Circuit Court for Frederick County
Case No.: C-10-FM-19-000612

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 436

September Term, 2022

CHIDOZIE NWADIGO

v.

NAYA NWADIGO

Graeff,
Leahy,
Ripken,
JJ.

Opinion by Ripken, J.

Filed: December 5, 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.

Appellant, Chidozie Nwadigo ("C. Nwadigo"), challenges the Circuit Court for Frederick County's order of divorce, which (1) granted C. Nwadigo and Naya Nwadigo ("N. Nwadigo") an absolute divorce on the grounds of their one-year voluntary separation, (2) divided marital assets and granted a monetary award, (3) prescribed custody and visitation of the parties' two minor children, and (4) set forth a child support obligation. C. Nwadigo raises five issues on appeal, which we rephrase as follows:[1]

1. Whether the court erred in calculating C. Nwadigo's child support obligation.

2. Whether the court erred in declining to award a child support credit to C. Nwadigo.

3. Whether the court erred in calculating the monetary award to N. Nwadigo.

4. Whether the court erred in failing to award attorney's fees to C. Nwadigo.

5. Whether the court erred in declining to transfer college savings funds to C. Nwadigo.

[1] In his brief, C. Nwadigo phrased the issues as follows:

1. Child Support Payments: Trial Court ordered monthly child support payments of $1409 by Appellant to Appellee.

2. Child Support Arrearages: Trial court failed to award reimbursement of child support overpayments of over $13,279.

3. Monetary award of $51,243 awarded to Appellee was not determined by fair application of the Law and facts of the case.

4. Attorney's Fees: The denial of Appellant's request for reimbursement of attorney fees by trial court was not determined by fair application of the Law and facts of the case.

5. Custody of MD 529 College Investment Accounts Funds.

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.

FACTUAL AND PROCEDURAL BACKGROUND

On August 4, 2011, C. Nwadigo and N. Nwadigo were married in Frederick County, Maryland. During the marriage, the parties had two children: M., born February 24, 2014, and E., born April 15, 2018. In March of 2019, C. Nwadigo moved out of the family home. As the trial court noted, "[t]estimony at trial suggested that domestic violence issues contributed to the marital breakup." Both parties obtained temporary protective orders, but neither proceeded to a final protective order.

In April of 2019, C. Nwadigo filed a complaint for absolute divorce. The following month, the court entered a *pendente lite* order setting forth a temporary consent order concerning custody, visitation, and child support. In April of 2022, after a two-day merits hearing, the court issued an order of divorce and corresponding ten-page memorandum opinion.

Specifically, the court awarded primary physical custody of the children to N. Nwadigo, shared legal custody to both parties, with tie-breaking authority to N. Nwadigo, and set forth a visitation schedule. The court also set C. Nwadigo's monthly child support obligation at $1,409.

Further, the court assessed the parties' marital property and determined that N. Nwadigo was entitled to a monetary award in the amount of $51,243. The court did so after

determining that C. Nwadigo's net worth was $462,331, that N. Nwadigo's net worth was $451,197, and concluding that:

> Taking all of the factors above into consideration, the Court believes it is equitable that [N. Nwadigo] is entitled to 55% of the marital property, and [C. Nwadigo] 45%. To compute the number, the Court adds each party's net worth, the sum of which is $913,528.00. Fifty-five percent of that figure is $502,440.00. By subtracting [N. Nwadigo's] net worth of $451,197.00 from that sum, it is appropriate to order payment of Monetary Award in the amount of $51,243.00, payable within 90 days from [C. Nwadigo] to [N. Nwadigo].

The court declined C. Nwadigo's request for attorney's fees, explaining that "most of the pleadings filed in the case were generated by *pro se* litigants who frequently were unaware of Court rules of procedure[,]" and also declined both parties' requests for a child support credit:

> The Court heard the testimony from the parties regarding their respective claims for overpayment/underpayment of child support. The Court is unable to explain the difference in their respective calculations, and for that reason will deny the relief each party seeks. Much of the debate centers on whether [C. Nwadigo] is entitled to a refund for daycare that apparently did not occur, but was required to be prepaid by [N. Nwadigo], lest she lose her daughter's slot in the daycare center. This is an unfortunate fact of life for parents who have their children in sought-after daycare centers, often with a waiting list of parents, and assuming these prepayments were made, the Court will not penalize [N. Nwadigo] for trying to [e]nsure that her child had a spot at the daycare center.

Lastly, the parties had a total of four separate Maryland 529 college savings plans for the children—each party held a separate account for each child. The record reflects that the accounts held by N. Nwadigo had significantly more value than the accounts held by C. Nwadigo, and C. Nwadigo made a request at trial "for the accounts to be balanced[.]" The court found that those accounts were not marital property and declined the request to transfer funds between the accounts.

C. Nwadigo timely filed this appeal.

STANDARD OF REVIEW

This Court has stated that it "will not disturb the trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002). Further, the "decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of discretion." *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). Similarly, "[w]e 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).

The abuse of discretion standard of review "asks whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable." *In re Dany G.*, 223 Md. App. 707, 720 (2015). A decision under that standard 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) (*citing Goodman v. Com. Credit Corp*., 364 Md. 483, 491–92 (2001) (quotation marks and internal citations omitted)). "Of course, the court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case." *Arrington v. State*, 411 Md. 524, 552 (2009). Further, "[a] court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous." *Guidash v. Tome*, 211 Md. App. 725, 735 (2013).

DISCUSSION

I. THE CIRCUIT COURT ERRED IN CALCULATING C. NWADIGO'S MONTHLY CHILD SUPPORT OBLIGATION.

C. Nwadigo contends that his child support obligation was "calculated by applying an erroneous percentage of time with each parent of 74.8% : 25.2%[,]" instead of "the actual values of 67.7% : 32.3%, as contained in the Visitation Order[,]" adding that, "[t]his resulted in an ordered overpayment of about $500 per month[.]" N. Nwadigo does not respond to C. Nwadigo's assertion regarding the court's calculation of the parties' percentages of time with the children, but asserts that the child support determination should be affirmed.

In Maryland, if the parties' combined monthly income is $30,000 or less, the court must follow the child support guidelines, enumerated in Md. Code Ann., Family Law ("FL") sections 12-201 - 204, in awarding child support. *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018). A "schedule of basic child support obligations" based upon the parties' combined income is set forth in FL section 12-204(e). In cases of shared physical custody,[2] the child support obligation provided in the schedule is "divided between the parents in proportion to their respective adjusted actual incomes." FL § 12-204(m)(1). Each parent's share is then "multiplied by the percentage of time the child or children spend with the other parent[.]" FL § 12-204(m)(2)(i).

[2] "Shared physical custody" under FL section 12-201(o)(1) "means that each parent keeps the child or children overnight for more than 25% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support." FL section 12-201(o)(2)(ii) provides that "the court may base a child support award on shared physical custody… regardless of whether joint custody has been granted."

Here, the court's child support guidelines worksheet calculates C. Nwadigo's child support obligation to include 92 overnights per year with the children. However, the court's visitation schedule provides C. Nwadigo with well over 92 overnights per year. Specifically, the court ordered that C. Nwadigo would have custody of the children as follows:

> Every Friday at 4:00 p.m. (pickup) until Sunday at 7:00 p.m.
>
> Fridays at 4:00 p.m. until Monday at 12 noon for the following 14 weekends: Martin Luther King, Jr. Day; Presidents' Day; Memorial Day; 3rd Monday in June; 4th Monday in June; 1st Monday in July; 2nd Monday in July; 3rd Monday in July; 4th Monday in July; 1st Monday in August; 2nd Monday in August; Labor Day; Columbus Day; Last Monday in December.

The visitation schedule further provides the following "holiday schedule":

> Mother's Day – with [N. Nwadigo] every year
>
> Father's Day – with [C. Nwadigo] every year
>
> Fourth of July – [N. Nwadigo] in even years, [C. Nwadigo] in odd years
>
> Thanksgiving – [N. Nwadigo] in odd years, [C. Nwadigo] in even years
>
> Christmas Eve – [N. Nwadigo] in even years, [C. Nwadigo] in odd years
>
> Christmas Day – [N. Nwadigo] in odd years, [C. Nwadigo] in even years
>
> New Year's Eve – [N. Nwadigo] in even years, [C. Nwadigo] in odd years
>
> New Year's Day – [N. Nwadigo] in odd years, [C. Nwadigo] in even years

Accordingly, the weekend schedule alone awards C. Nwadigo 118 overnights per year—well over the 92 computed in the court's child support calculation.[3] Neither the

[3] Although it is unclear from the visitation schedule whether the holiday schedule provides for overnight visits, assuming *arguendo* that it does, the court's calculation remains (continued)

court's order of divorce, corresponding memorandum opinion, nor the transcript provide any explanation for the discrepancy between these numbers. There is no indication that the court intended to reduce C. Nwadigo's visitation with the children, which was previously set at 104 overnights per year. Indeed, the court described its visitation schedule as "largely consistent with [the parties'] present arrangement."

For these reasons, we shall vacate and remand the court's child support determination. On remand, the court shall recalculate C. Nwadigo's child support obligation consistent with the court's April 2022 visitation schedule.

II. THE CIRCUIT COURT DID NOT ERR IN DENYING C. NWADIGO'S REQUEST FOR A CHILD SUPPORT CREDIT FOR ALLEGED CHILD SUPPORT OVERPAYMENTS.

C. Nwadigo asserts that the court erroneously denied his request for reimbursement of child support overpayments made to N. Nwadigo, relying upon *Damon v. Robles*, 245 Md. App. 233 (2020). N. Nwadigo responds that the court properly denied C. Nwadigo's request, adding that any child support overpayments were put towards the children's college savings accounts.

This Court has made clear that "child support is the obligation of a parent to a child, not to the other parent[.]" *Petitto v. Petitto*, 147 Md. App. 280, 311 (2002); *see also Corapcioglu v. Roosevelt*, 170 Md. App. 572, 613 (2006) (noting that the "right to child

unclear. For 2023, C. Nwadigo would still have 117 overnights per year with the children (adding one day for July 4, 2023, which falls on a Tuesday, and subtracting two for Mother's Day and New Year's Day 2024, which both fall on Sundays), and for 2024, he would have 120 overnights with the children (adding three days for Thanksgiving Day, Christmas Day, and New Year's Day 2025, all of which fall on weekdays, and subtracting Mother's Day, a Sunday).

support is a function of legal policy and not a matter of private contract rights.") Accordingly, "a parent who 'overpays' has no absolute right to recoupment." *Petitto*, 147 Md. App. at 311. We have emphasized concern "that such a requirement ultimately could deprive the child of benefits already received." *Id*.; *see also Krikstan v. Krikstan*, 90 Md. App. 462, 473 (1992) (noting that "a parent who 'overpays' [child support] possess no right to recoupment because that would presumably deprive the child of benefits already received.")

Further, as we have previously stated, "[o]nly if the paying party shows that the overpayments have not been used to support the child, and the recipient parent has the overpaid sum available to repay, so that, during the recoupment period, the child will not be receiving less support than has been ordered, may the court exercise its discretion to grant a recoupment award." *Corapcioglu*, 170 Md. App. at 612–13.

Here, the court considered C. Nwadigo's assertion regarding his overpayments of child support and determined that a child support reimbursement was not appropriate. The court noted that much of the dispute regarding overpayments "centers on whether [C. Nwadigo] is entitled to a refund for daycare that apparently did not occur" due to the COVID-19 pandemic. Although C. Nwadigo asserts that this finding was "not supported by the facts, by the testimony nor by the evidence presented[,]" we disagree. This determination was plainly supported by testimony at trial:

> [C.] NWADIGO: I've taken out loans to be able to maintain the level of child support that I've been paying. For instance, I've been paying for day care included in child support, even though the kids are not going to day care since March of 2020, since the beginning of COVID.

THE COURT: Well, you got a reduction in that child support, did you not –

[C.] NWADIGO: So, yeah, October of –

THE COURT: -- by about 1,000 --

[C.] NWADIGO: -- last year --

THE COURT: Yes.

[C.] NWADIGO: -- it was reduced to 1555.

THE COURT: Okay, but I think she --

[C.] NWADIGO: Yeah.

THE COURT: -- but I think your wife said she prepaid that, the initial amount. In other words, you were saying, well, why am I paying when there's no day care because of COVID, and I think your response was, you prepaid it; is that right?

[N.] NWADIGO: Uh-huh.

THE COURT: They didn't give you the money back?

[C.] NWADIGO: No. No, Your Honor.

Moreover, C. Nwadigo has made no assertion or showing that N. Nwadigo has funds available to repay any overpaid child support, or that the children will not receive less support under an awarded reimbursement. Instead, the court found to the contrary, noting that N. Nwadigo would need to eliminate expenditures on the children's recreation and entertainment memberships only to "break[] even on a monthly basis." Nor is C. Nwadigo's reliance upon our opinion in *Damon v. Robles*, which considered the retroactive application of a law preventing child support arrearages from accruing while a parent is incarcerated, applicable under these facts. 245 Md. App. at 236.

Accordingly, we find C. Nwadigo's contention that the court erred in denying his request for a child support reimbursement to be without merit. *See Corapcioglu*, 170 Md. App. at 613 (affirming circuit court's denial of father's request for child support reimbursement where "Father did not introduce any evidence to show that Mother has the funds available to repay the child support award."); *see also Ley v. Forman*, 144 Md. App. 658, 676 (2002) (remanding where "[t]he trial judge never articulated why [the child's] standard of living would not suffer as a result of applying the credit against [the father's] child support obligation.")

III. THE CIRCUIT COURT ERRED IN CALCULATING THE MONETARY AWARD.

C. Nwadigo contends that the court erred in calculating the monetary award, asserting that the court: (1) did not credit him for mortgage payments, living expenses, healthcare, and daycare payments made prior to the parties' separation, (2) failed to credit him for payments towards the second home, (3) attributed an incorrect lien amount to his Tesla, (4) "understated the net worth" of N. Nwadigo, and (5) failed to account for his "credit card and bank loan debts accumulated during the marriage[.]" N. Nwadigo responds that the monetary award should be affirmed and points to C. Nwadigo's decision to "eliminate" her and the children from his company pension and life insurance policy.

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 v. Mininberg*, 153 Md. App. 358, 428 (2003). 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. Doser*, 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 section 8-205(b), including factors such as "the contributions, monetary and nonmonetary, of each party to the well-being of the family;" the "circumstances that contributed to the estrangement of the parties;" and "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)(1), (4), (11).

Here, the court considered the parties' marital and nonmarital property, determined the values of over 20 items of property, and considered each of the factors set forth in FL section 8-205(b). Specifically, regarding each party's contributions to the well-being of the family, the court found that:

> While [C. Nwadigo's] income exceeds that of [N. Nwadigo], the testimony indicates that she has been more active in the children's school and extracurricular activities. By virtue of the fact that [N. Nwadigo]'s mother is able to stay at home and care for the children when necessary, the parties are saving a substantial amount of money on daycare.

Further, regarding the circumstances that contributed to the estrangement of the parties, the court noted that:

> Testimony at trial suggested that domestic violence issues contributed to the marital breakup. Mutual Temporary Protective Orders[] were obtained, but neither proceeded to a Final Protective Order. [N. Nwadigo] claims that [C. Nwadigo] struck her twice in the face while she was holding her daughter, but the Court is not certain as to precisely what occurred during this encounter. It was obvious to the Court that the parties are distrustful and accusatory of one another at the present time. It is hoped that putting the stress of divorce proceedings behind them will lead to an improvement in this situation in the near future.

Moreover, the court found several additional facts relevant, such as that C. Nwadigo had "chosen to eliminate his wife and children from his company pension and life insurance policy[,]" and that he "purchased [a second home] with marital funds, and titled the property in his own name." The court noted that:

> [C. Nwadigo] has seen fit to purchase another home, at [], on which he makes a monthly mortgage payment of $2,231.00. The Financial Statement suggests that his current monthly deficit is $2,990.00. While it is true that [C. Nwadigo] would in any event have to pay for housing, he could obtain an alternative living situation for far less than $2,231.00 per month.

We see no abuse of the court's discretion regarding the court's consideration of payments made on the second home. Although C. Nwadigo asserts that the court failed to consider "the down-payment and mortgages he paid towards the second home[,]" we disagree. The court plainly found that C. Nwadigo "made all mortgage payments [on the second home] since the time of purchase[.]" Further, the court found it "significant that he purchased the [second home] with marital funds, and titled the property in his own name[,]" a finding that C. Nwadigo does not dispute.

Nor do we see any error regarding the court's computation of N. Nwadigo's net worth. C. Nwadigo asserts that "the trial court understated the net worth of [N. Nwadigo] at $451,197 (instead of $460,356)[,]" but provides no support for his assertion. We have made clear that we "cannot be expected to delve through the record to unearth factual support favorable to [the] appellant." *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008) (quotation marks and citation omitted); *see also* Md. Rule 8-504(a)(4) (requiring appellate briefs to include "[a] clear concise statement of the facts material to a determination of the questions presented," and that "[r]eference shall be made to the pages of the record extract or appendix supporting the assertions.").

Nonetheless, the record does reflect a miscalculation regarding the lien on C. Nwadigo's 2017 Tesla Model S. Undisputed testimony at trial established that the lien on the vehicle was $17,842:

[THE COURT:] What's the lien on [the 2017 Tesla Model S]?

[C. NWADIGO:] The lien is 17842.

THE COURT: All right. Are you disputing that lien, ma'am?

[C.] NWADIGO: No[.]

However, the court indicated a note balance of only $1,842 on the vehicle within the monetary award calculation. The court provided no reasoning or explanation for the $16,000 reduction in the lien from the figure supported by the testimony. Accordingly, we shall vacate the court's judgment regarding the monetary award. *See Goshorn v. Goshorn*, 154 Md. App. 194, 212 (2003) (remanding for reconsideration of alimony award where

defendant's income was "almost 20% lower" than the figure used in the court's alimony calculation).

Moreover, we agree that it is unclear from the record whether the court considered C. Nwadigo's bank and credit card loans in its monetary award determination. C. Nwadigo testified to having various bank and credit card debts totaling over $42,000, but the court's monetary award analysis considered only N. Nwadigo's personal debts (or lack thereof) and is bereft of any consideration of credit card or bank debts held by C. Nwadigo. As we explained in *Randolph v. Randolph*, 67 Md. App. 577, 587 (1986), debt is significant "to the extent that it affects appellant's economic circumstances[,]" and that accordingly, it is a "factor to be considered in granting a monetary award[.]"

On remand, the court shall recalculate the monetary award considering C. Nwadigo's $17,842 lien on the Tesla Model S, as well as C. Nwadigo's credit card and bank loan debts, to the extent that the court finds that the debts affect his economic circumstances under FL section 8-205(b)(3). *Randolph*, 67 Md. App. at 587; *see also* FL § 8-205(b)(3) (providing that "the economic circumstances of each party at the time the award is to be made" is a factor to be considered in making a monetary award).

IV. THE CIRCUIT COURT DID NOT ERR IN DECLINING C. NWADIGO'S REQUEST FOR ATTORNEY'S FEES.

C. Nwadigo asserts that the court erred in declining his request for attorney's fees and states that "reimbursement of [a]ttorneys' fees will help correct the financial harm" caused by the litigation. N. Nwadigo responds that the court correctly declined C.

Nwadigo's request for attorney's fees, adding that C. Nwadigo repeatedly withheld documents, leading to increased litigation expenses.

Our highest court has made clear that "[d]ecisions concerning the award of counsel fees rest solely in the discretion of the trial judge." *Petrini v. Petrini*, 336 Md. 453, 468 (1994). In other words, "the trial court 'is vested with wide discretion' in deciding whether to award counsel fees and, if so, in what amount." *Malin*, 153 Md. App. at 435–36 (citing *Dunlap v. Fiorenza*, 128 Md. App. 357, 374 (1999)). Accordingly, "[a]n award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Petrini*, 336 Md. at 468.

Here, the court declined an attorney's fee award to C. Nwadigo after finding "that most of the pleadings filed in the case were generated by *pro se* litigants who frequently were unaware of Court rules of procedure." The court further explained that "[t]he case is nearly three years old, with 30 pages of docket entries, many of which are attributable to unnecessary filings, discovery disputes, and other extraneous matters[,]" adding that:

> [b]oth parties were at one time represented by counsel, but were unrepresented at trial, which required the Court to conduct much of the examination of the parties, and also review with them the contents of their Financial and Rule 9-207 Statements, which were neither timely nor procedurally filed in accordance with the Maryland Rules. While both parties did a creditable job presenting their cases without benefit [of] counsel, many of the details that might ordinarily be presented at a trial where complex financial issues are at issue were not fully developed by them.

We have explained that the trial judge "has discretion to base its award of attorney's fees on the fact that a litigant has engaged in conduct that produced protracted litigation." *See Frankel v. Frankel*, 165 Md. App. 553, 590 (2005). Given the court's findings

regarding the underlying proceedings, including that much of the litigation was "attributable to unnecessary filings," we are unpersuaded that the court abused its discretion in denying C. Nwadigo's request for an attorney's fee award.

V. THE CIRCUIT COURT DID NOT ERR IN DENYING C. NWADIGO'S REQUEST TO TRANSFER FUNDS FROM THE CHILDREN'S COLLEGE SAVINGS PLANS.

Finally, C. Nwadigo asserts that the court erred in failing to "evenly split custody" of the Maryland 529 college savings plans for the children. N. Nwadigo responds that both parties agreed the funds "belong to the children" and were not marital property, and thus that the court properly declined C. Nwadigo's request to transfer the funds.

This Court has previously stated that "it is a question of fact as to whether all or a portion of an asset is marital or non-marital property." *Flanagan*, 181 Md. App. at 521. We review factual findings "under the clearly erroneous standard." *Id.*; *see also* Md. Rule 8-131(c) (providing that an appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]"). Critically, marital property does not include property "excluded by valid agreement[.]" FL § 8-201(e)(3)(iii); *see also Flanagan*, 181 Md. App. at 531 (citation and quotation marks omitted) ("property 'excluded by valid agreement' is no longer marital property[.]")

We agree that the record reflects an agreement between the parties that the college savings funds would be kept separate from the marital property:

> [N. NWADIGO]: In terms of the 529, I wanted to reference the case *Abdullahi v. Zanini* because I believe that he disputes that it should -- the 529 should not be included in the calculation of a monetary award.
>
> BY THE COURT: What does that case say? What does that case say?

> [N. NWADIGO]: Okay. Okay. So – I'm sorry.
>
> [C.] NWADIGO: Your Honor, I can, I can agree to that. I can agree to that. We can make it -- the 529s, we can take it up, but I'll just ask for an order that it only be used for [the children]. I just ask for that to be included in the order.
>
> THE COURT: Okay. Frankly, off the top of my head, I don't know whether that is marital property or not. It belongs to the children, and I suppose you're the custodians of it. So I think it passes outside of the divorce, but I'll make a note that there's not a dispute provided it's going to be used only for the two children.
>
> [C.] NWADIGO: Yeah, include that in the court order.
>
> [N. NWADIGO]: Okay. Yeah. So –
>
> [C.] NWADIGO: That would apply to the 529 I also have for them. So all the 529s we can treat that way.

Moreover, C. Nwadigo further confirmed during closing argument that he was "okay with [the 529 accounts] staying outside of what would be split up[.]"

Even if the court determined that the funds were marital property, the court would have had no authority, outside of making a monetary award, to simply "transfer" a portion of the college savings funds held by N. Nwadigo to C. Nwadigo. FL § 8-202(a)(3) (providing that "the court may not transfer the ownership of personal or real property from one party to the other."); *Fox v. Fox*, 85 Md. App. 448, 453 n.2 (1991) (holding that "transfer of the husband's property to the wife, instead of increasing the monetary award *pro tanto*, was improper."). Nonetheless, here, the court determined that the college savings funds were not marital property, and we are unpersuaded that this was clearly erroneous given the parties' agreement at trial. FL § 8-201(e)(3)(iii). Accordingly, the court's denial of C. Nwadigo's request to transfer the funds shall be affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK 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 EVENLY SPLIT BY APPELLANT AND APPELLEE.