

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 313

September Term, 2022

ESAYAS BELAY

v.

SEMERT ORMA

Leahy,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 1, 2023

*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.

** During the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an appeal from a Judgment of Absolute Divorce, in which the Circuit Court for Montgomery County granted a monetary award in the amount of \$23,188 in favor of the appellee, Semert Orma (“Ms. Orma”), to be paid by the appellant, Esayas Belay (“Mr. Belay”). The court awarded that sum as an adjustment of the equities between the parties. In addition, the circuit court awarded Ms. Orma use and possession of the marital home, for a period of three years, and ordered Mr. Belay to pay the mortgage on the marital home during that time. Mr. Belay filed a motion for reconsideration, which the circuit court denied.

Mr. Belay filed a timely appeal. He presents three questions for our review:

- I. “Did the circuit court err when it granted a monetary award to [Ms. Orma] without considering the statutory factors contained in Maryland Code, Family Law § 8-205(b)?”
- II. “Did the circuit court abuse its discretion when it granted [Ms. Orma] a monetary award based on [Mr. Belay’s] bank account containing proceeds from a loan?”
- III. “Did the circuit court abuse its discretion when it granted [Ms. Orma] use and possession of the marital home and ordered [Mr. Belay] to pay the monthly mortgage for the marital home during the three years [Ms. Orma] had use and possession of the marital home?”

For the reasons explained below, we shall affirm the judgment of the Circuit Court for Montgomery County.

BACKGROUND

A. The Parties’ Marriage

The parties were married in 2003, in Ethiopia. The parties’ three minor children were born in 2009, 2014, and 2016.

The parties separated on December 20, 2019, after Ms. Orma secured, on that date, a protective order against Mr. Belay, effective for one year. The terms of the order, to which Mr. Belay consented, granted custody of the parties' three children to Ms. Orma. Mr. Belay was granted weekend visitation with two of the children. Mr. Belay was ordered to continue to pay the mortgage and utility bills for the marital home, as well as \$300 per month in emergency family maintenance.

B. Divorce Action and Interim Orders

In February 2020, Mr. Belay filed a complaint for divorce based on a one-year separation. Ms. Orma filed a counter-complaint, seeking a divorce on grounds of cruelty of treatment and excessively vicious conduct.

On December 21, 2020, a consent order was entered which resolved issues of child custody and child access. Under the terms of the consent order, Ms. Orma was granted sole legal and physical custody of the parties' children. Mr. Belay was granted visitation with the two younger children on the first three weekends of each month. Father was ordered to participate in "reunification therapy" with the oldest child.

Also on December 21, 2020, following a virtual hearing on the issue of child support, the court ordered Mr. Belay to pay child support in the amount of \$1,334.00 per month, pursuant to an order for earnings withholdings.

C. Trial

On October 7, 2021, the court held a trial on the issues of divorce, property settlement, and alimony. Mr. Belay was 42 years old at the time of trial and Ms. Orma was 35 years old. The parties' children were then 12, 6, and 5 years old.]Mr. Belay and Ms.

Orma were the only witnesses to testify. Both parties were assisted by an Amharic interpreter.¹

Mr. Belay's testimony

Mr. Belay testified that the parties had been separated, for more than one year, as a result of a domestic violence consent order. He stated that there had been no marital relations since that time and that there was no hope of reconciliation.

Mr. Belay denied that he had engaged in a “pattern of cruelty” toward Ms. Orma and denied any assault. He said that “things started changing” when Ms. Orma’s parents moved in with her. He claimed that Ms. Orma’s parents “want the house” and “wanted [him] to get out, . . . so that they can own the house.” Mr. Belay stated, “. . . I did not assault them. I didn’t do anything. They just applied . . . for a protective order and they told me not to get near to the area.”

Mr. Belay was cross-examined about a relationship with a woman in Ethiopia, whom we shall refer to as Ms. A. Ms. Orma introduced into evidence a photograph of Mr. Belay, who is in formal attire, and Ms. A., who, as Mr. Belay conceded, was wearing a wedding dress. Mr. Belay explained that the photograph was taken in June 2020, at which time, Ms. A. was pregnant with their child. Mr. Belay denied, however, that he and Ms. A. had a wedding. Mr. Belay claimed that the child was the product of “a thing that happened over one night and it was not a romantic relationship.” Mr. Belay testified that

¹ During trial, the court noted that both parties “understand a fair amount of English” and were answering some questions in English. The court directed the parties to testify solely through the interpreter.

he and Ms. A. “took the [wedding] clothing to the photo place and we took the picture there” “so that [Ms. A.’s] parents, her family knows [sic] because she was pregnant[.]”

At the time of trial, Mr. Belay and Ms. A.’s child was seven months old. Mr. Belay was sending Ms. A. \$100 per month in child support.

Mr. Belay was employed as a school bus driver and testified he earned an annual base salary of \$50,000 to \$55,000 per year. However, he also testified that his present salary was \$60,507.

Although Mr. Belay had disclosed no additional income during discovery, and presented no evidence at trial, he testified that he supplemented his income as an Uber driver in the District of Columbia two or three days a week, from 10:00 a.m. to 1:00 p.m., when he was not otherwise occupied as a school bus driver. According to Mr. Belay, he was not working for Uber “that much” at the time of trial because of problems with his car’s engine. He said that his average weekly Uber income was between \$40 to \$70, but that “sometimes it could be zero.”

Mr. Belay did not work as a school bus driver for an eight to nine-month period of time in 2020 because schools were closed during the COVID-19 pandemic. However, he continued to receive his regular salary during that time. Mr. Belay stopped driving for Uber at the “start of the pandemic.”

Mr. Belay traveled to Ethiopia and back two or three times between March 2020 and August 2020. While in Ethiopia, he cared for his brother and his father, who had both become ill with COVID-19. Mr. Belay’s father died in 2020, as a result of his illness.

Mr. Belay filed an amended financial statement the day before trial, in which he disclosed, for the first time, that he received a loan from the Small Business Administration in the amount of \$91,400. He testified that the loan was available to Uber drivers to compensate for lost income related to the pandemic. He received the first disbursement of the loan, in the amount of \$22,100, on July 1, 2020. The balance of the loan amount was received by Mr. Belay a month or two prior to trial. Mr. Belay testified that he would have to begin repaying the loan in 2022, and that the payment would be \$400 to \$450 per month.

According to Mr. Belay’s bank statements, he withdrew \$5,000 in cash from his bank account between July 8 and July 16, 2020. Of the \$21,043.51 he withdrew from his bank account between July 29 and August 26, 2020, over \$16,000 was in cash. Mr. Belay claimed that the funds were used to pay the mortgage on the family home and to repay money that he had borrowed from friends so that he could furnish his apartment, buy clothing and food, and purchase airfare to Ethiopia.

Mr. Belay admitted under cross-examination that he had not disclosed the SBA loan in the financial statement that he filed on August 5, 2020. He explained that it was a “business loan” and he did not think it would be “connected” to the divorce proceedings. He denied that he owned a house in Ethiopia, as counsel for Ms. Orma alleged in opening statement. He stated that “I don’t have anything on my name” and said that he did not “use family money toward [the house in Ethiopia] that’s in my father’s name.”

At the time of trial, Mr. Belay’s bank account had a balance of \$46,375.93. According to counsel for Mr. Belay, the balance was comprised entirely of remaining proceeds from the SBA loan.

After the protective order expired, in December 2020, Mr. Belay stopped paying the mortgage on the marital home because he was no longer under court order do so. Mr. Belay “thought that [Ms. Orma] was paying [the mortgage], but, two weeks before trial, the bank notified Mr. Belay that the mortgage had not been paid for 10 months. Mr. Belay acknowledged that a foreclosure would impact his credit and “make [him] go bankrupt.” However, he explained he was “not using this 40 to \$50,000 that [he] still ha[d] left to keep [the family home] from going into foreclosure[,]” because he planned to “use that money to buy car and to start Uber driving.” Mr. Belay added, “[Ms. Orma’s] mom and dad are living there. They have been working for the past six years. So why do I have to pay?”

The parties’ stipulated at trial that the fair market value of the marital home was \$188,000. The outstanding principal balance on the home mortgage was approximately \$158,000. Mr. Belay stated that he wanted the children to live in the marital home until the youngest reached the age of 18, and that Ms. Orma should pay the mortgage during that time. Alternatively, Mr. Belay stated that he was willing to purchase Ms. Orma’s share of equity in the home, using funds from the SBA loan.

According to Mr. Belay’s most recent financial statement, he earned \$5,047 in total income per month. Mr. Belay explained that he did still work for Uber, “sometimes,” but he did not include Uber income in his response to interrogatories because he would not know the sum of those earnings “until the end of the year.” He stated that he had not provided Uber paystubs because his Uber account had been “hacked” and “was shut down.”

On the last page of Mr. Belay’s financial statement, he entered the sum of \$6,819.54 as his total monthly expenses and claimed a net monthly deficit of \$1,772.54. Mr. Belay testified that he paid an additional \$500 per month toward credit card debt, which he said he had accumulated because, according to Mr. Belay, his income was insufficient to cover his expenses.

Ms. Orma’s Testimony

Ms. Orma testified that the couple separated “because he kept saying that we need to get divorced.” She stated that break occurred on December 2, 2019, when Mr. Belay went into her bedroom in the early morning hours, demanded a divorce, and when she refused, he “grabbed” and “pulled my hair.” Ms. Orma testified that he threatened “I swear on my mom I will cut your neck,” in front of their child, who had been wakened by the noise.

Ms. Orma recounted two prior incidents in which Mr. Belay assaulted her. She said that in 2017, when he returned from a trip during which his car was in a minor accident, Mr. Belay “grabbed [her] neck and choked [her]” until she could not breathe and “pushed him off.” She also stated that, a week before the December 2, 2019, incident, Mr. Belay pulled her hair and asked her, “Why did you go to church and leave my child?” Ms. Orma said that she finally secured a protective order in December 2019 because she was “concerned for [her] life.”

Ms. Orma testified that Mr. Belay’s infidelity also contributed to the breakdown of their marriage. She learned of the relationship between Mr. Belay and Ms. A. sometime before their separation, when she discovered their Facebook correspondence. Ms. Orma

introduced copies of their Facebook messages, which were written in Amharic and not translated for the court. According to Ms. Orma, Mr. Belay used words such as “my queen” and “my baby” to address Ms. A. Ms. Orma confronted Mr. Belay about the messages, but he “told [her that Ms. A was] just a friend.” However, some 3 months later, she discovered “photograph of Mr. Belay and the woman in the wedding dress.”

Ms. Orma testified that she was employed in a shop selling beauty products. She said she worked 35 hours a week, on average, and earning \$12 an hour, and had no other income. During the COVID-19 pandemic, the store was closed for two months, and Ms. Orma received approximately \$300 a week in unemployment benefits during that time. She did not return to her 35 hour per week schedule until schools reopened, in September 2021.

Ms. Orma introduced into evidence her 2020 tax return, which demonstrated that she earned \$7,710.00 in wages and \$15,381.00 in unemployment benefits, for a total of \$23,091.00. According to Ms. Orma’s most recent paystub, for the period ending September 25, 2021, she had earned a total of \$8,834.40 in wages since the beginning of 2021. According to Ms. Orma’s financial statement, her monthly net income, including child support, was \$2,701.00. Ms. Orma claimed monthly expenses of \$3,038.00, which included the mortgage payment of \$1,167.00.

Ms. Orma explained that she had been unable to pay the mortgage for a period of time because she was working reduced hours and she did not begin to receive child support payments through the Office of Child Support until four months after the entry, on December 21, 2020, of the court’s order for child support. She eventually received a lump

sum child support payment, and support payments were current at the time of trial. The mortgage was currently in forbearance, and she would begin making mortgage payments again in October 2021.

Ms. Orma claimed that Mr. Belay withdrew \$10,000 from their joint bank account to use toward the purchase of a home in Ethiopia. She said that “when [Mr. Belay] went to Ethiopia[,] he told [her] that he would be buying . . . a home.” When Mr. Belay returned, he “showed [her] some papers showing that he bought property[.]” Ms. Orma did not introduce any bank documentation showing a withdrawal. She explained that she was unable to access the statements for the joint account because it had since been closed. Ms. Orma did not introduce any documentation showing that Mr. Belay owned property in Ethiopia.

Closing Arguments

In closing argument, Mr. Belay urged the court to grant a divorce based on a one-year separation. He argued that the alleged incidents of violence toward Ms. Orma did not “rise to the level of” “extreme cruelty and pattern of violence” to justify granting a divorce on that basis. Mr. Belay argued against an award of alimony to Ms. Orma, stating that his financial statement demonstrated a negative monthly cash flow. With regard to the available balance of \$46,375.93 in his bank account, Mr. Belay urged the court to consider that the balance represented proceeds from a loan, which he was solely responsible for repaying.

The court expressed confusion about Mr. Belay’s need to borrow money when he continued to receive his full salary from his job as a bus driver. The court also questioned

Mr. Belay’s testimony regarding what had become of the \$45,000 in SBA loan proceeds that had already been spent. The court stated:

[T]he evidence . . . is [that Mr. Belay] gets \$91,000 and he doesn’t do anything to further a business. He’s not paying employees. He talks about replacing his vehicle. He hasn’t replaced his vehicle. He’s still using it.

* * *

And what did he use [\$45,000 of the SBA loan funds] for? He didn’t use it for his small business. If he used it to pay the mortgage, he already was doing that before from his income.

* * *

Again, he’s getting paid his full salary. He stopped paying the mortgage. He’s only paying \$600 a month to rent this basement apartment that he has. What . . . did he have to borrow money for?

* * *

And I can’t trace that money back. . . . if he used [the SBA loan funds] to pay back people that loaned him money, there’s no promissory notes. There [is] no other evidence of who [loaned it to him]. I don’t have bank statements showing Venmo or Zelle payments, or Cash App payments to somebody. I don’t know. For all I know maybe he sent that money to Ethiopia to buy this property over there. I don’t know.

The court also expressed doubt about Mr. Belay’s claim of a negative monthly cash flow:

So when we talk about this monthly deficit, he’s still sitting there with \$46,000. Now he may have to pay it back at some point. In a year he says. I don’t know. But he’s not paying it now. So I don’t know what he’s doing with his money. So I’m not right now certain about where this deficit’s coming from. He’s sitting there with \$46,000.

Ms. Orma argued in closing that Mr. Belay’s credibility was “precarious at best[,]” because:

He didn't disclose his marriage, he didn't disclose his affair, he didn't disclose this other child. He didn't disclose his Uber income. He didn't disclose the SBA loan.

Ms. Orma argued that, although Mr. Belay admitted at trial that he earned approximately \$60 to \$70 a week from Uber, it was not “a stretch to think that there's more that he has potentially not disclosed.”

Ms. Orma argued that an award of rehabilitative alimony was appropriate. She asserted that she had “a lot of financial catching up to do[,]” and that “she's not really able to continue to live in [the marital] home without financial support.” Ms. Orma posited that she had a right to an equitable distribution of the funds in Mr. Belay's bank account. She asked the court to consider “several incidents of abuse that occurred” during the marriage in evaluating her request for alimony.

D. Circuit Court's Order and Opinion

After hearing closing arguments, the court took the matter under advisement. On January 12, 2022, the court entered a 16-page written opinion, explaining that it would grant Mr. Belay an absolute divorce based on a 12-month separation, implicitly declining to find fault-based grounds for the divorce. The court identified the parties' marital property and its value. Then the court, “after careful consideration of all the statutory factors” under Maryland Annotated Code, (1984, 2019 Repl. Vol.), Family Law Article (“FL”), section 8-205(b), set out his factual findings prior to making any monetary award.

Property Disposition

The court recognized that the parties, in their Joint Statement Concerning Marital and Non-Marital Property (“Joint Statement”), identified four items as marital property.

The court agreed that three of those items had the value ascribed by the parties; namely, 1) approximately \$6,000 in Mr. Belay’s 401k account; 2) Mr. Belay’s personal vehicle valued at \$7,217; and 3) Ms. Orma’s personal vehicle valued at \$5,400. In regard to the marital home located in Silver Spring, Maryland, the court found that the property was purchased in 2017 with an \$11,000 down payment from the parties’ joint account and was owned by the parties as tenants by the entirety. The parties alleged that the fair market value of the home was \$213,051, but the court was unable to make a final determination about that. The court found that the monthly mortgage payments for the home was \$1,166.98, and that the unpaid principal balance on the mortgage was \$158,090.37.

The court found that the approximately \$46,375 in Mr. Belay’s bank account was marital property “as [Mr. Belay] acquired these funds during the marriage through an SBA loan.”

Application of FL § 8-205(b) Factors

The court recognized that it may grant a monetary award “after consideration of the 11 factors set forth” in FL § 8-205(b). In reviewing the parties’ contributions to the well-being of the family, the court identified Ms. Orma’s contribution as “primarily nonmonetary” and Mr. Belay’s as “primarily monetary.”

In assessing the economic circumstances of each party, the court found that Mr. Belay’s annual salary was \$60,570, and that he earned an additional \$250 per month driving for Uber. The court found that Mr. Belay’s monthly deficit was less than what he claimed because he had not included his Uber income on his financial statement. The court

found that Ms. Orma had an annual income of \$23,091, and that she had no retirement assets, nonmarital assets, or other income.

Regarding the “circumstances that contributed to the estrangement of the parties, the court found “[Ms. Orma’s] testimony more credible than [Mr. Belay’s] testimony regarding abusive conduct. The court also reviewed uncontroverted evidence of “[Mr. Belay’s] relationship with the other woman in Ethiopia and child with her,” and found that “[Mr. Belay’s] conduct bears a greater share of responsibility for the demise of the marriage.”

After a succinct but particular review of the remaining FL § 8-205(b) factors, the court found that “the division of marital property according to title would be unfair,” and that a monetary award of \$23,188 to Ms. Orma “would equalize the Parties’ property rights.” In its opinion, the court explained:

Neither party owns any nonmarital assets. [Ms. Orma] has sacrificed a career to stay home and raise the Parties’ children and take care of the Marital Home. [Ms. Orma]’s sacrifice allowed [Mr. Belay] to continue his employment.

[Ms. Orma] has no retirement assets, health benefits, or savings. Through his employment, [Mr. Belay] has retirement and other benefits. He has a 401(k).

The trial court then granted Ms. Orma a monetary award of \$23,188, describing it as “approximately 50% of the Parties’ marital assets[,]” the sum of which the court identified as \$46,375.²

² The court’s opinion shows that the parties listed the total value of their assets, which the court determined were marital assets, was \$94,902, including the value of the two cars, the 401K account, the Bank of American account, and the \$29,909 equity in the marital home. Clearly, any error in the court’s description of the monetary award inured to Mr.

Alimony and the Marital Home

The court considered and ultimately rejected Ms. Orma’s request for indefinite alimony, as although “it appeared that she does not speak English fluently,” she could be “at least partly self-supporting,” and could “make sufficient progress [toward becoming self-supporting,] such that the Parties’ respective standards of living would not be unconscionably disparate.” It then applied each of the statutory factors to an award of rehabilitative alimony. FL § 11-106(b)(9). The court observed that while both Mr. Belay and Ms. Orma had submitted financial accounts showing monthly deficits, Mr. Belay’s assets from the SBA loan enabled him to provide spousal support. It ordered Mr. Belay to pay the monthly mortgage on the home for the three years in which Ms. Orma had exclusive use and possession in lieu of rehabilitative alimony.

Contemporaneously and consistent with its written opinion, the court entered a Judgment of Absolute Divorce reflecting an award of \$23,188 to Ms. Orma, in addition to three years of exclusive use and possession of the marital home while Mr. Belay pays the mortgage; after which the home is to be sold and proceeds divided equally.

E. Motion for Reconsideration

On January 21, 2022, Mr. Belay filed a motion for reconsideration. Mr. Belay claimed that the court erred in concluding that the funds from the SBA loan were marital property, and that the court erred in awarding one half of that amount to Ms. Orma. Mr. Belay further claimed that ordering him to pay the mortgage on the family home would

Belay’s benefit. We note that even if one subtracts the \$46,376 Bank of America balance from \$94,902, 50% of \$48,526 equals approximately \$24,263.

result in a net monthly deficit of approximately \$2,687 while Ms. Orma would have a monthly surplus of \$828.

On April 7, 2022, the court held a hearing on Mr. Belay’s motion for reconsideration. Mr. Belay argued that the loan should not have been classified as marital property because Mr. Belay was solely responsible for its repayment.

Ms. Orma noted that Mr. Belay had provided no evidence of the terms of the loan at trial, which deficiency should “not be subject to supplementation” because the information had been readily available at that time. Ms. Orma alleged that Mr. Belay’s testimony of his monthly deficit was not credible and asked the court to sustain its order requiring him pay the mortgage during her three-year period of use and possession.

The court commented that Mr. Belay’s averred monthly deficit “can be addressed by simply pointing out that as of the time of trial, he had \$46,000 sitting in a bank account . . . \$30,000 of which has now disappeared,” according to an updated wage garnishment report. The court noted that there was no explanation for what use Mr. Belay had made of those funds and commented that a “recurring theme” throughout the trial was “that money is going places without it being accounted for.” The court stated that it had “a lot of concerns about Mr. Belay’s credibility, largely because of his lack of transparency” in the divorce proceedings. It declined to exercise its discretion to accept the evidence of the loan repayment terms that Mr. Belay offered at the hearing on the motion for reconsideration. The court commented that there was “no good explanation” for the delay in supplying relevant information, and found that Mr. Belay’s conduct “appear[ed] to be an effort to hide funds, to keep them out of [Ms. Orma’s] hands[.]”

On April 8, 2022, the court entered an order to deny the motion to reconsider, consistent with its oral ruling. This timely appeal followed.

STANDARD OF REVIEW

“When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence[,] . . . and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property[,]” and such findings “are subject to review under the clearly erroneous standard embodied in Md. Rule 8-131(c).” *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (cleaned up). We review the factual findings of the trial court with respect to questions involving marital property and alimony under a clearly erroneous standard. *Reynolds v. Reynolds*, 216 Md. App. 205, 218 (2014). “Generally, a trial court’s findings are not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (cleaned up).

The ultimate decision to grant a monetary award or to award alimony in a divorce proceeding is reviewed for abuse of discretion. *Reynolds*, 216 Md. App. at 222. “Under that lenient standard, the ruling ‘will not be reversed simply because the appellate court would not have made the same ruling.’” *McAllister v. McAllister*, 218 Md. App. 386, 400 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)). “Instead, ‘[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Id.* (quoting *North*, 102 Md. App. at 14).

DISCUSSION

“Although the law does not require a court to divide marital property equally between the parties, the division of such property must be fair and equitable.” *Brewer v. Brewer*, 156 Md. App. 77, 105 (2004) (citation omitted). “To achieve that result, a trial court may grant a monetary award to correct any inequality created by the way in which property acquired during the marriage happened to be titled.” *Id.* (citation omitted). “The decision to grant such an award ‘is generally within the sound discretion of the trial court[.]’” *Id.* (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)). We will “not disturb the trial court’s order unless we find an abuse of discretion.” *Id.*

As the circuit court observed in its opinion in this case, when a party in a divorce proceeding petitions for a monetary award, the court is required to engage in a three-step procedure:

First, for each disputed item of property, the court must determine whether it is marital or nonmarital. [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 a monetary award to rectify any inequity . . . [FL] § 8–205(a). . . . In doing so, the court must consider the statutory factors contained in [FL] § 8–205(b).

Innerbichler v. Innerbichler, 132 Md. App. 207, 228 (2000). In determining whether a monetary award is warranted, the court must consider the factors set forth in FL § 8-205(b):

- (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)³ 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.

If the court were to fail “to consider the statutory factors” then “any monetary award be vacated.” *Quinn v. Quinn*, 83 Md. App. 460, 465 (1990) (citation omitted). However,

³ Md. Code Ann., Fam. Law § 8-205(a)(2):

The court may transfer ownership of an interest in:

- (i) a pension, retirement, profit sharing, or deferred compensation plan, from one party to either or both parties;
- (ii) subject to the consent of any lienholders, family use personal property, from one or both parties to either or both parties; and
- (iii) subject to the terms of any lien, real property jointly owned by the parties and used as the principal residence of the parties when they lived together, by:
 1. ordering the transfer of ownership of the real property or any interest of one of the parties in the real property to the other party if the party to whom the real property is transferred obtains the release of the other party from any lien against the real property;
 2. authorizing one party to purchase the interest of the other party in the real property, in accordance with the terms and conditions ordered by the court; or
 3. both.

the court is “presumed to know the law, and is not required to enunciate every factor [the court] considered on the record, as long as [the court] states that the statutory factors were considered.” *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003) (citation omitted).

I.

Mr. Belay first avers that the circuit court “failed to consider any of the factors in [FL]§ 8-205(b)” and “fail[ed] to state, at a bare minimum, that it reviewed the factors[.]” He contends that this alleged failure compels this Court to vacate the monetary award and remand the matter to the circuit court. Ms. Orma rejoins that Mr. Belay fails to acknowledge the court’s 16-page written opinion addressing “all eleven factors[.]” Although Mr. Belay acknowledges that the court issued a written opinion contemporaneously with the judgment of divorce, he inexplicably failed to include the opinion in the record extract.

We find Mr. Belay’s contention to be wholly without merit and that his failure to include the trial court’s written opinion in his record extract fails to comply with Maryland Rule 8-501. The circuit court expressly stated that it made factual conclusions supporting a monetary award upon “careful consideration of all the statutory factors” in FL § 8-205, as evidenced by court’s written opinion enumerating and discussing each of the 11 factors.

II.

Mr. Belay next contends that the court erred in finding that the approximately \$46,000 in funds in his bank account were marital property. He claims that Ms. Orma did not offer any evidence that the SBA loan proceeds constituted marital property, but that he “provided uncontradicted testimony about the [l]oan, the repayment terms, and how the

[l]oan funds had been used and would be used in the future.” We discern no error in the court’s finding.

Section 8-201(e)(1) of the Family Law Article provides that “‘marital property’ means the property, however titled, acquired by 1 or both parties during the marriage.” “Thus, ‘[p]roperty acquired by a party up to the date of the divorce, even though the parties are separated, is marital property.’” *Reichert v. Hornbeck*, 210 Md. App. 282, 349 (2013) (citation omitted).⁴ Marital property does not include property: “(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources.” FL § 8-201(e)(3).

“The party who claims a marital interest in property has the burden of proof as to that claim.” *Malin*, 153 Md. App. at 428 (citation omitted). “Conversely, a party seeking to demonstrate the nonmarital nature of a particular property must ‘trace the property to a nonmarital source.’” *Id.* (citation omitted). “[A] ‘marital debt’ is a debt which is directly traceable to the acquisition of marital property.” Ordinarily, it is a question of fact as to

⁴ Mr. Belay asserts in passing that the circuit court’s discretion to make a monetary award was “significantly curtailed” because he secured the loan funds after the parties separated. For this principle he cites to the dissent in *Alston*, 331 Md. at 513-14, which extrapolates it from the majority opinion in that case, quoting:

Where one party, wholly through his or her own efforts, and without any direct or indirect contribution by the other, acquires a specific item of marital property after the parties have separated and after the marital family has, as a practical matter, ceased to exist, a monetary award representing an equal division of that particular property would not ordinarily be consonant with the history and purpose of the statute.

Alston v. Alston, 331 Md. 496, 514 (1993) (Bell, J. dissenting). Even were that deduction articulated in the majority opinion, and cogently construed by Mr. Belay as a source of judicial error, it would not be applicable to the facts in this case, as Mr. Belay offered no evidence that he expended significant effort in the acquisition of the loan.

whether all or a portion of an asset is marital or non-marital property[.]” and such findings “are subject to review under the clearly erroneous standard embodied in Md. Rule 8-131(c).” *Wasylyuszko*, 250 Md. App. at 269 (cleaned up).

Although Ms. Orma had the burden of proving that the balance of funds in Mr. Belay’s account was marital property, that burden was easily met. Mr. Belay, who testified first, stated that the funds in that account were comprised solely of the remaining proceeds of a \$91,400 small business loan received by him while the parties were still married. That undisputed testimony, without more, amounted to substantial evidence to support the court’s finding that the funds were marital property, as it established that the funds were acquired during the marriage. Mr. Belay does not contend that the loan proceeds were excluded from marital property by a valid agreement between the parties or that any other exclusions apply.

Mr. Belay does cite to authority stating that the value of marital property must be adjusted downward to reflect unpaid debt incurred to acquire marital property. *See Schweizer v. Schweizer*, 301 Md. 626, 636 (1984). However, the court explained its reasons for not doing so, in that “at the time of trial, there was no documentation evidencing any repayment plan or the nature of these funds. . . . [T]here was no indication that this was not a forgivable loan or what the terms of that loan were[.]” Mr. Belay testified that he received one of the two types of stimulus loans issued by the SBA during the COVID-19 pandemic; he claimed that the one he received was not the type that was forgivable. We cannot conclude the trial judge abused its discretion in the weight that it assigned to the testimony and the evidence before it.

Here, the circuit court determined that a division of marital property according to title would not be equitable. The court noted that while Ms. Orma had no retirement assets, health benefits, or savings, Mr. Belay had \$46,375 in his bank account and approximately \$6,000.00 in a 401(k) account. The court determined that a monetary award of \$23,188, which amounted to 50% of the funds in Mr. Belay’s bank account, would equalize the parties’ property rights. Based on the facts in this case, we conclude that the court did not abuse its discretion in making a monetary award.

III.

Mr. Belay’s third and final contention is that the court abused its discretion in ordering him to pay the monthly mortgage on the marital home during the three years that Ms. Orma has use and possession. Mr. Belay asserts that, as a result of the court’s order, Ms. Orma realizes a monthly cash surplus of \$828, while he has a monthly deficit of approximately \$2,688,⁵ which he identifies as a “gross disparity.”

“For a period of up to three years after the date of the divorce . . . the court may grant a party the sole use and possession of the family home.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 199 (2016) (citing FL § 8-208(a)(1)(i)). “In addition, ‘the trial court may order one or both of the parents to contribute to the mortgage on the family home, insurance, and taxes.’” *Id.* (citation omitted). *See also* FL § 8–208(c).

Here, the circuit court explicitly stated in its memorandum opinion: “In lieu of alimony, the Court shall require [Mr. Belay] to pay the monthly mortgage (principal,

⁵ Appellant claims a monthly deficit of “\$2,6874.54” in his brief to this court., which we assume was a typographical error.

interest, taxes, and insurance) for the marital property for 3 years. The Court finds that [Mr. Belay] has the financial resources to pay the mortgage on the Marital Home.” Also, according to the court’s order, at the end of three years, Mr. Belay is entitled to one half of the proceeds from the sale of the home.

Mr. Belay presents no argument that the court may not direct monthly alimony awarded to the party in possession of the marital home to be paid directly to a lender in the form of monthly mortgage payments on that home. Therefore, the appropriate standard for the court’s discretion is whether the decision under consideration is well removed from any ‘center mark’ in its determination of a “fair and equitable” alimony award under FL § 11-106(b). *See McAllister v. McAllister*, 218 Md. App. 386, 400 (2014). Mr. Belay does not challenge the court’s analysis of Ms. Orma’s entitlement to rehabilitative alimony, and in any case, we recognize that the court diligently considered all of the statutory factors in making its award.

Accordingly, we perceive no abuse of discretion in the court’s award of rehabilitative alimony to Ms. Orma in the form of three years of mortgage payments on the marital home.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
IS AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**