

Circuit Court for Montgomery County
Case No. 161213FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 713

September Term, 2021

LYN MULLINAX

v.

ROBERT MULLINAX

Wells, C.J.,
Graeff,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 16, 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.

Following a trial on the merits, the Circuit Court for Montgomery County granted an absolute divorce to Lyn Mullinax (“Wife”), the appellant, and Robert Mullinax (“Husband”), the appellee. The court also awarded Wife rehabilitative alimony, a portion of Husband’s retirement benefits, a monetary award, and an award of attorneys’ fees. As rephrased and reordered by us, Wife presents the following questions for our review:¹

1. Did the circuit court err or abuse its discretion in declining to award Wife indefinite alimony?
2. Did the circuit court err or abuse its discretion in its valuation of Wife’s pension and division of the parties’ retirement benefits?
3. Did the circuit court abuse its discretion in awarding Wife a monetary award in the amount of \$100,000?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Husband and Wife were married on March 11, 2000. The parties have one child together (whom we shall refer to as “I.”), born in 2001. At the time of I.’s birth, Wife was employed by Lockheed Martin and was on a promising career track. Her job required some

¹ The questions were framed as follows by appellant:

- I. Whether the Circuit Court erred and/or abused its discretion in accepting Mr. Pushkin’s valuation of Ms. Mullinax’s pension instead of ordering it to be divided “if, as and when” pursuant to the *Bangs* formula;
- II. Whether the Circuit Court abused its discretion in not awarding Ms. Mullinax a monetary award in the amount of \$170,937.50; and
- III. Whether the Circuit Court abused its discretion in not awarding Ms. Mullinax \$3,000 in indefinite alimony.

travel. Husband was employed by Hughes Network Systems and he also traveled for work. The parties agreed that Wife would change careers and become a teacher to allow her to be more available to care for I. Wife remained the primary caregiver for I. as well as two older children from Wife's previous marriage.

The parties separated on or about January 1, 2018. Wife continued to reside in the family home (the "Fallswood" house). Husband moved to the parties' second home (the "Adams" house) which had been previously utilized by them as a rental property. On April 30, 2019, Wife filed a complaint for Absolute Divorce.

The court held a two-day merits trial on March 9 and 10, 2021, at which time I. was emancipated by age, but he was still living with Wife and was being supported by the parties while he attended college. Relevant to this appeal, Wife sought an award of indefinite alimony in the amount of \$4,000 per month, retroactive to the date of her filing of the petition, and \$3,000 per month in child support, retroactive to the date of the filing of the petition and continuing through June 2020, when I. graduated from high school. Wife argued that she was entitled to indefinite alimony because, based on their salaries, she had a deficit of approximately \$4,000 per month, whereas Husband had an excess of \$5,300 per month. She asserted that she had financial needs that would be difficult for her to meet, Husband had the ability to pay alimony, and Husband's greater financial earning capacity would permit him to enjoy a much better lifestyle than she would be able to afford.

Wife also sought a monetary award to achieve an "equalization" of the marital assets, exclusive of her checking account, which she used to subsidize her expenses in the two months of the year when she did not work. She argued that she was entitled to

approximately \$100,000 of Husband's (approximately) \$300,000 in brokerage account funds, which she argued represented co-mingled marital and non-marital property.

With respect to Wife's pensions, she asked the court to value her pensions on an "if, as, and when" basis and require Husband to pay for any survivor benefit if the court should award him a survivor benefit. She also requested, based on the parties' relative financial circumstances, that Husband be ordered to pay her attorneys' fees.

With respect to alimony and attorneys' fees, Husband's position was that, because each party was financially independent, alimony and an award of attorneys' fees were not warranted. Husband argued that the funds in his brokerage accounts were acquired by him almost entirely before the marriage, and should therefore be considered non-marital. In the alternative, he argued that even if the court ruled that the brokerage accounts would be considered marital because he had commingled a small amount of marital rental income in the brokerage accounts, the court should nevertheless award him the entirety of the accounts because he had already used a substantial portion of those accounts to pay marital expenses for the benefit of the family. Because Husband's retirement savings accounts exceeded Wife's, Husband argued that the then-present value of Wife's pension should be used as an offset against the sum of his retirement accounts. Further, Husband requested that, should the court divide the Wife's pension on an "if, as, and when" basis, then the court should order the parties to split the cost of the survivor benefit for Husband.

On April 30, 2021, the court delivered an oral opinion on the record and issued a judgment of absolute divorce. Among other things, the court awarded Wife rehabilitative alimony in the amount of \$2,000 per month for the period of May 1, 2021 through April 1,

2024. The court ordered that the parties' checking account balances be divided equally and assigned to Wife \$200,000 of Husband's retirement benefits. The court entered a monetary award in favor of Wife in the amount of \$100,000 and awarded Wife attorneys' fees in the amount of \$25,000.

Wife filed a motion to alter or amend the judgment, which the court denied. Wife then noted a timely appeal.

DISCUSSION

I.

Rehabilitative Alimony Award

Wife contends that the circuit court abused its discretion in failing to award her \$3,000 per month in indefinite alimony, and instead awarding her rehabilitative alimony of \$2,000 per month for three years. She argues that the court erred in its decision to reduce or eliminate certain of her claimed expenses, while accepting Husband's claimed expenses for the same categories of items. She argues that "her monthly deficit is actually \$3,083.83 per month." Moreover, even if the court's deductions could be justified, the alimony award "of only \$2,000 still leaves Ms. Mullinax with a deficit of \$275 per month[.]" Wife avers that, because Husband has the ability to pay her \$3,000 per month, the court abused its discretion in awarding her just three years of rehabilitative alimony in the amount of \$2,000 per month rather than indefinite alimony of \$3,000 per month.

Husband counters that the circuit court did not abuse its discretion in its alimony award, as the parties' post-marital standards of living are not unconscionably disparate. He argues that the court properly considered Wife's income as well as the substantial financial

assets she would own in determining that she was self-sufficient, and therefore, indefinite alimony was not appropriate. He asserts in his brief that, in addition to her income of over \$100,000 per year from her ongoing employment,

after the [c]ourt’s various awards, Ms. Mullinax has approximately \$2 million in assets. She lives in a renovated home with essentially no debt. . . . [T]here is nothing established in the facts of this case—income, assets, lifestyle differences, that show any type of unconscionable disparity in the parties’ respective standards of living.

We review an award of alimony to determine whether the trial court made clearly erroneous factual findings or abused its discretion in rendering a judgment. *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003). We “accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Boemio v. Boemio*, 414 Md. 118, 124-25 (2010) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)). An alimony award will not be set aside unless the award results from an abuse of discretion or is “clearly wrong.” *Malin*, 153 Md. App. at 415 (quoting *Crabill v. Crabill*, 119 Md. App. 249, 260 (1998)); accord *Brewer v. Brewer*, 156 Md. App. 77, 98 (2004).

“The purpose of alimony in Maryland is the ‘rehabilitation of the economically dependent spouse.’” *K.B. v. D.B.*, 245 Md. App. 647, 667 (2020) (quoting *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184 (2016)). Maryland’s statutory scheme “generally favors fixed-term or so-called rehabilitative alimony[]’ rather than indefinite alimony.” *Solomon v. Solomon*, 383 Md. 176, 194 (2004) (quoting *Tracey*, 328 Md. at 391)). The preference for rehabilitative alimony stems from the Maryland legislature’s policy determination that “the purpose of alimony is not to provide a lifetime pension, but where practicable to ease

the transition for the parties from the joint married state to their new status as single people living apart and independently.” *Id.* at 194-95 (quoting *Tracey*, 328 Md. at 391); *accord Boemio*, 414 Md. at 142.

Maryland’s alimony statute—§ 11-106 of Md. Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”)—requires that the court shall consider the following necessary factors in deciding whether to award alimony, and the amount and duration of an award:

- (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.

FL § 11-106(b). *See Solomon*, 383 Md. at 195 n.15, noting: “The twelve factors included in the test are non-exclusive, and ‘although the court is not required to use a formal checklist, the court must demonstrate consideration of all necessary factors.’ *Roginsky v. Blake–Roginsky*, 129 Md. App. 132, 143 (1999).”

In addition to an award of fixed-term, rehabilitative alimony, the alimony statute also permits an award of alimony for an indefinite term pursuant to FL § 11-106(c), if the court finds the existence of either of these two factors:

- (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.

The Court of Appeals explained in *Solomon*:

The statute places strict limits on a trial court’s ability to grant indefinite alimony and requires a comprehensive case-by-case analysis. It follows that, after a determination by the trial court that the respective standards of living are unconscionably disparate, the amount of the award of indefinite alimony must relieve the unconscionably disparate condition.

The determination of whether an unconscionable disparity exists, according to section 11-106(c) of the Family Law Article, is a finding of fact,

reviewed under a clearly erroneous standard. *See* Md. Rule 8-131(c). An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong. We review the *amount* of the alimony itself under an abuse of discretion standard. Thus, absent evidence of an abuse of discretion, the trial court's judgment ordinarily will not be disturbed on appeal.

383 Md. at 196 (internal quotation marks and citations omitted).

In this case, the court expressly stated that it had considered the factors required by FL § 11-106(b) and made "findings of fact that address each factor." Regarding the ability of the party seeking alimony to be wholly or partially self-supporting, the court found that Wife was employed as a fifth-grade teacher for Montgomery County Public Schools, earning an annual salary of \$102,577. The court found that Wife did not plan to retire in the near future.² The court found that Wife was highly educated, experienced, and gainfully employed as a fifth-grade teacher, and consequently, there was no additional time needed for her to find suitable employment. With respect to the parties' standard of living during their marriage, the court described their lifestyle as "better than most[.]" noting that they lived in a comfortable home, spent \$300 per month dining out, belonged to a country club, and had season tickets to professional sporting events. The court noted that the parties had been married for 21 years.

As to the monetary and non-monetary contributions to the well-being of the family, the court found that Wife was the primary caretaker of I. and the home. The court

² Although Wife complains that this finding was not supported by evidence in the record, we conclude that it was a fair inference for the court to make based on the evidence in the record. Wife offered evidence of her current employment and presented no evidence that she planned to retire in the near future, in contrast to Husband, who testified that he planned to retire in 2021 when he turned 65 years old.

determined that Wife had contributed financially during the marriage, first while working at Lockheed Martin, and later, when she began her teaching career with Montgomery County Public Schools, where she made “a nice salary[.]” The court also recognized that Wife provided benefits to the family by giving up an established career and changing to a new career in order to have a schedule that would allow her to be more available for I.

The court found that Husband contributed monetarily and non-monetarily to the family. When the parties were first married, Husband earned a substantial salary and paid off Wife’s credit card debt. He also used \$40,000 from premarital funds to purchase Wife’s father’s interest in the Fallswood house, which the parties retitled jointly and used as the marital home. Husband rented out the Adams house and used the rental proceeds to pay family expenses. Husband’s non-monetary contributions consisted of attending parent-teacher conferences and maintaining the parties’ property. The court also recognized that Husband had provided financial and emotional support for Wife’s two older children from her previous marriage.

Regarding the circumstances of estrangement, the court found that the parties disagreed over finances and Wife felt excluded from the renovation decisions regarding the Fallswood house. They also disagreed about Husband’s work schedule, as his frequent travel shifted the responsibility for the home and the care of I. entirely to Wife. There had been one physical altercation in 2005, and though it did not lead to the parties’ separation, the court concluded that the incident had contributed to the deterioration in the parties’ relationship. The court found that the parties had not been intimate with each other for several years prior to their separation.

The circuit court noted that Wife was 62 years old and in good health, and though she had some minor health problems, her health had not interfered with her teaching career. Husband was 64 years old and in good health.

Finally, the court found that Husband had the ability to meet Wife's financial needs while still meeting his own. The court accepted Husband's estimated annual income of \$200,000 as well as the expenses listed on his financial statement.

The court determined that Wife's monthly net income was \$5,509 and her monthly expenses were \$7,784, leaving her with a monthly deficit of \$2,275. But the court projected that Wife's mortgage payment would be reduced by \$500 after she refinanced, and the court estimated her mortgage payment to be \$2,500 per month. The court credited as reasonable Wife's estimated monthly expenses of \$120, and accepted her itemized food expense of \$1,000 per month, as accounting for both her and I. Given that the parties had saved \$150,000 for I.'s college tuition, the court found that the parties had agreed to pay for I.'s college and their lifestyle was such that paying for I.'s expenses was also appropriate.

After discussing its plan to equalize the parties' marital assets, the court indicated that "this is not a case for indefinite alimony." The court found Wife to be self-supporting. The court did not find there to be an unconscionable disparity in the parties' respective standards of living. The court determined that an award of rehabilitative alimony of \$2,000 per month for three years was appropriate, particularly while I. was still living "most of the time with [Wife.]"

Although Wife attacks a number of the circuit court’s reductions of her claimed expenses, we are not persuaded that the court’s findings were clearly erroneous. The court reviewed Wife’s expenses, compared both versions of her financial statement she had filed, and determined that some expenses were not supported by the evidence while others were duplicative. In assessing the evidence, the court was free not to credit Wife’s explanation of her expenses or the disparity between the two financial statements. The court simply credited certain amounts as more reasonable than others and adjusted amounts it found unsupported by the evidence. We perceive no error in the court’s findings as to Wife’s expenses, and we perceive no abuse of discretion in the court’s determination of an appropriate amount and duration of rehabilitative alimony. *Solomon*, 383 Md. at 196 (“We review the *amount* of the alimony itself under an abuse of discretion standard. . . . [A]bsent evidence of an abuse of discretion, the trial court’s judgment ordinarily will not be disturbed on appeal.”).

With respect to Wife’s assertion that the court erred in failing to award indefinite alimony, we are not persuaded that the trial court’s finding that there was not an unconscionable disparity (as required for an award of indefinite alimony pursuant to FL § 11-106(c)(2)) was clearly erroneous. *See Solomon*, 383 Md. at 196 (“The determination of whether an unconscionable disparity exists, according to section 11-106(c) of the Family Law Article, is a finding of fact, reviewed under a clearly erroneous standard.”).

We note that a trial court typically begins by examining the parties’ respective earning capacities. *Whittington v. Whittington*, 172 Md. App. 317, 338 (2007). However, mathematical disparity in incomes does not, by itself, mandate indefinite alimony. *Ware*

v. Ware, 131 Md. App. 207, 232 (2000); accord *Kelly v. Kelly*, 153 Md. App. 260, 279 (2003) (“[I]ndefinite alimony is not necessarily required simply because there exists a gross disparity of income.”). The party seeking indefinite alimony bears the burden of satisfying the requisite factors for such an award. *Francz v. Francz*, 157 Md. App. 676, 692 (2004).

Aside from the differences in the parties’ incomes, Wife offered no evidence demonstrating unconscionable disparity in the parties’ standards of living after the divorce. The court considered that Husband was planning to retire in 2021. Although Wife did not testify as to her retirement plans, the court noted that she would begin receiving pension income of between \$331 and \$360 per month from her Lockheed Martin pension beginning in 2023. Wife would own the marital home with a reduction in the mortgage payment of almost \$500. In addition to Wife’s State and County pensions worth an estimated \$679,354, she had an IRA worth \$209,087 and 403(b) plan worth \$177,990. The court explained that it had considered the monetary award as well as the parties’ resources and the required statutory factors in determining the alimony award.

Based on our review of the record, we see no clear error or abuse of discretion in the circuit court’s alimony analysis and its decision to award rehabilitative alimony of \$2,000 only during the period that Wife supports the parties’ adult child, I.

II.

Determination of Martial Property Awards

Wife challenges the circuit court’s decisions awarding her \$200,000 of Husband’s retirement assets and a \$100,000 monetary award. Specifically, she contends that the court erred in its valuation of her pension benefits—resulting in a “windfall” for Husband—and

abused its discretion in awarding her less than an equal value of the brokerage account funds titled in Husband’s name.

When granting a divorce, “the court may resolve any dispute between the parties with respect to the ownership of personal property.” FL § 8-202(a)(1). The court may determine each party’s ownership interest and order that any property owned by both parties be divided between them. FL § 8-202(b). In deciding the best way to distribute marital assets, including retirement benefits and investment accounts, the court may grant a monetary award to adjust any inequities. FL § 8-205.

The function of a monetary award “is to achieve equity between the spouses where one spouse has a significantly higher percentage of the marital assets titled [in] his [or her] name.” *Long v. Long*, 129 Md. App. 554, 577-78 (2000). “It 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*, 153 Md. App. at 430.

In determining whether to grant a monetary award, a trial court must complete a three-step process. *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). First, pursuant to FL § 8-203, the court must identify which property is marital. *Id.* (citing *Flanagan v. Flanagan*, 181 Md. App. 492, 519 (2008)). Second, pursuant to § 8-204, the court must assign a value to each item of marital property. *Id.* Third, pursuant to § 8-205, “the court must decide if the division of marital property according to title would be unfair, and if so, it may make a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled.” *Id.* at 405-06 (quoting *Flanagan*, 181 Md. App. at 519-20) (internal quotation marks omitted).

If, after completing the three-step analysis, the court concludes that a monetary award is appropriate, the court must consider the following factors set forth in FL § 8-205(b):

“(1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

(2) the value of all property interests of each party;

(3) the economic circumstances of each party at the time the award is to be made;

(4) the circumstances that contributed to the estrangement of the parties;

(5) the duration of the marriage;

(6) the age of each party;

(7) the physical and mental condition of each party;

(8) how and when specific marital property or interest in property described in subsection (a)(2) 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.”

Abdullahi, 241 Md. App. at 406 (quoting FL § 8-205(b)).

Because we recognize that “[t]he decision whether to grant a monetary award is

generally within the sound discretion of the trial court[.]” *id.* at 407 (quotation marks and citation omitted), we will not “substitute our judgment for that of [the trial court] even if we might have reached a different result.” *Malin*, 153 Md. App. at 430 (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000)). Under Maryland law, the determination of a monetary award is so inextricably linked to a court’s alimony determination that a court’s “decision to award one or both may be made only after a consideration of them in their mutual context.” *Imagnu v. Wodajo*, 85 Md. App. 208, 222 (1990).

In this case, the court considered the factors set forth in § 8-205(b) in determining the distribution of the parties’ marital assets and retirement benefits. With respect to the division of retirement benefits, the court explained:

But I think it’s fair to do a division of the retirement accounts where [Wife] keeps her State retirement pension plan and her County retirement plan and keep[s] the Lockheed plan. She also keep[s] her two defined contribution plans. ... The direct equalization of his IRA’s marital portion, his 401k and her IRA, 403(b) and that with the pensions would result in \$106,294 to be assigned from one of his accounts to her.

But I look also as I’m required to look at other assets and other resources and I see that [Husband] has that \$1,500,012 in an IRA that’s non marital. I can’t divide it, I’m not dividing it but I’m taking it into consideration. I also want to say that I think it’s fair to divide her pension this way by having her just keep it because she wants to keep working and I think that’s great. And for how long? Who knows how long. [Husband] said [he’s] ready to retire at 65....

But I think more than an equalization would be fair in this case given the disparity between what they have overall. Also given the fact that [Wife], if she hadn’t changed jobs she might be able up to this time have that defined contribution balance that [Husband has], maybe not as much but she was making as much as he was. But I thought about that.

So rather than just doing a straight equalization, what I’ve written is that I’m going to order that \$200,000 of [Husband’s] total account balance under the Fidelity IRA ... is hereby assigned to [Wife].

A. Valuation of Wife’s Pension Benefits

Pension and retirement benefits that accrue during a marriage are marital property. *Abdullahi*, 241 Md. App. at 420 (citing *Imagnu*, 85 Md. App. at 212). Maryland courts may utilize one of three potential methods of valuing pension and retirement benefits:

“First, a trial court could calculate the value of the member’s contributions to the pension during the marriage, plus interest. Second, the court could attempt to compute the present value of the pension when it vests. Third, the court could determine a fixed percentage for [the spouse] of any future payments [the pension recipient] receives under the plan, payable to [spouse] as, if, and when paid to [the pension recipient].”

Id. at 421 (quoting *Dziamko v. Chuhaj*, 193 Md. App. 98, 111 (2010)) (internal quotation marks, further citation, and footnote omitted).

The Maryland “appellate courts generally have ‘shown great respect for the judgments of trial courts in choosing methods for valuing pension benefits in divorce proceedings.’” *Id.* at 420-21 (quoting *Imagnu*, 85 Md. App. at 215). *See also Imagnu*, 85 Md. App. at 216 (noting that the appellate courts have never “required a trial court to utilize a particular method of pension valuation”); *Long*, 129 Md. App. at 574 (noting that a trial court has “considerable flexibility” in determining how to allocate retirement benefits). The appropriate method to be utilized for pension valuation “depends on the circumstances of the individual case[,]” and “even if a pension payment on an ‘as, if, and when received’ basis is available, this does not mandate that the court adopt that method.” *Welsh v. Welsh*, 135 Md. App. 29, 53-54 (2000) (citations omitted).

Wife contends that the circuit court should have valued her pensions on an “if, as, and when” basis, allocating to Husband fifty percent of the marital portion and a survivor annuity, rather than an equitable division using a present value basis. She argues that the circuit court erred in relying on the opinion of Husband’s expert in the valuation of her pensions because the expert’s calculations were speculative and “flawed.” And, in addition to an “if, as, and when” distribution, Wife asserts that she was also entitled to \$445,971 from Husband’s retirement accounts.

Husband responds that the court did not abuse its discretion in awarding Wife more than half of the parties’ combined retirement assets, allowing her to keep the entirety of her pensions with no reduction in benefits for a survivor benefit for Husband, and ordering him to transfer to her \$200,000 in retirement assets. Husband avers that his expert witness, Marc Pushkin, properly considered all relevant factors in valuing Wife’s pensions and the court did not err in crediting his uncontroverted analysis in allocating the parties’ retirement assets.

Mr. Pushkin, an expert in pension plan valuations, testified that, at the time of trial, Wife was eligible to receive an unreduced retirement benefit from the State of Maryland and Montgomery County. In determining the value of Wife’s pensions, Mr. Pushkin considered Wife’s years of service, her compensation, and her age of 62, and determined that, as of the date of trial, she would be entitled to an annual pension of approximately \$32,000. Based on Wife’s annual pension benefit, Mr. Pushkin determined that the present value of Wife’s pensions from the State of Maryland and Montgomery County was \$679,354.47.

Mr. Pushkin arrived at the value of Wife's pensions by determining the cost of purchasing an annuity in the open market that paid \$32,000 per year, and concluded that the cost of that annuity would be \$679,354.47. Mr. Pushkin explained that he could not accurately predict how much money Wife would actually receive from her pension because that amount depended on how long she lived. If she died in the near future, she would receive less than \$679,354.47, and if she lived well beyond the average life expectancy, her pension payout could greatly exceed \$679,354.47. Wife argued to the court in closing arguments that Mr. Pushkin's testimony was speculative, but she did not object at any point during Mr. Pushkin's testimony or offer any expert testimony in support of her preferred valuation method.

With respect to the parties' retirement benefits, the court determined that Wife's pensions through the State of Maryland and Montgomery County were marital property. The court accepted Husband's valuation of Wife's pension benefits in the amount of \$679,354. The court also determined that Wife's individual retirement accounts were marital property: her Fidelity IRA account had a value of \$209,087, her Fidelity account had a value of \$74, and her 403(b) plan through Montgomery County Public Schools had a value of \$177,990. The court found that Husband had defined contribution retirement assets of \$1,279,019.

Although she offered no testimony from a pension expert to contradict or dispute Mr. Pushkin's testimony, Wife argues that the court erred in accepting Mr. Pushkin's valuation of her pension. She insists that the court was obligated to adopt her argument that the equitable way to treat the pensions was to value them on an "if, as, and when"

basis, with Husband receiving fifty percent of the marital portion and a survivor annuity. She asserts that, in that way, “each party receives the same benefits[.]” She contends that, if the court had valued her pension on an “if, as, and when” basis, she would have received a larger monetary award of “liquid funds” from Husband’s retirement accounts.

Wife does not point to an error in the court’s calculation of the benefits. Her argument that she would receive more money up front if the court had valued her pension on an “if, as, and when” basis does not persuade us that the court’s calculation method was either inaccurate or inequitable. The court was not obligated to distribute Wife’s pensions on an “if, as, and when” basis based solely on Wife’s preference for that method. *See Welsh*, 135 Md. App. at 54 (noting that “division of marital property in Maryland is not always equal, but rather equitable”). We conclude that the trial court did not err or abuse its discretion in the adoption of the methodology it chose for valuation of Wife’s pension and its determination that an assignment of \$200,000 from Husband’s retirement benefits to Wife was an equitable allocation of the parties’ marital retirement benefits.

II.

Monetary Award

Wife argues that the circuit court abused its discretion in awarding her a monetary award of only \$100,000; she asserts that she was entitled to a monetary award of \$170,937.³ Husband responds that the monetary award of \$100,000 was an equitable award. He argues

³ There is a minor discrepancy in the record regarding this amount. Because the amount Wife used in her question presented is \$170,937.50, we will use that amount for sake of consistency.

that the circuit court did not abuse its discretion in considering that—although Husband could not directly trace the funds in his brokerage accounts to premarital sources—he had contributed approximately \$600,000 to those accounts prior to the marriage, and was therefore entitled to a greater percentage of those marital funds.

This Court has explained the role of a monetary award in divorce proceedings:

“[T]he purpose of [a] monetary award ... is to achieve equity between the spouses where one spouse has a significantly higher percentage of the marital assets titled [in] his [or her] name.” *Long v. Long*, 129 Md. App. 554, 577-78 (2000). Granting a monetary award allows a court “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). Consequently, **when deciding whether to make an award, the court has broad discretion to reach an equitable result.** See *Freese v. Freese*, 89 Md. App. 144, 153 (1991), *cert. denied*, 325 Md. 396 (1992).

Hart v. Hart, 169 Md. App. 151, 160-61 (2006) (emphasis added); see also *Alston v. Alston*, 331 Md. 496, 508 (1993) (emphasizing that “our statute requires ‘equitable’ division of marital property, not ‘equal’ division”).

Husband testified that he held investments in two brokerage accounts worth a total of approximately \$600,000 at the time the parties married, which Wife did not dispute. Husband explained that he used some of the money in the brokerage accounts to pay the parties’ expenses and make capital purchases during the marriage, including home renovations and a vehicle. Husband estimated that he contributed over \$481,000 to the brokerage accounts during the marriage and withdrew approximately \$800,000 that he spent for family purposes. The balance remaining in the brokerage accounts at the time of trial was approximately \$300,000.

The court determined that Husband had “comingled property that could be viewed as nonmarital” brokerage accounts with marital funds. The court noted that any rental proceeds from the parties’ rental property and contributions that Husband had made to the brokerage accounts during the parties’ marriage were “just comingled all together.” Based upon the evidence presented, the court found that it was not possible to accurately trace the funds remaining in the brokerage accounts directly to a nonmarital source in order to establish those funds as nonmarital property.

In calculating the parties’ total non-retirement funds, the court determined that Wife had three investment accounts valued at \$7,216. The court valued Husband’s bank account, investment accounts, and Audi vehicle as marital assets worth \$349,091. The court determined that an equal split of those assets would result in an award of \$170,937 to Wife. But the court “recognize[d] that [Husband] had nonmarital assets that worked their way into marital assets[,]” and said: “I think it would be fair in this instance to make an adjustment from an equalization. So I am not going to grant \$170,9[3]7 as an equalization but I am going to grant a monetary award in the amount of \$100,000[.]”

We are satisfied that the court considered the requisite factors in arriving at an equitable monetary award. As noted above, two subsections of FL § 8-205(b) permit the court to consider factors other than arithmetic in determining the amount of a monetary award:

(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; [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.

The court's award of \$100,000 (instead of \$170,937) was supported by these subsections.

We perceive no abuse of discretion in the court's decision to grant Wife a monetary award in the amount of \$100,000.

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