

Circuit Court for Harford County  
Case No. C-12-FM-18-000004

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 329

September Term, 2020

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EARNEST A. FORD, SR.

v.

AYN C. FORD

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Kehoe,  
Zic,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Zic, J.

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Filed: April 20, 2021

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Harford County, Ernest Ford, Sr. (“Husband”) and Ayn Ford (“Wife”) were granted an absolute divorce after more than 28 years of marriage. The circuit court determined that the parties should share in their marital property evenly. To accomplish that result, it awarded each party a 50 percent interest in the other’s pension and, because more marital property was titled in Husband’s name, ordered Husband to make two monetary awards to Wife and to buy out Wife’s interest in the marital home. The circuit court denied Husband’s requests for alimony and a monetary award and declined to order either party to contribute to the other’s attorneys’ fees.

Husband appeals,<sup>1</sup> presenting two questions,<sup>2</sup> which we have combined and rephrased as one:

Did the circuit court err or abuse its discretion by not appropriately considering Husband’s anticipated Social Security benefits and/or by not ordering Wife to make a monetary award to Husband to counterbalance inequity arising from unequal entitlement to Social Security benefits?

We answer that question in the negative and shall affirm the judgment of the circuit court.

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<sup>1</sup> Wife noted a cross-appeal but asks this Court to affirm the divorce judgment.

<sup>2</sup> The questions as posed by Husband are:

1. Did the trial court err by failing to properly consider the actual and anticipated Social Security benefits of the parties in declining to award Mr. Ford a monetary award?
2. Did the trial court [err] in reaching its determination that Mr. Ford is not entitled to a monetary award?

## **FACTS AND PROCEEDINGS**

Husband and Wife married on September 21, 1991. They have a 30-year-old daughter and a 22-year-old son. They separated on April 14, 2018 when Wife moved out of the marital home. Two days later, Husband filed for a limited divorce.

The operative pleadings are Husband's second amended complaint for absolute divorce and Wife's supplemental counter-complaint for absolute divorce. Both parties asserted as one ground for divorce a voluntary 12-month separation and sought an equitable division of marital property, a monetary award, and attorneys' fees. Husband requested alimony and use and possession of the marital home.

A merits trial went forward on September 12 and 13, 2019, at which Husband and Wife were the sole witnesses. At that time, Wife was 48 and Husband was 50. The parties agreed to the value of most of the marital and non-marital assets. Given that the sole issue on appeal concerns the circuit court's consideration of the parties' entitlement to Social Security benefits in fashioning an equitable division of marital property and in assessing the parties' requests for a monetary award, we summarize the evidence pertinent to that issue.

When the parties first were married, Husband was on active duty with the United States Marine Corps. He was discharged in 1993, after five years, and then worked for the Baltimore City Police Department for a little over two years. Thereafter, he worked as a Maryland State Police officer for 19 years. He sustained a work-related back injury in 2011 and did not return to full duty until he retired in June 2014. He then worked for

the Maryland State Highway Administration for two years, before he sustained a knee injury. He worked briefly for the Department of Veteran's Affairs and Aberdeen Proving Ground but was unable to pass the physical fitness exam to allow him to continue in either position. He testified that he also suffered from hypertension and hearing loss. He received workers' compensation awards relative to some of these injuries and conditions.

In early 2019, Husband began working as a health occupations investigator for the Maryland Department of Health, earning \$4,727.53 monthly. He testified that he suffered pain because of his knee and back injuries that was exacerbated by sitting for long periods of time, which was necessitated by his current job. He testified that he retired prior to the parties' separation and was living "comfortabl[y], just maintaining the status quo." He returned to the workforce after Wife left the marital home because she "stopped paying her obligations" and he needed income. He did not intend to continue working after the parties were divorced because his pain was too great.

Husband continued to live in the marital home, which was owned by the parties as tenants by the entirety and valued at \$350,000. Just a few weeks before the parties separated, he paid off the more than a \$60,000 balance on the parties' mortgage loan using money from a workers' compensation award. He asked the court to permit him to buy out Wife's interest in the marital home, subject to contribution by her for expenses he incurred after their separation.

Husband's financial statement reflected that his net monthly income was \$8,511.70, consisting of his current income, a \$1,400 monthly disability benefit from the

Department of Veteran’s Affairs, and a \$3,534.58 monthly Maryland State Retirement pension payment (“MSP Pension”). He reported monthly expenses of \$4,745.50, more than half of which comprised repairs to the marital home, which he alleged amounted to \$2,799.50 per month.<sup>3</sup> Husband had an individual supplemental retirement account valued at over \$450,000 and about \$15,000 in two other accounts. He did not have any debts beyond unpaid attorneys’ fees of just over \$18,000.

Wife lived in an apartment in Rosedale, Baltimore County, along with the parties’ then 21-year-old son. She assisted her son with his living expenses because he was unemployed. She also was liable on student loans for her son, with an outstanding balance of \$16,000.

Wife worked in the education field throughout the parties’ marriage. In 1994, she completed her bachelor’s degree in early childhood education at Towson University. She was hired as a public-school teacher, first in Anne Arundel County and then in Harford County, ultimately advancing to the position of principal of an elementary school. She resigned from that position in 2016. Wife spent six months unemployed and worked for one year at Towson University before being hired to work in her current job as a literacy coach for Baltimore City Public Schools. She earns \$105,000 annually.

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<sup>3</sup> He arrived at this figure by averaging over 12 months the cost for a new roof, a new HVAC system, a new sump pump, and new appliances. He testified at trial, however, that the expenses for the roof and the HVAC system were reimbursed by the parties’ homeowners’ insurance and under a separate policy covering the HVAC system.

Wife’s financial statement reflected that she earned a net monthly income of \$6,056.98 and incurred monthly expenses totaling \$5,725.59.<sup>4</sup> Wife has a State of Maryland pension that she contributed to throughout her early teaching career and again as an employee of Baltimore City Public Schools, the current value of which is unclear, and two 403(b) accounts valued at just over \$200,000. Wife was liable on a car loan, a personal loan from her bank, and for credit card debt, collectively totaling nearly \$80,000.

Wife’s anticipated entitlement to Social Security benefits was undisputed. Husband testified that Wife paid into Social Security throughout her career. She also confirmed on cross-examination that her employers had deducted Social Security taxes for the entirety of her public-school teaching career.<sup>5</sup>

Husband’s entitlement to Social Security benefits was unclear. He did not testify in his case about his entitlement to Social Security benefits, but on cross-examination, Wife’s counsel asked Husband if he would be eligible for Social Security. He answered, “No,” adding that the Maryland State Police did not deduct Social Security taxes from his salary and, consequently, he did not believe he had paid into the system for the “required

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<sup>4</sup> Wife testified that she made a mistake on her financial statement, stating that she spent \$600 each month for replacement furnishings and appliances when that amount was her total expense for that category. We have reduced her expenses to reflect a \$50 monthly expense in that category.

<sup>5</sup> Wife testified that she was uncertain if Towson University had paid into Social Security on her behalf. She worked for Towson University for one year.

number of quarters.”<sup>6</sup> According to Husband, if he were eligible to receive Social Security benefits, those benefits would be “reduced because of [his] self-contained retirement system with the [Maryland State Police].” Wife’s attorney clarified, “So, you don’t know if you’re getting Social Security or not?” Husband replied, “Well, if I do get it, it won’t be at the full benefit.”<sup>7</sup> He acknowledged that he had worked for “other employers[,]” in addition to the Maryland State Police.

On redirect examination, Husband clarified that he paid into Social Security for five years (20 quarters) when he was on active duty with the Marine Corps. He was uncertain if the Baltimore City Police Department had paid Social Security taxes on his behalf during the two years (eight quarters) he worked for that agency. All of the jobs he had worked since he retired from the Maryland State Police had been “Social Security jobs[,]” meaning that his employer had contributed on his behalf. He was unable to definitively answer as to how many years he had worked for employers who contributed to Social Security on his behalf.

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<sup>6</sup> To be eligible for Social Security retirement benefits, a worker must pay Social Security taxes for 40 quarters over his or her lifetime (the equivalent of ten years). *See Learn About Retirement Benefits*, Soc. Sec. Admin., [ssa.gov/benefits/retirement/learn.html#h1](https://www.ssa.gov/benefits/retirement/learn.html#h1) (last visited Mar. 23, 2021).

<sup>7</sup> Husband likely was referring to the Windfall Elimination Provision, which may reduce Social Security benefits for persons who earned a retirement pension while working for an employer who did not withhold Social Security taxes, but who would otherwise qualify for Social Security benefits through other employment. *See Windfall Elimination Provision*, Soc. Sec. Admin. (2021), <https://www.ssa.gov/pubs/EN-05-10045.pdf>; *see also Jackson v. Sollie*, 449 Md. 165, 171 (2016) (discussing this provision’s applicability).

At the close of all the evidence, Husband argued that the evidence showed that he had paid Social Security taxes for only five or six years of his employment and that Wife had done so for at least 26 years. Given this discrepancy, he maintained that the trial court was obligated to consider their potential retirement benefits in making a monetary award. Husband asserted that the value of his MSP Pension was significantly greater because he did not contribute to Social Security and, consequently, if the court were to award Wife a 50 percent share of his MSP Pension without accounting for the discrepancy in their entitlement to Social Security benefits, she would realize a windfall. He cited the decision in *Jackson v. Sollie*, 449 Md. 165 (2016), in support of his position.

Wife agreed that the parties' entitlement to Social Security benefits was a factor the court could consider in determining whether to make a monetary award, but argued that the evidence was, at best, speculative on that point. She asserted that Husband had not met his burden to show that he was ineligible for Social Security benefits given that he had not introduced his Social Security statements or been able to testify with any certainty as to how many years he had worked for employers who did contribute to Social Security. Thus, she maintained that the court was not obligated to consider that as a factor in determining whether to make a monetary award as an adjustment of the equities.

On May 11, 2020, the circuit court issued a 25-page memorandum opinion and judgment of absolute divorce with an attached schedule of marital and non-marital property. We shall discuss the court's specific findings and reasoning below, but, in sum,



the court found that Husband was “not at an unfair deficit regarding the Social Security benefit which would alter the balance in the consideration of a monetary award.”

The court determined, after considering the relevant factors, that it was “equitable for [Husband and Wife] to share equally in the value of their marital property.” To accomplish that division, the court ordered Husband to purchase Wife’s interest in the marital home for \$175,000, less an approximate \$35,000 contribution from Wife to account for Husband having paid off the mortgage using non-marital funds. The court awarded Wife one-half of the gross monthly benefit from Husband’s MSP Pension, which was in pay status. Husband was awarded a one-half interest in Wife’s Maryland State Retirement pension, which was not in pay status, on an “if, as, and when basis” pursuant to *Bangs v. Bangs*, 59 Md. App. 350, 367-68 (1984). Husband’s monthly disability benefit was non-marital and not subject to division.

The court further ordered Husband to make two monetary awards to Wife. First, Husband was ordered to transfer to Wife \$129,078.35 to equalize their individual retirement accounts, which were valued at \$684,534.65, with \$213,188.97 in accounts in Wife’s name and the remainder in accounts in Husband’s name. Second, the court ordered Husband to pay Wife \$20,604.57 to account for other marital property valued at \$25,111.06, most of which was titled in Husband’s name, and to account for Husband’s share of a loan Wife took out against one of her retirement plans to pay for marital expenses. The court denied Husband’s request for alimony and the mutual requests for attorneys’ fees.

Husband noted this timely appeal.<sup>8</sup> We shall include additional facts as necessary to our resolution of the issues.

### STANDARD OF REVIEW

Following a bench trial, we “review the case on both the law and the evidence.” Md. Rule 8-131(c). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, . . . giv[ing] due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* We review “the record for the presence of sufficient material evidence to support the [trial court’s] findings” and “all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (citation omitted). “If there is any competent evidence to support [a] factual finding[] . . . [it] cannot be held to be clearly erroneous.” *Omayaka v. Omayaka*, 417 Md. 643, 652 (2011) (citation omitted). We review the trial court’s determinations on questions of law de novo. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008).

### DISCUSSION

Husband contends that the trial court erred because it did not “consider the actual or anticipated Social Security benefits of the parties” in assessing the appropriate monetary award. In his view, the court’s reasoning was speculative and improperly based upon “various hypothetical events.” He argues that if the court properly considered

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<sup>8</sup> As mentioned, Wife also noted a cross-appeal but does not pursue it in this Court.

this factor, it necessarily would have determined that Husband was entitled to a monetary award to counterbalance Wife’s greater anticipated benefits.

Wife responds that the trial court did consider the parties’ entitlement to Social Security benefits as a factor in determining whether to make a monetary award and did not abuse its discretion by concluding that it did not weigh in favor of an award to Husband. Alternatively, she asserts that Husband did not meet his burden of establishing that he was not entitled to receive Social Security benefits.

When a party requests a monetary award, a trial court must complete a three-step process before determining whether to grant such an award. *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). In the first step, the court determines whether each disputed item of property is marital or non-marital. *Id.* (citing *Flanagan*, 181 Md. App. at 519). The second step requires the court to determine the value of all marital property. *Id.* Third, the court “must decide if the division of marital property according to title would be unfair, and if so, it 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 405-06 (cleaned up). Only the third step is at issue in this case.

Section 8-205(b) of the Family Law Article sets forth a number of factors the court must consider in its balancing of the equities. As pertinent to the instant case, the final “catch all” factor permits the trial court to consider “any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award[.]” Md. Code Ann., Fam. Law § 8-205(b)(11) (1984, 2019 Repl. Vol.).

In *Jackson*, the Court of Appeals held that a general consideration of the parties’ “actual or anticipated Social Security benefits” must be weighed as part of a trial court’s analysis of this factor if there is evidence in the record making it relevant. 449 Md. at 173.

In *Jackson*, the husband filed for divorce after 35 years of marriage, when he was 61 and his wife was 58. *Id.* at 169 n.2, 170. The parties agreed to divide nearly all their marital assets evenly but could not agree as to the appropriate division of their pensions. *Id.* at 170. The trial was bifurcated to address, first, the grounds for divorce and then the disputed issue of the pensions. *Id.* In the latter part of the trial, the husband testified, and both parties called expert witnesses. *Id.*

The husband worked for 12 years in the private sector followed by 38 years for the Social Security Administration, where he continued to work at the time of trial. *Id.* As a federal employee, he contributed to a pension, but did not contribute to Social Security. *Id.* Under federal law, though he would be entitled to Social Security benefits upon his retirement based upon his private sector employment, his benefits would be reduced to account for his pension. *Id.* at 171. His expert witness testified that to account for the greater portion of the husband’s earnings that he contributed to his pension—which is marital property—the court could treat a portion of the husband’s pension as non-marital property, such as Social Security benefits. *Id.* at 171-72. The wife’s expert testified that “any attempt to value the hypothetical Social Security element” of her husband’s pension would be speculative and would run afoul of the federal preemption doctrine. *Id.* at 172. The trial court concluded that it could not consider the parties’ Social Security benefits,

reasoning that those benefits were non-marital property not subject to division. *Id.* at 197. It determined to award each party a 50 percent share of the other party’s pension on an “if, as, and when” basis subject to the *Bangs* formula. *Id.* The husband appealed, and the Court of Appeals granted certiorari before consideration in this Court. *Id.* at 173.

The Court of Appeals held:

[I]n a divorce proceeding, a trial judge is preempted by federal law from dividing Social Security benefits (including its hypothetical value) directly or by way of an indirect offset when determining the equitable distribution of marital property; . . . on the basis of the evidence presented, a judge must consider a party’s actual or anticipated Social Security benefits as a relevant factor under F.L. § 8-205(b) when determining whether to grant a monetary award to adjust the equities and rights of the parties concerning marital property.

*Id.* at 173. Thus, a trial court is obligated to consider any relevant evidence bearing upon a party’s entitlement to Social Security benefits in exercising its discretion vis-à-vis a monetary award. Because it was clear from the trial court’s ruling that it had not considered Social Security benefits as a factor before making an equitable division of the parties’ retirement accounts, the Court vacated the divorce judgment and remanded for the trial court to make a “general consideration of Social Security benefits[.]” *Id.* at 197.

We return to the case at bar. In this case, unlike in *Jackson*, the trial court did explicitly consider Husband’s and Wife’s entitlement to Social Security benefits in assessing Husband’s request for alimony, the denial of which is not challenged on appeal, *and* in making an equitable division of marital property. The court reasoned as follows:

[Husband] asks the court to consider the fact that none of his tenure with the Maryland State Police (MSP) counts

toward the forty quarter minimum necessary to qualify for Social Security benefits, whereas [Wife]’s employers have consistently made the employer contributions and payroll deductions necessary for her to enjoy this benefit. The court is prohibited under federal preemption rules from doing any quantitative offset for Social Security benefits in apportioning other retirement benefits. The court is required to consider the availability (or unavailability) of this benefit in its broad consideration of the equities pursuant to [Family Law] § 8-205(b)[.] *Jackson v. Sollie*, 449 Md. 165 (2016). As stated in the Social Security benefit discussion above<sup>9</sup>, [Husband] has twenty qualifying quarters from his five years in the U[S]MC, additional quarters since his retirement from the MSP, and twelve years until retirement age in which to log the remaining required quarters to qualify in his own right. He also has the potential to opt for a Social Security benefit at [Wife’s] level based on the length of the marriage. By the court’s examination of his employment history, [Husband] may already have twenty-eight of the required forty quarters, with the possibility of an additional eight if his BCPD service qualifies. Under the totality of these circumstances, [Husband] is not at an unfair deficit regarding the Social Security benefit which would alter the balance in the consideration of a monetary award.

Husband asserts that the court should not have considered the possibility that he would earn the required credits given his testimony that he planned to retire due to his health issues. We disagree. The court found that Husband was able to perform sedentary work, including his then current job, and thus was not precluded from continuing in the workforce:

While the court acknowledges [Husband]’s testimony that he would prefer to be fully retired due to his various health conditions, the court notes that these health concerns do not prevent [Husband] from currently maintaining lucrative full-

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<sup>9</sup> The court was referencing its discussion of this issue in the section of the opinion dealing with alimony.

time employment. His skills and experience as a former police officer have enabled him to work in related fields without the physical demands of active police work.

This finding was not clearly erroneous as it was supported by Wife’s testimony and the evidence that Husband had worked in his current position for nearly a year. The court further noted that there was evidence that Husband was “able to ride his motorcycle for pleasure and to attend all day outings to Ravens’ football games, which begin at nine in the morning and do not conclude until late in the evening.” It reasoned that if Husband “was able to engage in the activities, he [was] able to work in an office setting.”

Further, in *Jackson* the husband was one year away from retirement age (though he was planning to continue working beyond age 62) and the evidence was undisputed with respect to his entitlement to Social Security benefits. Here, Husband was just 50 years old and the evidence was unclear as to how many quarters he had earned towards his eligibility for Social Security benefits. The court was not obligated to credit Husband’s testimony that he had not earned enough quarters to qualify for Social Security benefits or that he was unable to continue working.

Even if Husband chose not to continue working, however, the court found that his monthly income, even accounting for a 50 percent reduction in his pension payment, was more than sufficient to cover his monthly expenses. These findings were supported by Husband’s testimony and his financial statement. Upon Wife’s retirement, Husband’s income would increase by reason of his entitlement to a 50 percent share of her pension.

In sum, the trial court considered Husband’s actual and anticipated Social Security benefits, found that he could continue working should he desire to earn his 40 credits, but that even if he did not, this was not a significant factor warranting an uneven division of the parties’ marital property. Considering the inconclusive evidence on this issue, the court amply addressed this factor consistent with *Jackson*. The trial court did not abuse its broad discretion in so ruling and we shall affirm the judgment of divorce. *See Nouri v. Dadgar*, 245 Md. App. 324, 342 (2020) (explaining that an appellate court “‘may not substitute [its] judgment for that of the fact finder, even if [it] might have reached a different result,’ absent an abuse of discretion” (quoting *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007))).

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