</sup> In arguing that the circuit court improperly modified the parties’ agreement on the record, K. Caulley likens the Order to a consent decree, the entry of which is reviewed for an abuse of discretion. We disagree with this characterization. A consent decree “memorializes the agreement of the parties, pursuant to which they have relinquished the right to litigate the controversy in exchange for a certain outcome and/or, perhaps, expedience.” *Long v. State*,

Notably absent from the agreement are specifics on how the court was to “encompass” the gap between the retirement accounts. We construe the parties’ agreement as to allow the court to exercise its discretion and consider the difference in retirement accounts.

**B. It Is Unclear Why the Circuit Court Added the Net Difference to D. Caulley’s Monetary Award.**

In light of the parties’ agreement, the circuit court’s addition and deduction of \$15,605.39 are not adequately explained. The Opinion and Order explains the addition of the net difference as a feature of the agreement: “the parties agree the net difference of \$15,605.39 in value will be included in any monetary award that [D. Caulley] may receive from the Court.” The court then deducted the net difference from the balance owed when reducing the award to judgment. The circuit court did not explain why it chose to incorporate the net difference this way or how the parties’ agreement obligated it to do so. Nothing in the agreement or the Opinion and Order offers a clear explanation for the addition or deduction.<sup>10</sup>

The parties seem to agree on appeal that their agreement on the record entitled the circuit court to offset the portion of the monetary award relating to marital real estate, i.e. to *subtract* some amount of the net difference from D. Caulley’s monetary award to the extent needed to affect an equitable distribution of retirement funds. Or, if the circuit court

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371 Md. 72, 83 (2002). The parties did not reach a final understanding about the monetary award but instead left consideration of the award within the court’s judgment.

<sup>10</sup> K. Caulley also raises the possibility that the court mistakenly added the net difference where it intended to subtract it.

found that an “as is” distribution of retirement funds was equitable in the circumstances, it could have said so without further adjustment to the monetary award—as with the parties’ vehicles and bank accounts. Although reducing only \$30,000 of the monetary award to judgment effectively left the retirement accounts as-is, the court’s process does not offer insight into its reasoning. The monetary award would have adequately “encompassed” the differential in retirement funds so long as it rectified any inequity resulting from the as-is distribution. *See Innerbichler*, 132 Md. App. at 228 (noting that the purpose of the monetary award is to rectify any inequity resulting from the division of marital property).

**C. It Is Unclear Whether the Circuit Court Exercised the Discretion It Retained to Equitably Account for the Distribution of Marital Retirement Funds.**

Without a sufficient explanation for the calculation of the monetary award, we cannot discern whether or how the court exercised its discretion. The parties’ agreement left the ultimate adjustment of the monetary award, including for the distribution of retirement accounts, in the circuit court’s discretion. *See Innerbichler*, 132 Md. App. at 228 (“[T]he court must decide if the division of marital property according to title will be unfair.”). The circuit court should have considered whether the as-is distribution of retirement accounts warranted any further equitable adjustment to the monetary award, but we cannot tell if it did so.

To be sure, the circuit court carefully considered each of the statutory factors in FL § 8-205(b) in addressing the distribution of the marital real property. But in addressing the marital retirement accounts the circuit court seems to have misconstrued the agreement on the record. The Opinion and Order suggests that the circuit court interpreted the parties’

agreement as one to leave the retirement funds as-is without any potential offset to the monetary award. The court included and subtracted the full “net difference” towards D. Caulley’s monetary award to “abide by the agreement stipulated to by the parties on the record[.]” Even though the circuit court stated it found this outcome was “fair and equitable,” we cannot tell whether it reached this outcome independent of its interpretation of the parties’ agreement. Accordingly, it is not clear whether the circuit court exercised its discretion. *See Gunning*, 347 Md. at 351 (noting that an exercise of discretion must be clear from the record).

### **III. INSTRUCTIONS ON REMAND**

On remand, the circuit court should consider the monetary award anew. It should clarify whether any inequity would result from allowing the parties to retain their respective retirement accounts and, if so, consider rectifying that inequity through the monetary award.

**JUDGMENTS PERTAINING TO THE  
MONETARY AWARD AND PARTIES  
RETIREMENT BENEFITS/ PENSIONS/  
FUNDS VACATED AND REMANDED TO  
THE CIRCUIT COURT FOR CALVERT  
COUNTY. COSTS TO BE SPLIT EVENLY  
BETWEEN APPELLANT AND APPELLEE.**