

Circuit Court for Anne Arundel County
Case No. C-02-FM-19-003660

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 385

September Term, 2021

MATTHEW SCOTT DAVIS

v.

SARAH RUTH DAVIS

Graeff,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: July 25, 2022

*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.

This matter stems from a divorce and child custody proceeding in the Circuit Court for Anne Arundel County. The appellee/cross-appellant, Sarah Ruth Davis¹ (“Wife”) filed a complaint for absolute divorce against the appellant/cross-appellee, Matthew Scott Davis (“Husband”). Husband filed a counter-complaint for absolute divorce against Wife. After the trial in April 2021, the court entered a judgment of absolute divorce, determining custody rights, alimony, and distribution of marital property. Husband appeals² and Wife cross-appeals.³ We have consolidated and rephrased the questions they presented as follows:

¹ Ms. Davis spells her name as SarahRuth, but it is entered as Sarah Ruth in the case based on Appellant’s brief.

² Husband phrased his questions presented as follows:

1. Whether it was abuse of discretion for providing the appellant less time with the two (2) younger children than what was ordered at the *pendente lite* order[.]
2. Whether it was abuse of discretion to award appellee tie-breaker authority for decisions related to the two (2) younger children[.]
3. Whether it was abuse of discretion for the amount of alimony and having alimony be indefinite[.]
4. Whether it was abuse of discretion for awarding attorney’s fees to the appellee[.]

³ Wife rephrased Husband’s questions presented and presented additional questions as follows:

1. Did the trial court abuse its discretion in ordering Appellee’s indefinite alimony be reduced after three years from \$2,100.00 to \$100.00 per month?
2. Did the trial court fail to make necessary findings, and err in the findings it did make, regarding the parties’ respective property interests, ultimately resulting in its erroneous denial of a marital award to Appellee?
3. Did the trial court abuse its discretion in ordering split physical custody of the parties’ minor children with mirrored access schedules for the children and non-custodial parent?

- I. Did the court err or abuse its discretion in ruling on physical custody and legal custody?
- II. Did the court err or abuse its discretion in granting alimony to Wife?
- III. Did the court err or abuse its discretion in declining to grant a monetary award to Wife?
- IV. Did the court err or abuse its discretions in granting attorney’s fees to Wife?

For the reasons set forth below, we shall affirm in part and vacate in part the judgment of the circuit court and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married for twenty-three years. They have five children: V. (born in 2002), L. (born in 2004), A. (born in 2006), N. (born in 2009), and K. (born in 2012). Both parties were serving in the military when they met. Wife was honorably discharged and spent most of the marriage as a full-time stay-at-home parent. Husband is a licensed physician’s assistant, earning over \$160,000 per year in gross income. Wife earns about

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4. Did the trial court abuse its discretion in awarding each party legal “tie-breaker” for the minor children in their primary physical custody?
 5. Did the trial court abuse its discretion in awarding an excessive amount of alimony?
 6. Did the trial court abuse its discretion in awarding indefinite alimony despite the lack of dispute regarding appellant’s employment income being over 18 times more than the Appellee’s, who had primarily been a stay-at-home parent for the parties’ 23 year marriage?
 7. Did the trial court abuse its discretion awarding Appellee \$40,000.00 as a contribution towards her attorney’s fees after considering the statutory factors?

\$800 per month in gross income in her Veterans Affairs disability pay and from special education consulting fees.

Wife has medical conditions—including Lupus, chronic kidney disease, and migraines—that impact her ability to work. Wife testified that she planned to begin a four-year seminary program that would allow her to earn \$30,000 per year upon completion. Wife also has her MBA, but she testified that her current medical conditions prevent her from taking advantage of that degree.

The parties separated in September 2019. Both parties testified to circumstances that led to the breakdown of their marriage. Husband testified about an “inflexibility to the communications” and increasing tensions in the marital home. Wife corroborated the communication difficulties and stated that Husband had used demeaning language towards her. Wife testified that, during an argument, Husband “did a shoulder check, where he walked by [Wife] and used his shoulder to impact [Wife’s] shoulder[.]”⁴ Husband testified that the contact was accidental.

During the divorce litigation, the parties sold the marital home and equally divided the proceeds. The *pendente lite* order granted Husband primary physical custody of L. and granted Wife primary physical custody of the three youngest children (A., N., and K.). In July 2020, A., who was then fourteen years old, took an Uber to Husband’s house and has remained there.

⁴ Wife ultimately decided to contact the police about this incident, and Husband was charged with assault. Husband accepted the State’s offer to stet that case.

During the four-day trial in April 2021, many pages of emails and text messages between the parties were entered into evidence, detailing their various disagreements and inability to resolve disputes without attorneys or the court.

At the end of the trial, the court granted the parties an absolute divorce.⁵ As to the circumstances surrounding their estrangement, the court found as follows:

I'm going to basically call that a standoff. The Court thinks that each of the parties could have been more committed and more cooperative and done more to help make the marriage survive. But that each of them has some faults which has contributed to this. The Court doesn't think the domestic violence incident was a huge thing although obviously it was very disturbing to Ms. Davis and Mr. Davis came to understand how it could disturb her as much as it did.

The court awarded Wife modifiable alimony in the amount of \$2,100 per month for three years and \$100 per month after that indefinitely. Wife was awarded primary physical custody of their two youngest children (N. and K.), and Husband was awarded primary physical custody of the two older minor children (L. and A.). The parties were awarded joint legal custody of the minor children and each party was awarded tiebreaker authority for the children in their primary physical custody. The court granted Husband sole possession of the parties' jointly titled 2007 Toyota Tundra, which the court valued at about \$7,000. The court required Husband to pay \$40,000 of Wife's attorney's fees.

We will supply additional facts as needed in the discussion of the questions presented.

⁵ During the trial, the parties announced that they reached a settlement as to the division of Husband's military pension: Wife would receive 45% of Husband's military pension and the maximum former spouse survivor benefit.

I. Custody Determinations

Standard of Review

We review child custody determinations using three interrelated standards of review, which we have described as follows:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). The abuse of discretion standard recognizes “the trial court’s unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.” *Santo v. Santo*, 448 Md. 620, 625 (2016) (quotation marks and citation omitted). An abuse of discretion is “when no reasonable person would take the view adopted by the . . . court[,]” or “when the court acts without reference to any guiding rules or principles[,]” or when “the court’s ruling is clearly against the logic and effect of facts and inferences before the court[.]” *Id.* at 625-26 (cleaned up). In all custody and visitation determinations, the best interest of the child is the overarching consideration. *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

Contentions

Husband contends that the court abused its discretion by giving him less access with the two younger minor children than the *pendente lite* order had provided, and by awarding

Wife tiebreaker authority for decisions about the two younger children. Wife contends that the court properly exercised its discretion in making its physical custody and legal custody determinations.

Discussion

Husband challenges the trial court’s determinations on both physical custody and legal custody. “Physical custody . . . means the right and obligation to provide a home for the child and to make’ daily decisions as necessary while the child is under that parent’s care and control.” *Santo*, 448 Md. at 627 (quoting *Taylor v. Taylor*, 306 Md. 290, 296 (1986)). The parent with whom a child spends a majority of his or her time has “primary physical custody” of the child. *Reichert v. Hornbeck*, 210 Md. App. 282, 345-46 (2013). By contrast, “[l]egal custody carries with it the right and obligation to make long range decisions’ that significantly affect a child’s life, such as education or religious training.” *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 296).

In awarding custody, “the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child.” *Taylor*, 306 Md. at 301-02. Thus, “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion.” *In re Yve S.*, 373 Md. at 585-86 (quoting *Davis v. Davis*, 280 Md. 119, 125 (1977)). But “there are numerous factors the [trial] court must consider and weigh in its custody determination.” *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 253 (2021).

In *Montgomery Cty. Dep't of Soc. Serv's v. Sanders*, 38 Md. App. 406 (1977), this Court set forth the following non-exhaustive list of factors for consideration:

- 1) fitness of the parents;
- 2) character and reputation of the parties;
- 3) desire of the natural parents and agreements between the parties;
- 4) potentiality of maintaining natural family relations;
- 5) preference of the child;
- 6) material opportunities affecting the future life of the child;
- 7) age, health and sex of the child;
- 8) residences of parents and opportunity for visitation;
- 9) length of separation from the natural parents; and
- 10) prior voluntary abandonment or surrender.

38 Md. App. at 420 (citations omitted). We explained that a trial court considers all the above factors, but that “it will generally not weigh any one to the exclusion of all others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor[.]” *Id.* at 420-21.

In *Taylor*, the Court of Appeals concluded that an award of joint custody is an appropriate “option available” to the trial court in its “overall consideration of a custody dispute.” 306 Md. at 303. The Court stated that when considering joint custody, “the factors that trial judges ordinarily consider in child custody cases remain relevant,” including those set forth in *Sanders*. *Id.* at 303 & n.10. And the Court identified additional non-exhaustive factors, partially overlapping with the *Sanders* factors, that are “particularly relevant to a consideration of joint custody[:.]”

- 1) Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child’s Welfare;
- 2) Willingness of Parents to Share Custody;
- 3) Fitness of Parents;
- 4) Relationship Established Between the Child and Each Parent;

- 5) Preference of the Child;
- 6) Potential Disruption of Child’s Social and School Life;
- 7) Geographic Proximity of Parental Homes;
- 8) Demands of Parental Employment;
- 9) Age and Number of Children;
- 10) Sincerity of Parents’ Request;
- 11) Financial Status of the Parents;
- 12) Impact on State or Federal Assistance;
- 13) Benefit to Parents;
- 14) Other Factors.

Id. at 303-311. Although “none [of those factors] has talismanic qualities,” the Court emphasized that the first consideration—“the capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare”—“is clearly the most important factor” in determining whether joint legal custody is appropriate. *Id.* at 303-04 (cleaned up).

In *Azizova v. Suleymanov*, we observed that “[i]t is well established that custody determinations are to be made by a careful examination of the specific facts of each individual case[,]” and that “[c]ourts possess wide discretion in determining questions concerning the welfare of children,” based on the best interests standard. 243 Md. App. 340, 344-45 (2019). Although the trial court is not limited in the factors it can consider in applying that standard, we noted that this Court and the Court of Appeals had identified a non-exhaustive set of twenty-one factors “that a court must consider when making custody determinations,” drawn mainly from *Sanders* and *Montgomery* and collected in *Fader’s Maryland Family Law*. *Azizova*, 243 Md. App. at 345-46 (citing Cynthia Callahan & Thomas C. Ries, *Fader’s Maryland Family Law* § 5-3(a), at 5-9 to 5-11 (6th ed. 2016)). Ultimately, however, those factors simply serve as analytical tools to guide a circuit court’s

decision of what is in the best interests of the children. “In all family law disputes involving children, the best interests of the child standard is always the starting—and ending—point.” *Azizova*, 243 Md. App. at 349 (quoting *Boswell v. Boswell*, 352 Md. 204, 236 (1998)).

Here, in addressing the issue of physical custody, the court considered the relevant factors and reached the following determinations: (1) Husband and Wife are fit parents; (2) both parents have a good reputation; (3) the older minor children (L. and A.) preferred to reside with Husband, while the younger children (N. and K.) expressed no clear preference to reside with either parent; and (4) both parents could provide for their children. In short, the children’s living situation at the time of the proceeding was working:

By all the description that I have heard of the functioning level of these children in terms of how they are doing in school, how they are getting along socially, how they operate in the world . . . both [K.] and [N.] are really very happy, bubbly, high functioning kids. They get along well with everyone, they have lots of friends. So the Court thinks that whatever is happening for them now seems to be working out pretty well. **[E. 1219]**

The court presented a sound and reasoned approach to the award of physical custody. Wife would have primary physical custody of the two youngest children and Husband would have primary physical custody of the two older minor children:

The Court believes that it . . . it approximates the status quo that the parties have sort of stumbled their way towards and would be in the best interest of the children to provide that the primary residential custody during the school week -- during the weekdays -- of the two younger children would be with their mother. With the two older, minor children would be with their dad. That there should be alternating weekends so that the children are always together on the weekends. One of those weekends would be all of the children together at their mom’s, the other weekend the next weekend would be all of the children together at their dad’s. And we would ask both parents to encourage all of the children to go and enjoy that spending every weekend together.

Currently I think there have been some Wednesday visits. The Court would think it would make sense to provide that there continue to be Wednesday at least dinner time visits and would ask if it's possible with the children's extracurricular activities and appointments and so forth that we try and get all of the children together for those Wednesday dinner visits, wherever they are. And again the Court would think it would make sense to alternate those so that one Wednesday visit would be at mom's, the next Wednesday visit would be at dad's, and the parties can calendar that and put it on a schedule.

Turning to legal custody, the court recognized that the parents had trouble communicating, but that joint legal custody with a tiebreaker was still appropriate. To that end, the court determined that each parent would have tiebreaker authority for the children in their primary physical custody: "The Court would think it makes sense to say that the parent who has the children living primarily with him or her would be the tiebreaker. So that would make [Wife] the tiebreaker for the smaller children and [Husband] the tiebreaker for the two older minor children."

Husband argues on appeal that the court was overly concerned with avoiding further litigation when the court awarded Wife tiebreaker authority for the children in her primary physical custody. However, the court made detailed findings about the need for both parties to have tiebreaker authority. The court noted the friction between the parties and their communication issues. Tiebreaker authority "pragmatically reflects the need for *some* decision to be made *for the child* when parents themselves cannot agree." *Santo*, 448 Md. at 634-35. Indeed, the court's decision to grant tiebreaker authority to each parent was practical. To be sure, the court was concerned about avoiding further litigation between the parties because of their past inability to resolve their disputes without attorneys or the

court. But the record makes clear that the court’s primary concern was the best interests of the children. We perceive neither error nor an abuse of discretion in granting each party tiebreaker authority for the children in their primary custody.

Husband also argues that the court erred in reducing his access with the younger minor children from the *pendente lite* order, which had awarded Wednesday overnight visits, instead of Wednesday evening dinner visits, to Husband. The court, however, was not required to order the same access schedule as the *pendente lite* order. As the court noted, the parties’ custody arrangements had evolved since the *pendente lite* order. As outlined above, the physical custody arrangement was based on the court’s overall determinations about the best interests of the children as of the hearing. Again, we perceive neither error nor an abuse of discretion in the court’s determination.

For these reasons, we shall affirm the court’s custody determinations.

II. Alimony

Standard of Review

We “accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Tracey v. Tracey*, 328 Md. 380, 385 (1992). We will disturb a trial court’s ruling only when “no reasonable person would take the view adopted by the trial court,” or when “the ruling is clearly against the logic and effect of facts and inferences before the court.” *Reynolds v. Reynolds*, 216 Md. App. 205, 219 (2014) (cleaned up). But “we may disturb an award of alimony if

we conclude that . . . the . . . court abused its discretion or rendered a judgment that is clearly wrong.” *Brewer v. Brewer*, 156 Md. App. 77, 98 (2004) (cleaned up).

Contentions

Husband contends that the court “erred” in awarding Wife indefinite alimony. According to Husband, Wife failed to meet her burden of proof to show that she was entitled to any alimony. Wife contends that indefinite alimony is appropriate under these circumstances, but that the court “erred” in ordering the drastic reduction from \$2,100 per month to \$100 per month after three years.

Discussion

“[A]limony awards, though authorized by statute, are founded upon notions of equity[.]” *Tracey*, 328 Md. at 393. “Because the purpose of alimony is the rehabilitation of the economically dependent spouse, Maryland favors the provision of rehabilitative alimony for a fixed term to assist the dependent spouse in becoming self-supporting.” *Kaplan v. Kaplan*, 248 Md. App. 358, 371 (2020) (cleaned up). But indefinite alimony is appropriate when fairness requires it. *Boemio v. Boemio*, 414 Md. 118, 143-44 (2010). It should be reserved, however, for exceptional circumstances, such as when “the standard of living of one spouse will be so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court.” *Karmand v. Karmand*, 145 Md. App. 317, 338 (2002).

By statute, the court must consider the following factors when determining alimony and its duration:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;
- (4) the duration of the marriage;
- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (6) the circumstances that contributed to the estrangement of the parties;
- (7) the age of each party;
- (8) the physical and mental condition of each party;
- (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
- (10) any agreement between the parties;
- (11) the financial needs and financial resources of each party, including:
 - (i) all income and assets, including property that does not produce income;
 - (ii) any award made under §§ 8-205 and 8-208 of this article;
 - (iii) the nature and amount of the financial obligations of each party; and
 - (iv) the right of each party to receive retirement benefits; and
- (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

Md. Code Ann., Fam. Law (“FL”) § 11-106(b). Although a formal checklist is not required, the trial court must demonstrate its consideration of all necessary factors. *Simonds v. Simonds*, 165 Md. App. 591, 604-05 (2005) (citing *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999)). After considering the above factors a court may award indefinite alimony upon finding that:

- (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
- (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

FL § 11-106(c). “In cases involving dramatic income disparities after long marriages, this Court has found an abuse of discretion in a trial court’s failure to award indefinite alimony.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 196 (2016).

The parties were married for twenty-three years. As to caretaking for the children, the court found that it was “far and away more [Wife’s] responsibility” than the Husband’s. As to the circumstances contributing to the estrangement of the parties, the court considered that to be a “standoff.” Husband’s gross income was over \$160,000 per year. Wife earned about \$800 per month from her Veterans Affairs disability pay and as a special education consultant. The court concluded that Wife’s medical issues limit her ability to work but that she could anticipate earning about \$30,000 per year when she graduated from a seminary program.

Husband claims that the alimony award was erroneous because, without context, Wife had received about \$50,000 in bank account deposits during the litigation. A review of the record explains the sources of those deposits. First, the parties sold their home in September 2020 and equally divided the proceeds, with each receiving about \$9,000. The parties received an escrow refund of about \$8,400, all of which was first deposited into Wife’s account, half of which she transferred to Husband. Wife cashed out the entirety of her IRA (about \$23,000) in March 2020 to help cover her living expenses and attorney’s

fees.⁶ Unlike employment income, there is no expectation that these sources of income will recur on any regular basis.

To bolster his argument that the court’s alimony award was improper, Husband points to Wife’s purchase of electronics—an iPhone, iPad, and a computer— for their children during the divorce litigation. The evidence established, however, that Wife used tax stimulus money for the purchase of the iPhone. And, moreover, we are not persuaded that these purchases for their children somehow rendered the alimony award improper.

Relying on *Hiltz v. Hiltz*, 213 Md. App. 317 (2013), Husband argues that the evidence at trial was insufficient for the court to find that Wife is disabled for alimony purposes. In *Hiltz*, the trial court granted the appellee indefinite alimony based on her own testimony and status as a social security disability benefits recipient. *Id.* at 331. On appeal, the relevant question presented was “whether an SSA disability award letter, by itself, and the proponent’s own testimony regarding his or her impairment, are prima facie evidence that the proponent is, in fact, unable to earn any income through work-related activity because he or she maintains a permanent and total disability.” *Id.* at 342. We held that “no rational basis exists to support an automatic finding that every social security disability recipient *completely lacks the capacity to work or earn any income.*” *Id.* at 342-43 (emphasis added).⁷

⁶ There was also evidence that Wife received money from GoFundMe accounts, and she received monetary assistance from family and friends to aid her and the children’s expenses after the parties separated.

⁷ In *Hiltz*, this Court recognized the limited applicability of its holding: “We do not foreclose the possibility, however, of instances where the party alleging the disability and

Husband’s reliance on *Hiltz* is misplaced. First, *Hiltz* involved a narrow question: whether an individual’s own testimony and evidence of a social security disability allow for a prima facie finding that the individual cannot earn any income. And, unlike the appellee in *Hiltz*, Wife did not claim that she was completely unable to work. Indeed, Wife was working part-time at the time of the trial. As Husband’s counsel conceded while arguing against an indefinite alimony award in the trial court, there was a great disparity between Wife’s income and Husband’s income regardless of the parties’ dispute over the amount of Wife’s income: “Mr. Davis also understands that even if Your Honor were to impute some income, there is still a disparity of—of income between the parties, and alimony is appropriate.” Second, Wife’s evidence was not limited to her Veterans Affairs disability income and her testimony. The parties’ oldest child (V.) testified to her observations of the effect of migraines and Lupus flare-ups on Wife. The evidence presented at trial was sufficient to support a rational finding that Wife’s ability to earn money was negatively impacted by her medical conditions.

That said, the timing of the trial court’s drastic decrease in the indefinite alimony award appears to lack evidentiary support. The court ruled that the testimony established that Wife could complete the seminary program within three years:

I think the Court heard that Ms. Davis could complete the seminary program in three to four years and so starting with the presumption that she could do it sooner rather than later the Court would say three years. And after that the Court would find it is appropriate to reduce it drastically but continue \$100 per month.

inability to work is readily apparent, without the need for expert testimony and extensive medical reports. But such apparent impairment is not present in the instant case.” 213 Md. App. at 344.

But it was uncontroverted at trial that Wife’s seminary program would last four years. Therefore, we vacate the alimony award and remand to the court for further proceedings. *See St. Cyr*, 228 Md. App. at 190. (stating that remand is required “if a court makes a projected income finding that does not appear to be based on reasonable inferences drawn from competent evidence.”).

III. The Lack of a Monetary Award

Standard of Review

The standard of review for the division of marital property and monetary awards is as follows:

First, we utilize the “clearly erroneous” standard to the court’s determination of what is, and what is not, marital property because “[o]rdinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000); *see also* Md. Rule 8-131(c). Factual findings that are supported by substantial evidence are not clearly erroneous. *Collins v. Collins*, 144 Md. App. 395, 409 (2002). Second, as to the court’s decision to grant a monetary award, and the amount thereof, we apply an abuse of discretion standard of review. *Gallagher v. Gallagher*, 118 Md. App. 567, 576 (1997). Within that context, “we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.” *Innerbichler*, 132 Md. App. at 230.

Richards v. Richards, 166 Md. App. 263, 271-72 (2005) (cleaned up). Although “[t]he decision whether to grant a monetary award is generally within the sound discretion of the trial court[,]” the court “must exercise its discretion in accordance with correct legal

standards.” *Alston v. Alston*, 331 Md. 496, 504 (1993). *Accord Hart v. Hart*, 169 Md. App. 151, 161 (2006).

Contentions

Wife contends that the court erred in valuating the parties’ property and in failing to grant a monetary award to Wife under FL § 8-205. She argues that the trial court “neglected to make any findings as to the marital versus non-marital nature of” Husband’s real property in Alabama that he inherited. She also claims that the court erred in valuating certain items, including a Toyota Tundra and the amount of money in the parties’ bank accounts. In Wife’s view, the court improperly compensated for the lack of a monetary award by increasing Wife’s alimony award. Husband contends that the circuit court did not err as to its marital property findings. He argues that the accounts were properly considered, that the value of the bank accounts and the Toyota are “basically the same,” and that there was no testimony as to the value of the Alabama property.

Discussion

Determining whether to grant a monetary award involves a three-step procedure. *See* FL §§ 8-203, -204, -205; *Flanagan v. Flanagan*, 181 Md. App. 492, 519 (2008). First, the court must determine whether each disputed piece of property is marital or non-marital. FL §§ 8-201(e)(1); 8-203. Second, it must determine the value of all the marital property. FL § 8-204. Third, it must decide whether the division of marital property according to title would be unfair. Any inequity “created by the way in which property acquired during marriage happened to be titled” may be rectified by a monetary award. *Doser v. Doser*, 106

Md. App. 329, 349 (1995); *see also* FL § 8-205(a). As part of the final step, the court must consider the eleven factors enumerated 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) 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.

Here, the court was mistaken about Wife’s valuation of the Toyota:

The Tundra the Court has heard and I believe it’s also on a joint marital property statement which is escaping me at the moment, the parties have different estimates for. I believe that . . . [Wife’s] estimate of it in the financial statement [was] \$4,892. And [Husband’s] was \$7,000. So he puts greater value on it than she did in that amended financial statement.

Four thousand eight hundred ninety-two dollars represented only her claimed one-half interest. On Wife’s amended financial statement, she claimed the Toyota was valued at

\$9,784, and she testified that she believed that the Toyota was worth “anywhere from Eighty-Three to Ten Thousand” dollars.

In addition, the court did not make findings about the real property in Alabama that Wife claimed was partly marital property. As Wife’s appellate counsel noted at oral argument before this Court, the Alabama property was listed on the parties’ Md. Rule 9-207 joint statement, which was admitted into evidence. On that statement, Husband and Wife disagreed about whether the Alabama property was marital. Husband asserted that the property was non-marital and titled jointly with his sister as an inheritance. Husband claimed that the property was worth \$75,000, while Wife asserted that its value was “unknown[.]”

At trial, Husband testified that his father gifted the Alabama property to Husband and Husband’s sister. Wife testified that marital funds were used to pay the taxes on the Alabama property:

[Husband’s father] asked us to pay the taxes on the land, and I want to say that that took place around 2011, but my memory is fuzzy; I would have to have some documents to refresh my memory on that. And then we’ve paid the land -- the tax on the land from marital funds since that point.

At some point, [Husband’s father] had gifted the tax as a Christmas gift. At one point, it was to me, per the e-mails that I was able to pull up, and so there’s some level is marital interest, however minimal, in that way.

The court failed to determine whether the Alabama property was all non-marital property or whether some portion was marital in its monetary award analysis. On the Md. Rule 9-207 joint statement, which was admitted into evidence, Husband asserted a value of \$75,000. No one testified to a different value and Wife presented no substantive evidence

to establish any material marital interest in the property. In short, we are not persuaded that the failure to value the Alabama property negatively affected the overall marital property award analysis.

Wife also contends that the court erroneously computed the amount of money in Wife’s bank accounts. Wife argues that the court double counted funds that were transferred between Wife’s various accounts. The court stated that Wife had “approximately I think \$7,000 more in the bank than Mr. Davis did.” Wife claims that the court overlooked her testimony that—despite the account statement that was entered into evidence—her Sandy Springs business account lacked funds at the time of trial.

We are uncertain how the trial court reached its determination as to the difference between the funds in the parties’ bank accounts because the court did not identify its basis or conclusion. For that reason, we will reverse for reconsideration of the marital award.⁸

Because a remand on this issue will bring other determinations into play, we want to be clear that our reversal on the marital property award relates to the car and the bank accounts, and that resolution of those issues should not significantly change the ultimate award. Hopefully they can be resolved without protracted proceedings.

IV. Attorney’s Fees

Standard of Review

⁸ We appreciate the trial court’s difficulty in resolving this issue because of unclear records, testimony, and argument presented by the parties at trial on this issue. However, we cannot perform our review function unless we are able to identify a basis in the record for the trial court’s finding.

“We review an award of attorney’s fees in family law cases under an abuse of discretion standard.” *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017) (citing *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002)). “An award of attorney’s fees will not be reversed unless a court’s discretion was exercised arbitrarily or the judgment was clearly wrong.” *Petrini v. Petrini*, 336 Md. 453, 468 (1994)).

Contentions

Husband contends that the court erred in awarding attorney’s fees to Wife. He argues that his financial situation and the justification for his litigation precluded the court’s award of attorney’s fees. Wife contends that the court considered the relevant statutory factors and properly exercised its discretion when it awarded her attorney’s fees.

Discussion

As indicated above, the resolution of the monetary award on remand requires that we also vacate the award of counsel fees. *Malin v. Mininberg*, 153 Md. App. 358, 433 (2003). We will, however, address this issue to assist the court and the parties on remand.

A court can award attorney’s fees to a party in a divorce action or in an action for alimony after considering (1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the action. FL § 7-107(c) and § 11-110(c). And when a person applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties, a court may award to either party the costs and counsel fees that are just and proper under all the circumstances. FL § 12-103(a). That said, a court must consider: “(1) the financial status

of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.” FL § 12-103(b). An award of attorney’s fees in a family law case “must be based upon the statutory criteria and the facts of the case.” *Broseus v. Broseus*, 82 Md. App. 183, 199 (1990).

Here, the court explained its award of attorney’s fees as follows:

The last item is the attorney’s fees. The Court as we’ve discussed has seen Exhibits 23 and 47 indicating a total of about \$63,000 in counsel fees for [Wife], Exhibit GG, \$44,000 and change for [Husband] for a total of, again, over \$100,000.

The Court recognizes there are three statutory factors that are to be considered under Maryland law. Which are the parties respective needs, resources, and the substantial merits of the claims or defenses . . . that are asserted.

The Court in this case thinks that there has been -- well, I’m going to incorporate in terms of the needs and resources the discussion that I have already made about the parties’ finances. In terms of the substantial merits of claims or defenses, the Court recognizes that there has been substantial merit on both sides.

That statutory factor doesn’t mean who won or lost. If I did look at the win or loss part of it the Court would take into account that [Wife] did not prevail on either of the contempts but that there was not a complete lack of merit.

And the Court also takes into account the hourly fees. The Court recognizes that [Husband] picked a more economical attorney in terms of hourly fee than [Wife] did.

Putting all of these things together, the Court believes that it is appropriate to provide a monetary award or contribution from [Husband] to [Wife] in the amount of \$40,000. And the Court recognizes that he does not have \$40,000 in his pocket. The options for him might be to try to finance this to pay it off at once and refinance all of his obligations to put them all together into one sum. Or the Court could enter a judgment which he might make payments on over the course of time

Husband argues that the court erred in failing to recognize that the parties were essentially on equal footing financially. But as we explained above in the context of alimony, the record does not support that argument. For example, Husband’s gross income was over \$160,000 per year. Wife earned about \$800 per month. Husband argues that the court erred in awarding attorney’s fees because he succeeded on two contempt motions that Wife filed against him. But Wife’s requests for custody, access, and support were ultimately granted in whole or in part. And substantial justification is “measured by the issues presented and the merits of the case[.]” *Davis v. Petito*, 425 Md. 191, 202 (2012).

The bottom line is that the court considered the relevant statutory factors, made detailed findings, and properly exercised its discretion in awarding attorney’s fees to Wife. In short, we perceive neither error nor an abuse of discretion in the court’s award of attorney’s fees. But because we are remanding this case because of the indefinite alimony and monetary awards, we will, as we will explain below, also vacate the order regarding attorney’s fees.

CONCLUSION

The remand of this case for reconsideration of the alimony award and the monetary award impacts other portions of the judgment. A court’s determinations about alimony, child support, monetary awards, and counsel fees involve overlapping evaluations of the parties’ financial circumstances. In other words, the factors “are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other.”

Turner v. Turner, 147 Md. App. 350, 400 (2002). Because one of the awards is being vacated for reconsideration, all of the awards can be reconsidered. *Id.* at 401.

In sum, we affirm the trial court’s determination as to physical and legal custody of the parties’ children. We are vacating the alimony award and remanding for a re-evaluation of the timing and reduction of the indefinite alimony award. We are vacating the monetary award and remanding for a re-evaluation of that award. When these issues are resolved, the court should reevaluate the parties’ respective child support obligations and then rule on attorney’s fees in light of any revised findings and rulings.

Until the circuit court completes the proceedings on remand, the present orders for alimony and child support will continue to have “the force and effect of a *pendente lite* award.” *Simonds*, 165 Md. App. at 613. To the extent deemed necessary by the trial court to conduct further proceedings required by this opinion, the parties may supplement the record with additional information.

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED IN PART AND VACATED IN PART. JUDGMENT WITH RESPECT TO ALIMONY, CHILD SUPPORT, MONETARY AWARD, AND ATTORNEY’S FEES VACATED. ALIMONY AND CHILD SUPPORT PROVISIONS TO REMAIN IN FORCE AND EFFECT AS PENDENTE LITE ORDERS PENDING FURTHER ORDERS OF THE CIRCUIT COURT; JUDGMENT OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER

PROCEEDINGS CONSISTENT WITH THIS OPINION. THREE-FOURTHS OF COSTS TO BE PAID BY MATTHEW SCOTT DAVIS AND ONE-FOURTH TO BE PAID BY SARAH RUTH DAVIS.