

Circuit Court for Howard County
Case No: 13-C-18-114498

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 724

September Term, 2023

WALTERE KOTI

v.

AUDREY THEODORA LEONARD KOTI

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 15, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This timely appeal arises from a May 2, 2023 decision of the Circuit Court for Howard County granting an absolute divorce in favor of Waltere Koti, appellant (“Husband”), and ordering him to pay indefinite alimony and attorneys’ fees to his wife, Audrey Theodora Leonard Koti, appellee (“Wife”).

ISSUES PRESENTED

Husband presents four issues for our consideration,¹ which we have consolidated and rephrased as follows:

- I. Whether the circuit court erred in awarding Wife indefinite alimony in the amount of \$2,000 per month.
- II. Whether the circuit court erred in ordering Husband to pay \$10,000 toward attorneys’ fees incurred by Wife.

¹ The issues presented, as articulated by Husband, are:

- I. The trial court erred and abused its discretion as a matter of law when it determined that appellant’s income “is more along a minimum of \$85,000”, higher than the amount represented in appellant’s tax returns thereby changing appellant’s tax consequences.
- II. The trial court erred or abused its discretion as a matter of law in awarding appellee indefinite alimony.
- III. The trial judge erred or abused its discretion as a matter of law [sic] in deciding that the appellee is not capable of supporting herself.
- IV. The court erred or abused its discretion as a matter of law in awarding appellee attorney’s fees to the appellee in the amount of \$10,000.

For the reasons set forth below, we shall neither affirm nor reverse the circuit court’s award of indefinite alimony, but shall remand the case to the circuit court for further consideration of Husband’s income and the award of attorneys’ fees.

PROCEDURAL AND FACTUAL BACKGROUND

The parties were married in a civil ceremony in Prince George’s County on October 12, 1994. They had one child together, a daughter, born on November 13, 2003.² Beginning in 2017, the parties lived together with their daughter in a rented home in Laurel. Husband moved out of that home in December 2017 and lived in one of his business’s offices.

On March 7, 2018, Husband filed a complaint, and subsequently filed an amended complaint, seeking an absolute divorce. Wife filed a counter-complaint for absolute divorce and later filed an amended counter-complaint in which she also sought a limited divorce. A *pendente lite* order was entered on October 16, 2018 that, among other things, granted Wife use and possession of the family home and ordered Husband to pay her \$2,600 per month for “*pendente lite* undifferentiated family support.” After a hearing on January 14, 2019, the court entered a “Limited Divorce Consent Order” pursuant to which Wife was granted a limited divorce. The parties agreed, and the consent order provided, among other things, that Wife would have use and possession of the family home. The Consent Order also provided, in part, as follows:

ORDERED, that by agreement, [Husband] shall pay the following expenses related to the family directly to the

² The parties’ child was emancipated on November 13, 2021, while the underlying divorce proceeding was pending.

respective third-party providers: a) 100% of the monthly rent associated with the family home; b) monthly TV and Internet connection; c) monthly utilities bill for the family home; d) quarterly water bill for the family home; and e) monthly cellular telephone bill for the [Wife] and the minor child of the parties; and it is further

ORDERED, that by agreement, commencing and accounting from January 14, 2019, [Husband] shall pay directly to the [Wife] the sum of \$500.00 in undifferentiated family support over and above the payments made directly as set forth herein[.]

On April 7, 2021, Husband filed a complaint for absolute divorce on the ground of voluntary separation. Following a hearing on *pendente lite* alimony, Husband was ordered to continue making the payments required by the consent judgment of limited divorce and to pay an additional \$1,000 per month for *pendente lite* alimony. Wife testified that Husband never paid the full \$1,000, but instead paid half that amount. In September or October 2022, Husband stopped making payments to Wife for undifferentiated family support and *pendente lite* alimony. Wife filed a petition for contempt and, after a hearing on March 23, 2023, Husband was found to be in contempt. As a purge, Husband was ordered to pay Wife \$2,800 by April 7, 2023, which he did.

A hearing on the complaint for absolute divorce was held on April 13, 2023, at which the following facts were adduced. Husband was 60 and Wife was 57 at the time of the hearing. Wife was a high school graduate. From 1995 to April 2003, she worked at Kaiser Permanente as a customer service representative. She was terminated from that job because she was not answering enough calls. Thereafter, she worked for one year in a customer service position at the Motor Vehicle Administration (“MVA”). In 2008, Wife

earned some credits from Howard County Community College toward a nursing degree, but did not graduate because she could not get through the required math courses. Wife did occasional babysitting and worked for a temporary employment agency known as Adecco. Wife stopped working temporary jobs when the parties' daughter was in second or third grade because the child's grades were slipping and she was "acting up." The parties decided Wife would stay home, take care of the child, and ensure her homework was completed.

After the parties separated in 2017, Wife worked at Walmart and had a seasonal job with the United Postal Service. In 2021, Wife earned \$24,546.58 from her job at Walmart. She earned about the same amount in 2019 and 2020. In December 2021, Wife fell and broke her ankle, requiring surgery. She wore a boot on her foot until August 2022 and lost her job because she could not stand as her work required. She applied for and received unemployment insurance benefits and obtained \$1,965 by emptying her retirement account. Wife applied for social security disability benefits, but her claim was denied.

Wife worked for a temporary staffing agency known as First Team from about September 2022 through March 2023. In September 2022, Wife purchased a Volvo for \$33,000. Shortly after purchasing the car, it was involved in an accident. It remained in a repair shop from October 2022 to the time of the April 13, 2023 hearing because, according to Wife, there was a problem with the insurance. Wife was several months behind on the car payments of \$404 for the Volvo. A few weeks prior to the hearing, wife began working at Walmart where she earned \$15 an hour. She experienced trouble with transportation to and from work because bus service was not available to accommodate her work hours.

Wife had a male friend who lived in the family home “from time to time.” One morning Husband showed up at the house and saw the man there. After that, Husband reduced the monthly payments of \$1,500 required by the consent judgment of limited divorce and the *pendente lite* alimony order. Later, in September or October 2022, he ceased making payments to Wife.

Shortly before the April 13, 2023 hearing, Wife received notice that she had to move out of the family home because the landlord planned to sell it. She did not have a place to live so she planned to stay at a hotel until she could gather resources to rent an apartment.

Since about 1996, Husband has owned an insurance, title, and tag business known as First Insurance Agency. The business has two locations, one in Elkridge and another in Baltimore City. There are two individuals who work as independent contractors for First Insurance Agency. Husband testified that they are not employed full time, but work a couple of times per month “when they have the time to come.” They are paid on commission and receive half of the fee charged for tag and title work. Wife claimed that one of those independent contractors was Husband’s girlfriend, but Husband denied that claim.

With respect to the insurance portion of his business, Husband sells policies on behalf of Maryland Automobile Insurance Fund (“MAIF”) and Progressive Insurance Company (“Progressive”). He is paid a commission of about ten percent on the premiums. According to Husband, if an insured cancels a policy, Husband is required to return the unearned portion of his commission to the appropriate insurance company within 24-25 days. When a customer pays with a credit card, payment is made to a finance company for

MAIF or directly to Progressive. If a customer pays with cash, the payment is deposited into Husband’s business account at M&T Bank.

Husband’s business is also licensed to provide title and tag services for the MVA. Clients pay the fees required by the MVA plus a fee ranging from \$70 to \$100 for the services provided by First Insurance Agency. When a customer pays for tag or title work using cash, Husband deposits the payment into his M&T Bank business account. That account is tied to the MVA, which can withdraw from that account the funds it is owed. Husband testified that if a customer pays using a mobile payment service such as Zelle or Cash App, the payment is deposited into his personal bank account at Navy Federal Credit Union³ because he is unable to use a mobile payment service with his business account at M&T Bank. Husband would withdraw the MVA’s portion of the payment and move it into the business bank account at M&T Bank. Husband made cash withdrawals because transferring the money electronically involved a delay that might prevent the MVA from being able to access its money in a timely manner.

Husband testified that his business fluctuates, that his income cannot be determined, and that he did not “have a salary[.]” Husband testified that he filed for an extension for his 2022 taxes. Just prior to trial, he produced Form 1120S, a federal return for an S Corporation, which showed that in 2022 his business had gross sales of \$115,672 and deductions of \$79,022. Husband testified that in 2022, his business earned between \$60,000 and \$64,000 from the tag and title portion of the business. As to the insurance

³ Husband testified that he had additional personal accounts at Navy Federal Credit Union, but they were inactive because they had been compromised.

part of his business, he receives 1099 forms from each insurance company. In 2022, he earned \$29,588.64 from MAIF and in 2021 he earned \$37,316.54. In 2022, he earned \$21,680.42 from Progressive and in 2021 he earned \$19,513.07. Husband paid rent of about \$1,236 per month for the Elkridge business office and \$375 plus utilities each month for the Baltimore City location. Other expenses included the two independent contractors, advertising, the cost of bonds, workers' compensation insurance, general liability insurance, errors and omissions insurance coverage, automobile insurance, telephone and internet service, and Comcast service in the Baltimore location. In 2022, Husband paid his independent contractors in cash and, in 2022, he paid them \$33,450. Husband acknowledged that he pays personal expenses out of his First Insurance Company bank account, including rent payments for the family home.

Husband owed the Internal Revenue Service about \$65,374.22 and the State of Maryland about \$17,000 for unpaid personal income taxes. He also had personal credit card debt. Husband acknowledged that prior to the hearing on his complaint for absolute divorce, he gave Wife \$2,800 through Cash App. Husband owned a 2010 Pontiac Viper. In April 2023, Husband told the parties' daughter that he would voluntarily give her \$300 per month for a period of one year. Husband testified that his "body is broken" and that he "just can't, you know, take much more[,]” but he did not present any evidence of a health issue.

The court announced its decision on the record at a hearing on May 2, 2023. The circuit court awarded Husband an absolute divorce on the ground of a one-year separation. Husband was ordered to pay indefinite alimony in the amount of \$2,000 per month

beginning on May 1, 2023, and to pay \$10,000 toward Wife’s outstanding attorneys’ fees. In reaching its decision, the court found that if Wife worked full time at Walmart and earned \$15 per hour, her after-tax income would be “approximately \$2,100.00 per month,” and her expenses were \$4,349 per month.

The court found that Husband’s testimony about his finances and the income portion of his financial statement were not credible, that he “significantly co-mingled” the funds for his business with his personal funds, and that “it’s impossible to say with certainty what his actual income is as it runs through both of those types of accounts and is difficult to ascertain.” The court considered that First Insurance Agency’s 2022 “gross sales were listed as \$115,672.00” and that Husband “took \$79,022.00 in deductions leaving ordinary business income of \$36,450.00.” The court noted that there was no documentation to support the expenses listed, except for the rent on Husband’s office. The court determined that Husband’s “income is more along a minimum of \$85,000.00 per year, which is about \$7,059.91 per month,” and attributed to him after-tax income of “about \$6,000 per month.” Notwithstanding its finding that Wife’s after-tax income would be approximately \$2,100 per month, the court stated that Husband’s income “appears to be almost four times as much as” Wife’s income. The court concluded that the parties’ living standards were unconscionably disparate.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

Husband challenges the circuit court’s decision to grant Wife alimony in the amount of \$2,000 per month. He contends that the court erred in finding that his testimony about his finances was not credible and that it was impossible to ascertain his actual annual income. He further argues that the court erred in rejecting the evidence he presented concerning his business income, deductions, and personal income and imputing to him annual income of \$85,000. In addition, Husband maintains that the court erred in finding that Wife was not capable of supporting herself. Husband further challenges the court’s decision to award Wife attorneys’ fees in the amount of \$10,000.

A. Standard of Review

Since the adoption of the Maryland Alimony Act in 1980, alimony may be awarded either for a fixed term, referred to as “rehabilitative alimony,” or for an undefined amount of time, referred to as “indefinite alimony.” *Walter v. Walter*, 181 Md. App. 273, 281 (2008). “[A]limony awards, though authorized by statute, are founded upon notions of equity[.]” *Goicochea v. Goicochea*, 256 Md. App. 329, 357 (2022) quoting *Tracey v. Tracey*, 328 Md. 380, 393 (1992)). The purpose of alimony generally 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)). In determining alimony, the circuit court must look to § 11-106(b) of the Family Law Article “FL”), which provides:

(b) In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:

(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) (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.

Id.

Although the court is required to give consideration to each of the factors contained in the statute as applicable to a given case, it is not required to employ a formal checklist, mention specifically each factor, or announce each and every reason for its ultimate decision. *Doser v. Doser*, 106 Md. App. 329, 356 (1995). *See also Simonds v. Simonds*, 165 Md. App. 591, 604-05 (2005) (citing *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999)). We may examine the record as a whole to see if the court’s findings were based on the mandated factors. *Doser*, 106 Md. App. at 356.

Notwithstanding the preference for an award to be for a fixed term, the court has discretion to award indefinite alimony when one of two circumstances described in FL § 11-106(c) has been shown:

(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.

Id. Accord Solomon v. Solomon, 383 Md. 176, 195-96 (2004); *Walter*, 181 Md. App. at 281-82 (citing *Tracey*, 328 Md. at 391).

Findings predicated on subsection (c) rest upon the court’s first-level factual findings of the factors listed in subsection (b). *See Whittington v. Whittington*, 172 Md. App. 317, 337 (2007); *Bricker v. Bricker*, 78 Md. App. 570, 577 (1989). The provisions of

subsection (c) are “a restraint upon the doctrine of rehabilitative alimony” that exist “to protect the spouse who is less financially secure from too harsh a life once single again.” *Tracey*, 328 Md. 380, 392 (1992) (citation omitted). Indefinite alimony is appropriate “if the standard of living of one spouse will be so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court.” *Karmand v. Karmand*, 145 Md. App. 317, 338 (2002). The court’s determination of an unconscionable disparity sufficient to justify an order of indefinite alimony “requires the application of equitable considerations on a case-by-case basis, consistent with the trial court’s broad discretion in determining an appropriate award.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 248 (2000) (quoting *Roginsky*, 129 Md. App. at 146-47).

We “accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Tracey*, 328 Md. at 385. “Thus, absent evidence of an abuse of discretion, the trial court’s judgment ordinarily will not be disturbed on appeal.” *Solomon*, 383 Md. at 196. *Accord Boemio v. Boemio*, 414 Md. 118, 124-25 (2010) (“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.”); *Reynolds v. Reynolds*, 216 Md. App. 205, 219 (2014) (we will disturb a trial court’s ruling only “where no reasonable person would take the view adopted by the [trial] court,” or “the ruling is clearly against the logic and effect of facts and inferences before the court.”) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

B. Analysis

Husband challenges the circuit court’s findings that his testimony about his finances was not credible, that it was not possible to ascertain his actual income, and that annual income in the amount of \$85,000 should be imputed to him. Husband argues that the judge confused the difference between business and personal income, “did not understand” that “it really does take a lot of overhead to earn a buck,” and erroneously treated certain deposits into his personal account as his personal funds.

We find no error in the court’s determination that Husband’s testimony about his finances was not credible. Husband testified that he did not have a salary and that his income could not be determined because his business fluctuated. He acknowledged that he co-mingled business and personal funds in his bank accounts. Notably, Husband admitted that he paid personal expenses, including rent payments for the family home, from the business account at M&T Bank. He also overstated his monthly expenses by including in them such things as alimony and other expenses he was ordered to pay *pendente lite*. In addition, the court properly considered Husband’s decision to voluntarily pay his emancipated daughter \$300 per month and credited Wife’s testimony that Husband stopped making some of his court-ordered payments when he learned about overnight visits at the family home by Wife’s male guest. The court also noted Husband’s failure to provide supporting documentation for claimed business deductions. In an action tried without a jury, we “give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). In short, there was ample evidence to support the court’s credibility determination in this case.

We find no error with respect to the court’s decision to impute to Wife income based on full-time employment earning minimum wage. Nevertheless, from the record before us, we are unable to determine the factual basis for the court’s decision to impute to Husband annual income in the amount of \$85,000. Husband claimed that his gross monthly wages were \$3,686, which the court calculated to be \$44,232 per year. The court found that his income was “more along a minimum of \$85,000.00 per year, which is about \$7,059.91 per month.” In reaching that conclusion, the court referenced Plaintiff’s Exhibits 5, 6, 7, 9, 13, 14, and 15 and Defendant’s Exhibits 12, 13, and 17. Those exhibits included the business’s tax return for 2021; Husband’s personal tax returns for 2021; business and personal bank statements for 2021 and 2022; non-employee compensation statements showing income from Progressive of \$12,367.86 in 2020, \$19,513.07 in 2021, and \$21,680.42 in 2022; and 1099 miscellaneous income of \$33,450. The court noted that in 2022, the business’s “gross sales were listed as \$115,672.00,” that Husband “took \$79,022.00 in deductions leaving ordinary business income of \$36,450.00,” and that Husband failed to produce any documentation to support the deductions with the exception of a rental agreement for his office. It is unclear whether the court declined to credit some of the deductions. From the record before us, we are unable to determine the basis for the court’s finding that Husband’s income was “more along a minimum of \$85,000.00 per year[.]”

Similarly, with respect to Husband’s monthly expenses, there was no error in the court’s decision to reject his claimed personal expenses of \$6,799 because he included in that amount expenses he had been ordered to pay *pendente lite*. It is unclear from the

record, however, how the court calculated Husband’s expenses to be \$2,822 per month. The court reduced the amount claimed by Husband by \$1,500 “for alimony,” which appears to be the \$500 for undifferentiated family support and the \$1,000 in *pendente lite* alimony pursuant to the consent judgment for limited divorce. As for the expenses associated with maintaining the family home, there was no clear evidence presented to show the expenses actually paid by Husband. The parties did not dispute that the rent on the family home was about \$2,000, the utilities cost about \$250 to \$300 per month, internet and cable were about \$180 per month, and the cell phones cost about \$100 per month, but there was no specific evidence about these expenses. In its decision, the court looked to testimony from a February 2022 hearing before the family magistrate that Husband was paying “about \$2,283.00 per month for those expenses.” We also note that the court did not appear to include Husband’s tax debts in assessing the alimony factors. In sum, the factual basis for a determination that Husband’s expenses were \$2,822 per month is unclear.

For these reasons, we shall vacate the award of indefinite alimony and remand the case for further consideration. As we are unable to determine the factual basis for the income imputed to Husband, and therefore, the financial resources of each party, we shall also vacate the award of attorney’s fees and remand that issue for further consideration.

On remand, the court may accept additional evidence on the issue of Husband’s income and expenses and both parties may introduce additional evidence on the issue of their earnings and expenses, past and present, including evidence that is up-to-date. Wife

will continue to bear the burden of proving her entitlement to indefinite alimony.⁴ Until the circuit court completes the proceedings required by this opinion, the existing order for indefinite alimony will continue to have the force and effect of a *pendente lite* award. See *Simonds v. Simonds*, 165 Md. App. 591, 613 (2005).

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AS TO ALIMONY AND ATTORNEYS' FEES VACATED. JUDGMENTS IN ALL OTHER RESPECTS AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. JUDGMENT WITH RESPECT TO ALIMONY TO REMAIN IN FORCE AND EFFECT AS PENDENTE LITE ORDER PENDING FURTHER ORDER OF THE CIRCUIT COURT. COSTS TO BE SHARED EQUALLY BY THE PARTIES.

⁴ We recognize that the evidence presented may not have been sufficient for the court to conduct the required analysis. We note that if, after further proceedings, the court believes it lacks sufficient credible evidence to make the necessary findings, it might appoint a neutral expert pursuant to Md. Rule 5-706 to assess Husband's earning capacity.