

Circuit Court for Queen Anne's County  
Case No.: C-17-FM-21-000129

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 418

September Term, 2022

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BOBBI JO HULL

v.

BRADLEY HULL

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Wells, C.J.  
Leahy,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: January 9, 2023

\*At 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 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.

The parties to this appeal, appellant, Bobbi Jo Hull (“Wife”), and appellee, Bradley Hull (“Husband”), appeared before the Circuit Court for Queen Anne’s County to litigate issues related to the dissolution of their marriage, including divorce, modification of child custody, modification of child support, marital property, monetary award, and attorneys’ fees. Following a two-day trial, the court entered a judgment of absolute divorce. Wife raises the following three issues on appeal:<sup>1</sup>

1. Did the trial court err in calculating the monetary award?
2. Did the trial court err in granting Husband’s motion in limine?
3. Did the trial court err in calculating Husband’s income?

For the reasons discussed below, we shall affirm in part, vacate in part, and remand the child support and monetary award determinations for further proceedings in accordance with this opinion.

### **BACKGROUND**

Husband and Wife were married on January 12, 2018. They share one child, C., born on April 30, 2016. Throughout the marriage, Husband ran a business he began in 2014, Coastal Pools, LLC (“Coastal Pools”), and Wife served as the primary caretaker to

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<sup>1</sup> Wife phrases her questions presented as follows:

1. Did the trial court err when calculating the marital award?
2. Did the trial court err when it required [Wife] to prove the premarital value of an otherwise marital asset subject to division?
3. Did the trial court err when calculating [Husband’s] income for the purposes of child support?

C. The marriage deteriorated due in part to what the trial court described as “Husband’s alleged abusive behavior towards Wife.” In February of 2020, the parties separated, and on December 28, 2020, they were granted a limited divorce.<sup>2</sup>

In April of 2021, Husband filed a complaint for absolute divorce. Wife thereafter filed a countercomplaint for absolute divorce. Through the course of discovery, Wife sought business and financial records relating to Coastal Pools. As a result, Husband filed a motion to dismiss Wife’s claims to the business, or in the alternative, to limit discovery related to the “value as of the date of marriage and as of the date of separation[.]” In support, Husband asserted that Coastal Pools was a premarital asset which he started nearly four years prior to the parties’ marriage, and that Wife had failed to produce any evidence that it was marital property.

In October of 2021, the court issued a memorandum and order regarding several then-pending motions. On Husband’s motion to dismiss, the court ordered:

**Motion to Dismiss:** This motion seeks to limit the marital property issues, *inter alia*. [Husband] contends that [Wife] has no claim to [Husband]’s premarital business, Coastal Pools, LLC. Additionally, [Husband] seeks “limited remaining discovery” and counsel fees. Among the requests, the Court does agree that relevant dates for [Wife’s] valuation [of the business] are the value as of the date of marriage, and the date of separation, *and as of the date of trial*. The Court set a trial date as requested but notes that the corporate records are subject to review and use at trial by [Wife] even if “confidential and subject to a protective order.”

In February of 2022, the court held a two-day trial on the merits, where Husband sought to preclude testimony from Wife’s expert regarding the current value of Coastal

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<sup>2</sup> The parties were granted a limited divorce in a separate proceeding before the circuit court, Case No. C-17-FM-20-000076.

Pools. Husband asserted that Wife had “failed to meet [her] minimum burden of proof of establishing that there is any marital component whatsoever” to Coastal Pools, and that Wife “did not provide, through her expert, a number to value the business as of the date of marriage and, therefore, there is no evidence to suggest there is any portion of Coastal Pools that would be under this Court’s jurisdiction and subject to division in this case.”

Wife responded that Coastal Pools had grown in value since the date of their marriage, and thus that it was Husband’s burden, not hers, to demonstrate what the non-marital portion of the business was. The following exchange occurred:

[WIFE’S COUNSEL]: The testimony is that [Husband] is the sole member of the LLC, that is, Coastal Pools. The testimony is that [Husband] has grown that business. The testimony is that [Husband] has expanded that business; that he has hired new employees; that he has other people that now do things. Testimony, also, is that [Husband], by his efforts, that he testified about, as far as what his responsibilities and duties are through the business, is that he is the guy. That is the business. He has a staff, of course, because he has grown his business. That demonstrates that during the marriage there is a marital portion to this asset and that that asset has grown through the course of the relationship, the marriage.

THE COURT: How do I know [it’s] grown if I don’t know what the value of it was at the time of their marriage . . . ?

[WIFE’S COUNSEL]: Because what you do is you go back and you look -- the only evidence that has been produced by [Husband] and he can’t have it both ways. He’s got to produce the documents. So the documents that we have, we have '17, '18, '19, and '20. We have four years of tax returns. The marriage was in '18. So we know from the tax returns what the business was doing in '17. Then we know what the business was doing in '18.

THE COURT: There is a difference between what the business is doing, what the gross receipts are, what the gross expenses are[,] and what the profit line is. There’s a difference between that number and what is the value of a business.

[WIFE’S COUNSEL]: I agree.

THE COURT: That's why experts are hired because the Court does not do that calculation. You all have to spoon feed me that information with your experts. Oftentimes experts disagree, so the Court has to make a determination between the experts.

[WIFE'S COUNSEL]: Right.

THE COURT: But you just cannot give me tax returns and say this tax return for 2018 represents what the business was doing; that does not give me a valuation.

The court granted Husband's motion in limine, determining that Wife had failed to meet her burden to demonstrate that the business was marital property:

THE COURT: The character of the property is in the documents that were filed with SDAT. That's the legal character of the property, which says it is all his. What your burden is to say is there is -- part of this is marital. This is the part, the date of the marriage to the date of trial. Those two would have been helpful. Date of marriage to date of separation to day of trial is even better.

[WIFE'S COUNSEL]: I don't disagree with the dates being relevant dates and helpful dates. The question becomes whose burden is it.

THE COURT: It's your[s], [Wife's counsel].

[WIFE'S COUNSEL]: Your Honor, it is not our burden to show what the non-marital portion is.

THE COURT: It is yours. I will grant the motion in limine. [Wife's expert] will not testify. Next witness.

On March 8, 2022, the court issued a judgment of absolute divorce. Therein, the court granted the parties an absolute divorce based upon their one-year separation, modified child support, declined Husband's motion to modify child custody, and made a monetary award to Husband due to Wife's extended use and possession of the marital home:

Wife was granted exclusive use and possession of the marital home in Case No: C-17-FM-20-000076, expiring June 30, 2021 or upon the sale of the home (whichever occurred first). However, Wife chose to hold-over in the marital home beyond the expiration of her period of use and possession and still continues to do so, despite the fact that Wife has been renting an alternate house for approximately 8 months. Accordingly, the Court finds that Husband is entitled to carrying costs associated with Wife’s continued use and possession. Representing one half of the mortgage plus costs associated with electric and propane, the Court finds that Wife shall pay to Husband Fifteen Thousand Seven Hundred Eighty Six Dollars and Thirty Four Cents (\$15,786.34).

The court also declined Wife’s claims to Coastal Pools and declined attorneys’ fee awards to either party. Wife filed a motion to alter or amend the judgment, which was denied.

Wifely timely noted her appeal.

#### **STANDARD OF REVIEW**

This Court has stated that “[i]t is well settled that the trial court has broad discretion in determining whether to grant a monetary award and, if so, in what amount.” *Malin v. Mininberg*, 153 Md. App. 358, 430 (2003). Thus, a monetary award will not be disturbed unless there is “a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Jenkins v. City of Coll. Park*, 379 Md. 142, 165 (2003) (quotation marks, citations, and emphasis omitted).

Further, “the admission of evidence is committed to the considerable and sound discretion of the trial court.” *Merzbacher v. State*, 346 Md. 391, 404 (1997). Accordingly, “[i]n reviewing a motion in limine, ‘we are generally loath to reverse a trial court’ unless the evidence was plainly improperly admitted or excluded under law, ‘or there is a clear

showing of an abuse of discretion.” *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 337 (2011) (quoting *Merzbacher*, 346 Md. at 404-05), *aff’d*, 429 Md. 387 (2012).

Lastly, “[t]he amount of actual income that drives the specific amount of the [child] support award under the guidelines is a factual finding that is required in every case.” *Walker v. Grow*, 170 Md. App. 255, 284 (2006). This Court will not set aside a trial court’s factual findings “unless clearly erroneous[.]” Md. Rule 8-131(c). “A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it.” *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007).

## DISCUSSION

### **I. THE COURT DID NOT ERR IN CALCULATING THE MONETARY AWARD, BUT BECAUSE WE VACATE AND REMAND THE COURT’S CHILD SUPPORT DETERMINATION, WE SHALL VACATE AND REMAND THE MONETARY AWARD.**

The court determined that in order to balance the equities between the parties, Husband was entitled to a \$15,786.34 monetary award to cover “the carrying costs he incurred on the marital home[.]” which represented “one half of the mortgage plus costs associated with electric and propane” during Wife’s hold-over of the property.

Wife does not dispute that she remained in the marital home in violation of the judgment of limited divorce, nor does she dispute the amount of carrying costs assessed against her. Instead, Wife asserts that the court “should not ignore the other factors of this case under [Maryland Code, Family Law Article (“FL”)] § 8-205(b).” Wife points to no specific factor that the court “ignore[d,]” but contends that the court erred in calculating the monetary award by failing to consider certain economic circumstances of the parties,

such as the debt on her vehicle, marital property held individually by the parties, and Husband’s missed second mortgage payments. Husband responds that the court properly relied upon each of the factors set forth in FL § 8-205(b) in determining that Husband was entitled to a monetary award, and thus that the court’s judgment should be affirmed.

The purpose of a monetary award is “to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage, strictly in accordance with its title.” *Ward v. Ward*, 52 Md. App. 336, 339 (1982). Thus, “when deciding whether to make an award, the court has broad discretion to reach an equitable result.” *Hart v. Hart*, 169 Md. App. 151, 160-61 (2006).

This Court has made clear that “[w]hen a party petitions for a monetary award, the trial court must follow a three-step procedure.” *Malin*, 153 Md. App. at 428. We described those three steps in *Innerbichler v. Innerbichler*, 132 Md. App. 207, 228 (2000) (internal citations omitted):

First, for each disputed item of property, the court must determine whether it is marital or nonmarital. Second, the court must determine the value of all marital property. Third, the court must decide if the division of marital property according to title will be unfair; if so, the court *may* make a monetary award to rectify any inequity “created by the way in which property acquired during marriage happened to be titled.” [*Doser v. Dosser*, 106 Md. App. [329,] 349 [(1995).]

In considering whether division of property will be unfair, the court must consider each of the factors set forth under FL § 8-205(b), including “any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award[.]” FL § 8-205(b)(11). The purpose of a monetary award is “to achieve



equity between the parties; it does not require an equal division of marital property.” *Randolph v. Randolph*, 67 Md. App. 577, 588 (1986).

Here, contrary to Wife’s contention, the record reflects that the court both followed the three-step procedure and went through each of the factors set forth in FL § 8-205(b). The court found Wife’s hold-over in the marital home, which resulted in Husband’s payment of over \$33,000.00 in carrying costs, of particular importance under FL § 8-205(b)(11) and determined that Husband was entitled to an award of half of those costs.

Although Wife asserts that the court abused its discretion in failing to consider the debt on her vehicle, marital property held individually by the parties, or Husband’s missed second mortgage payments, we disagree. When reviewing a monetary award, “a judge is presumed to know the law, and is not required to enunciate every factor he considered on the record, as long as he or she states that the statutory factors were considered.” *Malin*, 153 Md. App. at 429 (quotation marks and citation omitted). *See also Cousin v. Cousin*, 97 Md. App. 506, 518 (1993) (holding that the court “is not required to articulate every fact upon which [it] relies”). Instead, “[t]he application and weighing of the factors is left to the discretion of the trial court.” *Alston v. Alston*, 331 Md. 496, 507 (1993).

Here, the court plainly considered each of the relevant statutory factors, including the value of property interests of each party and the economic circumstances of each party. [E22-25] We are unpersuaded that merely because the court did not analyze the FL § 8-205(b) factors within the context of Wife’s choosing that there was an abuse of discretion under these facts. *Brewer v. Brewer*, 156 Md. App. 77, 115-16 (2004) (affirming the trial

court’s monetary award to appellee where “the trial court did consider the conduct of the parties but not in the context of [appellant]’s choosing”).<sup>3</sup>

Nonetheless, as we discuss *infra*, because the court’s award relies upon the income of the parties, and we vacate and remand the child support determination due to the court’s finding regarding Father’s income, we shall vacate the monetary award for further proceedings consistent with this opinion. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016).

## **II. THE COURT DID NOT ERR IN GRANTING HUSBAND’S MOTION IN LIMINE.**

Wife asserts that the court erred in granting Husband’s motion in limine, asserting that the court erroneously prohibited Wife from presenting evidence regarding the marital portion of Husband’s business at trial. Husband responds that the court correctly determined that Wife had failed to satisfy her burden of showing that the business was marital property.

Marital property is defined as “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). However, marital property “does not include property” that is “acquired before the marriage” or “directly traceable” to property acquired before marriage. FL § 8-201(e)(3)(i), (iv). We have stated that “[p]roperty that is initially non-marital can become marital[.]” *Innerbichler*, 132 Md. App. at 227. However, “[t]he party who asserts a marital property interest bears the burden of producing evidence

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<sup>3</sup> Nor are we persuaded by Wife’s assertion that the court’s failure to consider her vehicle loan is reversible error under these facts. *Prince George’s Drs. Hosp., Inc. v. Health Servs. Cost Rev. Comm’n*, 302 Md. 193, 212 (1985) (finding no reversible error where real estate taxes were “overlooked in calculations”).

of the identity and value of the property.” *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993).

Here, it is undisputed that Husband created Coastal Pools in 2014 – nearly four years before the parties’ marriage. Accordingly, as the trial court pointed out, the “legal character” of the property is that it was solely Husband’s. Thus, the burden was on Wife to demonstrate that the business was marital property. *Id.* Indeed, as was made clear in the court’s October 2021 order, the relevant dates “for [Wife’s] valuation [of the business]” was its value “as of the date of marriage, and the date of separation, *and as of the date of trial.*” (Emphasis in original.)

At trial, however, Wife contended that providing the value of the business as of the date of marriage or the date of separation was “not [her] burden,” adding that “[t]he person who is advocating for the non-marital portion, that is their job.” Accordingly, Wife attempted to present expert testimony as to the current value of the business only. The trial court granted Husband’s motion in limine, explaining that Wife had failed to satisfy her burden of demonstrating that any part of the business was marital property.

On appeal, Wife provides no authority supporting her position that it was Husband’s burden to confirm that the property he acquired prior to the marriage is in fact non-marital, and we are not aware of any. FL § 8-201(e)(3)(i), (iv). Instead, we have made clear that it is “[t]he party who asserts a marital property interest” who bears the burden of proving the identity and value of the property. *Noffsinger*, 95 Md. App. at 281. Indeed, we have previously held that an increase in the value of non-marital assets traceable as such will

“retain[] that character” as non-marital assets. *Rosenberg v. Rosenberg*, 64 Md. App. 487, 529 (1985).

Instead, Wife relies upon *Innerbichler* and *Noffsinger*, neither of which support her assertion. In *Innerbichler*, the trial court relied upon evidence showing the appreciation of husband’s pre-marital business during the parties’ marriage in finding that a portion of the business was marital property. 132 Md. App. at 226. There, we noted that at trial, there was “[a]mple evidence” regarding the status of the business “at the time of the marriage.” *Id.* at 217. In contrast, here, the trial court found that Wife had provided no evidence of the value of the business at the time of the marriage. The only evidence Wife relied upon in support of the business’s appreciation were its tax returns, which Wife even conceded did not provide a value of the business.

Further, in *Noffsinger*, we considered whether certain property acquired by husband during the parties’ marriage with purportedly non-marital funds constituted marital property, holding that “[w]hen attempting to demonstrate that *property acquired during the marriage* is nonmarital, the party with this burden must directly trace the property to a nonmarital source.” 95 Md. App. at 282 (emphasis added). Here, Coastal Pools was indisputably acquired prior to the parties’ marriage, with nonmarital funds.

In sum, the circuit court found that because Wife only intended to present testimony regarding the current value of the business, and not the value at the time of the parties’ marriage or separation as ordered, that Wife had failed to demonstrate that Coastal Pools was marital property. We do not agree that Wife’s expert’s testimony was “plainly improperly . . . excluded” under these facts. *CR-RSC Tower I*, 202 Md. App. at 337.

### **III. THE COURT ERRED WHEN CALCULATING HUSBAND’S INCOME.**

Wife maintains that the court erred in calculating Husband’s income for purposes of child support, asserting that “there is no explanation as to how” the court determined his income. Husband responds that the court relied upon the testimony at trial in determining his income, and thus that the court’s decision should be affirmed.

When making an award of child support, “the trial court must ascertain each parent’s actual income.” *Walker*, 170 Md. App. at 267 (quotation marks and citation omitted). Actual income “means income from any source.” FL § 12-201(b)(1). Further, “[f]or income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, ‘actual income’ means gross receipts minus ordinary and necessary expenses required to produce income.” FL § 12-201(b)(2).

Here, we agree with Wife that the court failed to explain how it determined Husband’s actual income. At trial, there was a significant disagreement between the parties regarding Husband’s income: Wife contended that Husband earned more than \$500,000 per year, and Husband asserted that he earned less than \$85,000 per year. Although the court indicated that it found Husband’s testimony regarding his income not credible, the record provides no indication as to how the court calculated Husband’s income.

Instead, the court’s order merely states that “[b]ased on the testimony presented at trial, the Court determines that Husband still earns approximately Fourteen Thousand Three Hundred Dollars” each month, or \$171,600.00 annually. Unfortunately, neither the order nor the transcript offer an explanation as to how the court reached this conclusion. It appears that the court may have based Husband’s income upon the court’s judgment of

limited divorce dated December 28, 2020, where the court set Husband’s annual income at \$171,600.00 after finding that Husband “failed to provide th[e] Court with an accurate representation of his income.”

However, in that case, the court explained that Husband’s income was calculated “by using the net profits from the 2019 tax return of \$107,156.00, add[ing] back in the depreciation of \$52,445.00, and add[ing] an additional income of \$1,000 [per] month of personal expenses paid by the business (transportation, cell phone).” Here, the court made no such determinations. The court merely concluded that Husband “still earns” what the court determined that he earned over a year prior, despite testimony that Coastal Pools’ gross sales had “more than double[d]” in that time, to the tune of over \$9 million.

As we have previously made clear, “[t]he clear intention of the legislature requires the trial court to consider actual income and expenses based on the evidence.” *Ley v. Forman*, 144 Md. App. 658, 670 (2002). It follows that “[t]he court must rely on the verifiable incomes of the parties, and failure to do so results in an inaccurate financial picture.” *Id.* Finding no material evidence in the record to support the court’s determination of Husband’s income, we shall vacate the child support determination and remand for determination of Husband’s income based upon FL § 12-201(b) and the evidence presented at trial. *Hoang*, 177 Md. App. at 576.

Finally, we have emphasized that “a court’s determinations as to alimony, child support, monetary awards, and counsel fees involve overlapping evaluations of the parties’ financial circumstances[.]” *St. Cyr*, 228 Md. App. at 198. Accordingly, “[t]he factors underlying such awards ‘are so interrelated that, when a trial court considers a claim for

any one of them, it must weigh the award of any other.” *Id.* (quoting *Turner v. Turner*, 147 Md. App. 350, 400 (2002)). Because we remand the court’s child support determination, we shall remand the monetary award for further proceedings consistent with this opinion. *Id.* (holding that “[b]ecause we are remanding this case for a re-evaluation of the amount and duration of alimony, we will also vacate the interrelated orders regarding child support, the monetary award, and counsel fees).

**JUDGMENT OF THE CIRCUIT COURT  
FOR QUEEN ANNE’S COUNTY  
AFFIRMED IN PART, VACATED IN  
PART, AND REMANDED FOR  
RECALCULATION OF CHILD  
SUPPORT AND THE MONETARY  
AWARD IN ACCORDANCE WITH THIS  
OPINION. COSTS TO BE SPLIT  
EVENLY BETWEEN THE PARTIES.**