Circuit Court for Carroll County
Case No. C-06-FM-23-000458

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 770

September Term, 2024

DOMENICO AMODEI,

v.

JENNIFER AMODEI,

Nazarian,
Zic,
Maloney, John M.
(Specially Assigned),

JJ.

Opinion by Maloney, J.

Filed: April 15, 2026

* 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 Maryland Rule 1-104(a)(2)(B).

This appeal requires us to address a number of issues raised in the divorce proceedings for appellant Domenico Amodei ("Father") and appellee Jennifer Amodei ("Mother") by the Circuit Court for Carroll County. After a five-day trial, the trial court granted a judgment of divorce that, in relevant part, made a child custody determination with a visitation schedule and granted Mother child support and a monetary award along with an award of attorneys' fees.

Father takes issue with a number of these rulings. He raises the following questions for our determination, which we rephrase slightly:

1. Did the trial court err in the awarding or calculation of a marital award?
2. Did the trial court err in the awarding of $52,000 to Mother in what was labeled "Crawford Credits"?
3. Did the trial court err in calculating the child support under the sole custody guidelines?
4. Did the trial court abuse its discretion in deciding the Christmas access schedule?
5. Did the trial court abuse its discretion by refusing to order Mother to cooperate in getting the children passports and by placing a set time in the future when this could occur?
6. Did the trial court err in awarding counsel fees?

We will affirm the access schedule ruling, affirm in part and vacate in part the passport determination, and will remand the marital property award, along with the child support, and attorneys' fees decisions.

PROCEDURAL AND FACTUAL BACKGROUND

Mother and Father met in high school and started dating shortly after graduation. They dated for 13 years before their marriage on June 8, 2018. Prior to marriage, the

parties bought a house together in 2014 ("Pine Circle home") that they lived in from the time of purchase until Father moved out in 2024. Mother paid the $52,000 downpayment for the home and it was titled jointly in both of their names on the deed. They shared expenses for the home before and after the marriage.

Mother and Father are the parents of two young children, G.A., and S.A., who were three and two, respectively, at the time of the underlying trial. Sometime after S.A. was born, the parties began living in separate bedrooms. Mother filed a complaint for absolute divorce on June 5, 2023, in the Circuit Court for Carroll County.

Assisted by a mediator and their attorneys, the parties reached what is titled a "Temporary Agreement" in December of 2023 to begin the dissolution of the marriage. In keeping with the terms of this agreement, on January 5, 2024, Father moved out of the marital home.

Both parties are employed. Mother is a hairdresser. Father is self-employed as a labor supplier who occasionally does construction projects.

The trial in this matter lasted five days beginning May 6, 2024. Besides testifying themselves, both parties called a number of family members and friends as witnesses along with financial experts. A great deal of the testimony in the trial involved evaluating Father's businesses and attempting to calculate his income.

The trial court rendered its oral opinion on May 20, 2024. After granting a judgment of divorce, the parties were given a shared physical custody schedule along with joint legal custody. The trial court adopted Mother's recommended vacation

schedule. Mother was awarded three years of Use and Possession of the marital home along with a "Crawford Credit" for her $52,000 contribution to the purchase of the home before marriage. This money was to be given to Mother when the home is sold after three years, with the remaining proceeds to be evenly divided.[1] Mother was also awarded a $50,000 marital award but was denied alimony.

The trial court found that Mother's expert in forensic accounting, Robert Carter, was "particularly credible" and adopted his analysis to find that Father's annual salary was $206,000. The trial court went on to make findings that Mother's annual salary was $101,243; that she would have to pay $2,000[2] a month for childcare for both girls; and that Mother was paying $282 a month for health care for the children. The trial court estimated the childcare expense because the court refused Mother's request that the court require the children to remain at the Goddard School where the girls were currently attending pre-school. The court found that while Goddard was a good school, the divorce made tuition cost an issue so the parties would have to jointly determine where the children will attend preschool. Mother had testified that the cost of Goddard for both children was $3,600, down from the $3,700 the parties had been paying.

[1] Mother was also granted the option to purchase the home within the first 90 days following the expiration of the three-year Use and Possession period. The trial court did not state how the home would be valued for such a purchase so presumably the parties would have to agree upon a price.

[2] In its oral ruling, the trial court found that Mother would have to pay $2,000 of daycare expenses. The child support guidelines sheet signed by the court, however, indicates $1,500 in "Work-related Child care expenses." Because the child support determination is being vacated, the trial court will have to resolve this discrepancy upon remand.

Based upon its findings and a belief that the calculation for child support was less when prepared under the sole guideline's calculation, the trial court ordered Father to pay $3,966 in monthly support.

The trial court also addressed another issue that was strongly contested during the trial: whether Father would be able to take the children to his cousin's upcoming wedding in Italy. After hearing from both parties and others, the trial court ruled that Mother does not have to cooperate in getting passports for the wedding and the trial court also put a timetable on when the children would be allowed to acquire passports.

Finally, the trial court, noting that Father "stonewalled in the discovery process and escalated" the contentiousness of the litigation, required Father to contribute $50,000 to Mother's attorneys' fees, which the trial court found to be over $120,000.

After the court denied Father's Motion to Alter and Amend, this appeal was filed. Further facts will be included in the discussion that follows.

DISCUSSION

Standards of Review

A trial court's determination whether property is marital and, if so, its value, are both factual questions that we review for clear error. *Flanagan v. Flanagan*, 181 Md. App. 492, 521, (2008); Md. Rule 8-131(c). We review the circuit court's ultimate decision to grant a monetary award, as well as its amount, for abuse of discretion. *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (citing *Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019)).

In doing so, "'we may not substitute our judgment for that of the fact finder, even if we might have reached a different result. . . .'" *Flanagan,* 181 Md. App. at 521-22, (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000)). And although that review is deferential, we emphasize that the "'trial court must exercise its discretion in accordance with correct legal standards.'" *Flanagan*, 181 Md. App. at 522, (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)).

Child custody and visitation awards are predicated on the "best interest" of the children. *Petrini v. Petrini*, 336 Md. 453, 468 (1994). Accordingly, the standard of review in custody cases is whether the trial court abused its discretion in making its custody determination. *Id.* at 470 (citing *Davis v. Davis*, 280 Md. 119, 125 (1977)). "[T]he chancellor's decision should be disturbed only if there has been a clear abuse of discretion." *Id.* at 126. Such abuse would arise:

> when no reasonable person would take the view adopted by the [trial] court or when the court acts 'without reference to any guiding rules or principles. . . . Put simply, we will not reverse the trial court unless its decision is 'well removed from any center mark imagined by the reviewing court.'

Santo v. Santo, 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-313 (1997)).

"[C]hild support orders are within the sound discretion of the trial court." *Reichert v. Hornbeck*, 210 Md. App. 282, 316 (2013). Such a determination will not be disturbed provided that the trial court's discretion was not arbitrarily used or based on incorrect legal principles. *Walker v. Grow*, 170 Md. App. 255, 266 (2006).

Finally, "[a] court's decision to award attorney's fees generally is reviewed under an abuse of discretion standard." *Henriquez v. Henriquez*, 185 Md. App. 465, 475 (2009). "If the court gives proper consideration to the statutory factors and the circumstances of the case, an award of attorney's fees will not be reversed 'unless a court's discretion was exercised arbitrarily, or the judgment was clearly wrong.'" *Id.* at 476 (quoting *Collins v. Collins*, 144 Md. App. 395, 447 (2002)).

MONETARY AWARD(S)

We will address appellant's first two challenges together since both the marital award of $50,000 and the "credit" of $52,000 concern the trial court awarding monetary awards to Mother despite the fact that they were characterized differently.

Father first takes issue with the monetary award of $50,000 by the trial court to Mother. His overarching issue with the monetary award can be broken down into four purported errors:

1) The court failed to consider the factors found in Family Law Article Section § 8-205(b).
2) The court failed to explain its reasoning for the award.
3) The $50,000 marital award erroneously exceeded the value of Father's marital property.
4) The court granted Mother an excessive amount of the marital property.

The second issue Father raises concerns a separate award that Mother received for the $52,000 that she contributed to buying the family home prior to the marriage. Father points out that this award is in direct contradiction of *Kline v. Kline*, 85 Md. App. 28 (1990), which prohibits a return of a down payment made by one party for the purchase

of a home that the parties purchased prior to marriage. Father argues that it was a contribution by Mother of nonmarital property to the purchase of jointly owned nonmarital property, thus this ordered payment to Mother violates Maryland Code (1984 2019 Repl. Vol.), § 8-202(a)(3) of the Family Law Article ("FL"), which expressly prohibits the transferring of property from one party to another.

Mother answers that, as far as the first award, the "decision whether to grant a monetary award is generally within the sound discretion of the trial court." *Alston v. Alston*, 331 Md. 496, 504 (1993). She further argues that while the trial court did not make specific findings of the factors listed in FL § 8-205(b), the record reflects that the court did consider them. Mother goes on to point out "inequitable conduct on the part" of Father which she believes justifies the award.

As to the $52,000 payment, Mother argues that the marital home on Pine Circle should be considered marital property with the singular exception of her downpayment which was properly returned to her. She argues that this downpayment was conceded by Father and it was clearly made prior to marriage. Mother reasons that, since there is no evidence in the record of any other nonmarital payments such as mortgage payments being made during the years the parties lived in the home prior to marriage, the court should consider the balance of the equity in the home as marital property under FL § 8-203.

The three-step process for determining whether to grant a monetary award is long-established. First, for each disputed item of property, the court must determine whether it is marital or nonmarital. *Flanagan*, 181 Md. App. at 519; FL § 8-203.

Marital property refers to "property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). This subsection of the statute further provides:

> (2) "Marital property" includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.
>
> (3) Except as provided in paragraph (2) of this subsection, "marital property" does not include property:
>
> (i) acquired before the marriage;
>
> (ii) acquired by inheritance or gift from a third party;
>
> (iii) excluded by valid agreement; or
>
> (iv) directly traceable to any of these sources.

FL § 8-201(e).

Second, the court must determine the value of all marital property. *Flanagan*, 181 Md. App. at 519; FL § 8-204.

Third, 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.'" *Flanagan*, 181 Md. App. at 519-20 (quoting *Doser v. Doser*, 106 Md. App. 329, 349 (1995)). *See* FL § 8-205(a).

The three steps have been described in case law for decades in a fashion similar to how this court has done so. A concern is that the third "step," FL § 8-205, is really a number of steps blended into one.

While the statute does not spell it out, the court must first assign a title designation of either or both parties to each individual marital property. That is often easily determined by agreement of the parties on the 9-207 or evidence of title. In other instances, the court will have to use the authority granted by FL § 8-202(a), which permits the court to resolve disputes between the parties as to the owner of real or personal property:

> (1) When the court grants an annulment or a limited or absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of personal property.
> (2) When the court grants an annulment or an absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of real property.

FL § 8-202(a).

After the marital property is properly valued and titled, the court must then calculate the value of each party's property by title. Each property is assigned by title to one or the other party, or partially to both in the case of jointly titled property. The total value of each side's property is added up and compared.

Only after doing these steps does the court make the decision whether dividing the property by title is equitable. If it is, the process stops there, and no consideration of the factors in FL § 8-205(b) is needed since no marital award will be made.

However, if the court determines that one party's ownership of marital property is inequitable, the court will then proceed to consider each of the 11 factors in FL § 8-205(b). As mentioned, the better the articulation of these factors is done, the easier it is for an appellate court to ascertain that this requirement was followed.

It is only after this final "step" of FL § 8-205 is completed that the court may make "an adjustment of the equities and rights of the parties concerning marital property" by granting one side a marital award from the other.

While the accepted "three steps" has symmetry with the three statutes that govern marital property awards, FL § 8-203–5, this shorthand reference may also contribute to some of the confusion that is often seen by courts and practitioners in applying the three statutes correctly.

The philosophy behind this section was spelled out in *Ward v. Ward*, 52 Md. App. 336, 339-40 (1982) (internal quotation marks omitted):

> The monetary award is thus an addition to and not a substitution for a legal division of the property accumulated during marriage, according to title. It is intended to compensate a spouse who holds title to less than an equitable portion of that property. . . . What triggers operation of the statute is the claim that a *division* of the parties' property according to its title would create an inequity which would be overcome through a monetary award.

If the court does decide to make a monetary award, the court must first consider the eleven factors set forth in FL § 8-205(b).

In the present case, it is agreed that the court did not enunciate any of the 11 factors under FL § 8-205(b). Nor did the court reference generally when making a marital award.

But Mother claims that the one sentence the court uttered in awarding the marital award indicates that the court complied with the requirement of FL § 8-205(b): "Based upon giving careful consideration to all the testimony, *exercising my discretion*, I am going to direct that wife be awarded a monetary award from husband in the amount of

$50,000. . .” Mother’s argument relies on the trial judge stating he was “exercising his discretion” and the often-stated maxim that “a judge is presumed to know the law[.]” *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003).

That maxim is accurate. And it is also true, that in making a monetary award, the chancellor need not enunciate every factor that was considered on the record, but the court should “state on the record that [it] considered the required factors in making [its] decision.” *Randolph v. Randolph*, 67 Md. App. 577, 585 (1986).

This Court has on numerous occasions refused to uphold monetary awards when a trial court does not adequately explain its decision in light of the statutory factors. *See Flanagan*, 181 Md. App. at 522 (concluding that trial court abused its discretion where it “concluded, in a single sentence, that $30,000 was an appropriate award” and “did not adequately explain the basis for its monetary award”); *Hart v. Hart*, 169 Md. App. 151, 166 (2006) (concluding that trial court abused its discretion in making monetary award where “there [wa]s no indication that the court considered the mandatory factors”); *Campolattaro v. Campolattaro*, 66 Md. App. 68, 78 (1986) (concluding that trial court abused its discretion where the court “**neither mention[ed] the statutory factors, nor provide[d] any clue as to the manner in which those factors were considered**”) (emphasis added).

We find ourselves in a similar situation in the present case. A court stating that it used its discretion is not equivalent to the court applying the factors or indicating that they were considered. Discretion is used to make a marital award *after* considering the §

8-205(b) factors. "[A]ppellate courts must be able to discern from the record that these factors were weighed," *Hart*, 169 Md. App. at 166-67, and because this Court is unable to do so, the marital award must be remanded.

But that is not the only concern we have with the method used to make the marital award. The manner of addressing the other two steps of the process is also problematic.

The trial court did go through all of the property listed in the Maryland Rule 9-207[3] joint statement of marital and nonmarital property and properly determined whether or not each item was marital property according to FL § 8-203 with one exception: it did not determine whether the Pine Circle home was marital property, nonmarital property or some combination thereof. This is important because the Pine Circle home was the most valuable property considered by the court.

Both parties indicated in their briefs that it was partially marital and partially nonmarital property.[4] That appears to be correct since there is no mention of the property

[3] Maryland Rule 9-207 requires that when there is a claim for a marital award, the parties must file a joint statement "listing all the property owned by one or both of them." The Rule sets out a form where the parties list all property owned by both parties, broken down into three groupings: property the parties agree is marital property, property they agree is not marital property and a third for property that is disputed as to whether it is marital. Whatever grouping the property falls into, each party must list who holds title to the property along with the fair market value of the property and any liens or encumbrances.

The purpose of requiring Maryland Rule 9-207 statements is to simplify property disputes for the trial court by "narrow[ing] the issues (relating to property) that are actually in dispute." *Beck v. Beck*, 112 Md. App. 197, 207 (1996) (emphasis removed) (holding such as to Rule S72 and S74 statements, the predecessors of Rule 9-207).

[4] On the 9-207 form, Father lists the property as being nonmarital. In his brief, he claims that it is partly marital and partly nonmarital as he did at argument.

being titled as tenants by the entirety[5] and it is uncontradicted that the home was purchased four years prior to the marriage and was titled as a joint tenancy.[6] There is also no dispute that the parties made mortgage payments on the property before and after their marriage.[7] Thus, part of the property is nonmarital.

To the extent the mortgage balance was further reduced during marriage by the payment of marital funds, the property is partly marital. As the Supreme Court has stated, "[t]he characterization of property as nonmarital or marital depends upon the source of the contributions as payments are made." *Grant v Zich*, 300 Md. 256, 270 (1984). The Court in *Grant* addressed this issue as follows:

> Property is nonmarital in the ratio that the nonmarital investment bears to the total nonmarital and marital investment in the property. To the extent that property is nonmarital, its value is not subject to equitable distribution. Property is marital in the ratio that the marital investment bears to the total nonmarital and marital investment in the property. To the extent that the property is marital, its value is subject to equitable distribution.

Id. at 276, n.9.

[5] If the property had been re-titled to tenants by the entirety after marriage, that would make this inquiry uncomplicated since it would be entirely marital property pursuant to FL § 8-201(e)(2). That does not appear to be the case.

[6] Defense exhibit 21 is the deed from the original purchase dated November 26, 2014, listing the parties as joint tenants with right of survivorship. Mother is listed under her pre-marriage last name of Diachenko.

[7] The parties testified that they split the mortgage payments both prior to the marriage and afterwards. They further agree in their 9-207 forms that the mortgage on the property is $2,209.34 a month. Interestingly, neither side lists on their 9-207 form any taxes or insurance payments for the property. So, despite Mother's protest, there is evidence in the record of both the nonmarital and marital mortgage payments.

Thus, it was necessary to ascertain the marital and nonmarital portion of the Pine Circle home. Because this did not occur, remand is required.

There is also a concern with how the properties were valued as required by FL § 8-204. In its oral ruling, the trial court addressed property listed in the first section of the Rule 9-207 form submitted by the parties and, except for the Pine Circle home, made findings as to the marital character and value of each. The court determined that the value of the marital property net of a $44,072.50 debt owed on a Kia Telluride vehicle to be $58,417.39.

The trial court found the total value of the marital property to be $102,489.89 prior to reduction for the vehicle debt. It does not appear that the court subtracted the vehicle debt from the fair market value of the vehicle to find its marital value. Instead, the vehicle debt was subtracted from the total value of *all* marital property. The marital debt should be subtracted from the individual item of marital property it was used to acquire, not from the total value of marital property as was done here. "[M]arital debt cannot be transferred from one item of marital property to another." *Kline*, 85 Md. App. at 45. In some situations, the marital debt could reduce an individual property's value below zero thus making it no longer marital property. *Id.* at 45-46. The trial court will have an opportunity on remand to address this.

Then, after acknowledging the property the parties agreed was nonmarital in the second part of the form, the court went through the disputed properties in section three of the form. The court determined that some of the properties were in fact marital,

specifically guns,[8] the gun safe, and an office desk. The court assigned them values but did not add the value of these additional marital properties, totaling $11,500, to its previously calculated "marital property determination of $58,417.39." These values, along with the previously mentioned marital value of the Pine Circle home, were never added to the earlier amount to get a final, singular total of the parties' marital property valuation. This additional $11,500 of marital property along with the Pine Circle marital property value will need to be added to the previous total to get a singular total value of all marital property for the parties. "[T]he court shall determine the value of all marital property." FL § 8-204(a).

As to the marital award pursuant to FL § 8-205, the essential "pre-step" required before making an award under this section did not occur: dividing all marital property by title and determining the value of each party's property by this method. A trial court applying FL § 8-205(a) "must decide if the division of marital property according to title would be unfair. If so, the chancellor may make a monetary award to rectify any inequity 'created by the way in which property acquired during marriage happened to be titled.'" *Flanagan*, 181 Md. App at 519-20 (quoting *Doser v. Doser*, 106 Md. App. 329, 349 (1995)).

[8] Both parties indicated on the 9-207 form that the guns were "part marital." The court in its ruling initially said that it "accepts husband statement on this form that the guns are…part marital." The court then indicates that it did not hear testimony about guns that the Father brought to the marriage, so the court then rules that "those are marital, and they are worth $10,800."

It follows that a court cannot decide whether a division of marital property is "unfair" or "inequitable" if the court does not first divide the total marital property by title between the parties. Thus, the court did not have the necessary information to determine whether a marital award was even necessary.

Which brings us to the $52,000[9] award to Mother described in both the court's oral ruling and its final judgment as "Crawford Credits[.]" Both sides agree that the use of the term "Crawford Credits" was incorrect. "*Crawford* credits" refers to the credits or contribution payments one spouse is owed for paying mortgage, insurance, tax, and other up-keep payments on the marital home when the parties are separated, but before divorce is finalized, or for a post-divorce period while the property remains jointly titled. *See generally Crawford v. Crawford*, 293 Md. 307 (1982).

Thus, we are left with the challenge of how to categorize this payment[10] or the trial court's authority to order it.[11] Father is correct that *Kline* is controlling.

[9] The payment was referred to by Father as a $51,000 payment in his testimony, and by Mother in her testimony as a $52,000 payment. The trial court characterized it as a $52,000 payment in its ruling so we will also. *See also*, Plaintiff's Exhibit 42 **(**Mother's cashier's check for $52,000).

[10] The order in which the court made this award in its oral ruling does not help resolve how to label it: the trial court made the award of the $52,000 *after* the court granted Mother use and possession of the home pursuant to FL § 8-208 and just *prior* to addressing the parties' property listed in the 9-207 form to determine which ones were marital property.

[11] To justify this refund payment for the nonmarital deposit used to purchase the house, Mother cited in her brief and at oral argument a New Hampshire real estate partition case. *Bartlett v. Bartlett*, 116 N.H. 269 (1976). That case involved a father and his wife litigating with the father's son and the son's wife over the distribution of funds

As in this case, the parties in *Kline* purchased a property together prior to their marriage. They subsequently married. The court found that the property was partially marital property because of payments made after the marriage, and partially nonmarital due to the deposits and other payments made prior to trial.[12]

And also as in this case, one party sought a "refund" of the money expended prior to the marriage to purchase the current marital home. The *Kline* court pointed out that a court divorcing parties in such a situation have no authority to return moneys expended pre-marriage for the marital home:

> [T]he mistaken belief that a contribution of nonmarital property somehow entitles the contributor to get back the property or its value, as if the contribution is deemed to create an indebtedness for which the contributor

concerning a purchased home. That matter has no relevance or persuasive authority to the division of property under the Maryland Property Act.

[12] The fact that the Klines subsequently changed their title after marriage to tenants by the entirety, unlike the present parties, does not alter the relevance of the holding since *Kline* occurred prior to the 1994 Amendment that added FL § 8-201(e)(2) expanding the definition of "marital property" to "any interest in real property held by the parties as tenants by the entirety unless the property in excluded by valid agreement." The Supreme Court of Maryland, in *McGeehan*, 455 Md. 268, 282-284 (2017), interpreted § 8-201(e), holding that the General Assembly, in its 1994 amendment to the statute, intended to eliminate the "source of funds analysis" as a means by which to deem a portion of marital property held as tenants by the entirety as nonmarital. (citation modified). Rather, the statute, as amended, provided that property titled as tenants by the entirety "was marital and could only be excluded as nonmarital by the execution of a valid agreement." *Id.* at 284; *see Gordon v. Gordon*, 174 Md. App. 583, 630 (2007) (stating that FL § 8-205 "does not authorize an automatic 'credit' or 'reimbursement' to a spouse who contributes nonmarital funds towards the acquisition of a marital home that is owned [tenants by the entirety]"); *Karmand v. Karmand*, 145 Md. App. 317, 341 (2002).

Thus, in both *Kline* and the present case, the properties are partially marital and partially nonmarital, the amount of the marital portion to be determined by the source of the funds rule as laid out in *Harper*, 294 Md. 54 (1982).

> should have a lien, is a total distortion of the Act. As we pointed out in *Watson*, when one makes a valid gift of property. . . marital or nonmarital, the donee acquires a vested interest in the property. The court, when it grants a divorce, cannot return to the grantor spouse the legal interest that he or she had earlier given just because the gift was of nonmarital property; to do so would violate § 8-202(a)(3) of the Act, which expressly prohibits the divorce court from transferring ownership of property, real or personal, from one spouse to the other. *Watson*, 77 Md. App. at 631, 632, 551 A.2d 505. *See also Rogers v. Rogers*, 80 Md. App. 575, 586, 565 A.2d 361 (1989); *Nisos v. Nisos*, 60 Md. App. 368, 380-81, 483 A.2d 97 (1984). The fact of the gift, the value of the property given, and the circumstances under which the gift was made are important factors to be considered by the court in determining whether to grant the donor spouse a monetary award to adjust equities between the parties, provided there is sufficient marital property to support such an award.

Kline, 85 Md. App at 44 (quoting *Watson v. Watson*, 77 Md. App. 622, 638 n.5. (1989)).

Likewise, the trial court in this case was without authority to transfer property, i.e., Father's $52,000, to Mother, based upon FL § 8-202(a)(3).[13] And if this payment was somehow considered as being a marital award, it would be an improper second marital award. "[T]he statute contemplates but one net monetary award—or none—but certainly not two." *Flanagan*, 181 Md. App. at 525 (quoting *Ward*, 52 Md. App. at 342).

Either way, the $52,000 payment for the wife's contribution to purchase the home was improper and must be remanded along with the marital award. But, as *Kline* points out, the contribution prior to the marriage of the $52,000 can be an "important factor" for the court to consider in deciding whether to make a marital award. *Kline*, 85 Md. App at

[13] Trial courts *do* have authority to transfer other types of property pursuant to FL § 8-205(a)(2). But, again, this can only be done in the context of a marital award.

44. Likewise, this payment that Mother made for the acquisition of the marital home is also a factor that the trial court must consider in determining the amount of a marital award. FL § 8-205(b)(8).

Furthermore, it is permissible for the court to make any monetary award, or a portion thereof, payable to Mother by Father at the time of settlement on the sale of the marital home following the expiration of any use and possession order rather than ordering expressly that it be paid from a party's share of the net proceeds as was done in the trial court's order. Doing so would not be an impermissible transfer of one party's property to the other. The trial court has the discretion not only to decide the amount of the award, but also the timing and manner of payment.[14] FL § 8-205(b).

Upon remand, we would encourage the court to make a list of all the property that is marital or partially marital pursuant to FL § 8-203. This should be from all three sections of the 9-207 form and done prior to determining the values for each individual property. We understand that many trial courts prefer to go through the Rule 9-207 form and make the FL § 8-203 determination of whether each property is marital or nonmarital at the same time as the FL § 8-204 determination of the value of each property, as was

[14] The court's options are not limited to requiring that the entire amount of the monetary award be deferred until the sale of the home. Thus, it could decide to make all of the award payable at one designated time, or could order that some be paid at a certain time and another portion at a different time. It could, for example, order that some be paid a certain period of time after divorce and another portion at the time of settlement on the sale of the home. The determination of the timing and manner of payment should be made with consideration given to the economic circumstances of the parties at the time the award is to be made. FL § 8-205(b)(3).

done in this case. We caution that this can lead to confusion when the different steps are intertwined.

The trial court will have a smaller list of properties to address when it eliminates the nonmarital property. The court should then rule on any disputes as to the value of the properties under FL § 8-204. If some of the properties are a combination of marital and nonmarital, as apparently the home is in this instance, the court should determine the value of the marital portion of that property. This is accomplished by applying the "source of funds" theory described previously for property that has been acquired by using both marital and nonmarital funds.

After that is completed, the court should ensure that all the properties are given a designation as to which party they are titled or if they are jointly titled. *See Rogers v. Rogers*, 80 Md. App. 575, 587 (1989). "The court's failure to resolve disputes as to the ownership of property. . ." makes it necessary for the marital award to be vacated. *Id*. When granting an absolute divorce, "the court may resolve any dispute between the parties with respect to the ownership of personal property[,]" FL § 8-202(a)(1) or "real property." FL § 8-202(a)(2).

Next, the trial court should divide all the property by title as to either Mother, Father, or both if jointly titled. If the property is jointly titled, it may be designated to each party in their "column" with the value divided appropriately.

The court must then add the value of each side's property. With a final total of each party's monetary share of the marital property in hand, the court will then be in a

position to consider whether there is an inequity in the division of the parties' marital property. If the court finds that the parties share of the property so divided is equitable, the analysis ends there. But if the court finds that there is an inequity, the court should proceed to consider and articulate its view on the eleven factors in FL § 8-205(b).

Then, and only then, should the court make its singular marital award to adjust the inequities of dividing the marital property solely by title.[15]

Child Support Award

FL § 12-202(a)(2)(i) states that, when the child support guidelines are used, there is a rebuttable presumption that the amount of child support calculated by use of the guidelines is the correct amount to be awarded. *Matter of Marriage of Houser,* 490 Md. 592, 598 (2025). The parties in this case agree that the child support guidelines are applicable since their combined salary is less than $30,000 per month. "If the parties' combined monthly adjusted income is under $30,000 (or $360,000 annually), the circuit

[15] Father has also argued that the $50,000 marital award should not have been given since it exceeded the value of his marital property. It is unclear how Father can claim this while also asserting in his brief that the over $300,000 equity in the Pine Circle home is all marital property with the exception of $52,000 payment made by the wife prior to the marriage. That is in addition to the $58,417.39 the court calculated from the property that the parties agreed was marital property, which does not include the $11,500 for the gun, gun safe, and desk that the court determined to be marital property from the disputed list on the 9-207 form.

If Father is arguing that jointly valued property such as the house are excluded from his total amount of marital property, he is incorrect. *See Brewer v. Brewer*, 156 Md. App. 77, 110 (2004) (quoting *Ward*, 52 Md. App. at 339-340). S*ee also, Coutant v. Coutant*, 86 Md. App. 581, 589 (1991).

court must apply the guidelines." *Sims v. Sims*, 266 Md. App. 337, 384 (2025) citing FL §12-204(e).

And in reference to the child support guidelines, the parties also agree that this is a "shared physical custody" case, as opposed to a "sole custody" case, since both parties would have well over the required 92 overnights with the children per year pursuant to the physical custody ruling. FL §§ 12-201(o)(1), 12-204(m)(2)(ii).

The court ordered child support payable by Father in the amount of $3,966 per month based upon the parties' salaries, along with the work-related childcare and health care expenses paid by Mother. The trial court indicated in his oral ruling that he opted to use the sole child support guidelines rather than the shared guidelines because it would be the lower payment of the two, which the law requires. *See* FL § 12-204(m)(5); *see also* Md. Rule 9-206(d) (Section 16) (Line 16 of Worksheet B). Father disputes that using the sole calculations resulted in a discount to him.

Father is correct.[16] We will remand for a recalculation of the child support guidelines so that both the parties and the court can address the proper method of

[16] It is understandable how the court made the error using the commonly used SASI-CALC forms. SASI-CALC is a software application that generates a "Recommended Child Support Order" by applying the calculations required by the Guidelines to the numbers that the user enters on a worksheet. The form has lines for items such as each parent's income, the child's overnights with each parent, and expenses as listed in various provisions of the Guidelines.

Unfortunately, when one inserts the information applicable in this case for a shared-custody case, the application flashes a warning indicating "Under the statute this calculation is greater than sole guidelines. Switch to Sole Guidelines." But what actually needs to be done is to manually enter the exact number of overnights for the shared

inputting the court's findings to determine child support. If the court finds upon remand that Father has in fact had the children for more than 92 nights in the previous year, it is required to apply the shared custody calculation. The statute "*requires* the court to use the shared physical custody formula for child support where a parent has actually kept the children for more than" the required 25% or 92 nights under FL §12-201(o)(1). *Rose v. Rose*, 236 Md. App. 117, 136 (2018), *reconsideration denied* (Mar. 28, 2018), *cert. denied*, 459 Md. 417 (2018).[17] On remand, if for some reason the court finds that Father did not have at least 92 overnights with the children, then the court has discretion whether it will use the shared physical custody formula since it awarded Father over 25% of the nights under the custody order. FL § 12-201(o)(2); *Rose*, 236 Md. App. at 136. The court is required to make a "threshold factual determination" under FL § 12-201(o)(2) in order to use such discretion.

While Mother did not seriously contest that an error occurred on the child support calculation, she did request that this court further order the trial court on remand to correct what she believes were errors in the calculation of the work-related childcare

custody arrangement in the case. This is because the application originally populates with the lowest number of overnights to be a shared custody arrangement, i.e., 92, for Father. When Father's number of overnights for this court order is put into the application, 182 nights, the shared custody amount Father owes in considerably less than if it were run using the sole custody formula.

[17] Since 2016, this definition of shared physical custody has been recodified, first as FL § 12-201(n) and more recently as FL § 12-201(o), where it is located today. Apart from the 2020 amendment that reduced the threshold percentage of overnights to 25% (92 days) from 35% (128 days), the wording and substance of the definition has remained the same.

expenses and the health care expenses. Those issues were not raised on a cross-appeal nor briefed by the parties therefore we will not address them.[18] *State v. Chaney*, 375 Md. 168, 174 (2003); Md. Rule 8-504.

Custody

1. Holiday Schedule

Father argues that the court abused its discretion by ordering that the children spend every Christmas Day with Mother. Father claims that it is not in the best interest of the children for Mother to have the girls every year for Christmas morning.

Mother counters that this is an entirely discretionary determination by the court that cannot be disturbed unless there is an abuse of discretion. She further argues that while it may not be what is routinely done, that does not equate to the trial court abusing its discretion.

The court order permits Father to have the children every year for the entirety of Christmas Eve from 9 AM to 8 PM. Then the children spend the remainder of Christmas

[18] However, we will point out that childcare expenses are required to be "determined by actual family experiences, unless the court determines that the actual family experience is *not in the best interest* of the child[.]" FL § 12-204(g)(2) (emphasis added). The trial court stated in its oral ruling:

> I have no doubt that the Goddard School is great. But the fact remains that the parties are now going to be separated from one another. That makes the ability to afford certain things more of an issue. In this case, I'm not going to order that the parties continue enrolling their children at the Goddard School for preschool.

As we understand the record, the trial court appears to have had this statutory provision in mind when giving its ruling. Upon remand, the court may want to reference the statute or its language for clarity.

Eve at the marital home through Christmas Day. Father is able to come over for the opening of presents at 10:00 on Christmas morning.[19] The order does not indicate how long this time will last.

There is no information in the record as to how and when the parties or their respective families celebrate Christmas.[20] Nor was there argument at trial as to this issue, or any other holidays, besides both sides requesting that their plan be chosen. As far as Christmas is concerned, Father requested an alternating schedule while Mother put forth the one the court chose. The trial court indicated that "there is not massive differences between the holiday schedules … I find that the schedule proposed by wife is reasonable. I will, therefore, order holiday schedule to be utilized on the terms and conditions suggested by wife in her proposed judgment of absolute divorce."

While we agree with Father that alternating holiday schedules is routine, we decline to order that it be mandatory. Based upon the record in this case, we do not find that the Court abused its authority by ordering the children to be with Mother on Christmas with Father coming over for the opening of gifts and the children spending all day Christmas Eve with Father.

[19] Phrased in the Order as "Stocking and Santa gifts[.]"

[20] Mother asserts in her answer to Father's Motion to Alter and Amend that Christmas Eve "is when his family traditionally has their Christmas celebration". Obviously, the Court did not have this assertion when it made its oral ruling on the holiday schedule. Mother's allegation was not rebutted, and the Court denied Father's motion without a hearing.

2. Passports

Father next contends that the trial court erred not only by refusing to order Mother to cooperate to get passports for the children so they may attend a family wedding in Italy, but also by ruling that the children may not get passports until the youngest is 10 years old.

While trial courts in this State are often requested to address issues regarding the acquisition or handling of passports for children in custody cases, both sides report that they could not find any Maryland law on the standard the court should apply when addressing such issues.[21] We likewise could not find that this issue has previously been addressed by our courts.

However, a number of other states have addressed the issue, and they have uniformly determined that a court should apply a best interest of the child standard in these situations. *See Nagle v. Nagle*, 2005 PA Super 102, ¶ 14 (Pa. Super. Ct. 2005) (Superior Court of Pennsylvania concluding that proper test for reviewing a trial court's

[21] Federal law requires the consent of both parents or each of the minor's legal guardians when applying for a passport for a minor under the age of sixteen. 22 Code of Federal Regulations ("CFR") § 51.28. (Up to date as of 4/9/2026) The regulation further provides a joint custody order is interpreted as requiring the permission of both parents. 22 CFR § 51.28(a)(3)(ii)(F).

However, ordering the parents to "cooperate" in acquiring a passport is not the only way a trial court can permit one parent to acquire a passport for a child when the parties are at an impasse in a joint custody arrangement. The federal regulation also provides that one parent may apply for the minor's passport with "an order from a court of competent jurisdiction . . . specifically authorizing the applying parent or legal guardian to obtain a passport for the minor, regardless of the custodial arrangements[.]" 22 CFR § 51.28(a)(3)(ii)(D).

decision to order two parents to obtain passports for their children was whether the passports were in the best interests of the children.); *Jorge R.C. v. Julieta A.C.*, 220 AD3d 612, 613 (1st Dept 2023) (Appellate Division of the New York Supreme Court upholding trial court's determination applying best interest of the child standard in awarding the father custody of the children's passports.); *Luong v. Vahey*, 138 Nev. 962 (Nev. App. 2022) (Court of Appeals of Nevada rules that the trial court was required to apply the best interest of the children standard in making determination about the children's passports.); *Wasilk v. Wasilk*, 2024 S.D. 79, ¶¶ 18-19 (Supreme Court of South Dakota finding that the Circuit Court did not abuse its discretion in applying the best interest of the children standard by ordering child's father to participate in acquiring passports for a child to travel to Mexico.)

Father cites two cases as persuasive authority that it was an abuse of discretion for the court to deny the request for passports for the children to attend the wedding: *Benton v. Sotingeanu*, 450 S.W. 3d 714 (Ky. App. 2014), and *Patrawke v. Liebes*, 285 P. 3d 268 (Alaska 2012).

In *Benton*, a father sought to take his almost nine-year-old daughter to the Bahamas for vacation. The mother refused. The father asked the court to order the mother, with whom he shared joint custody, to cooperate in obtaining a passport for their child. The father's attorney pointed out that his client was a physician in this country, a naturalized citizen and there was no evidence of any intent to abduct the child. The mother argued that there was animosity between the parties, that the father had previously

failed to tell mother about previous vacations with the child, and that the father "fit the profile" of someone who would abscond with the child to a foreign county where he had relatives.

The trial court granted the father's motion "cautiously" and imposed a number of restrictions including: 1) requiring the father to post $250,000 cash bond prior to travel, 2) mandating that the court must approve all travel, 3) ordering a preliminary itinerary be provided by the father before a hearing to approve such travel, 4) allowing the mother to hold the passports when the father is not on approved travel and 5) ordering that the father must ensure that the child calls her mother by phone at least three times per week when on approved travel. The mother appealed.

The Kentucky Court of Appeals found that a best interest of the child standard would apply to such a passport determination. It went on to find that the trial court properly weighed the benefits of international travel against the possible detriment. The court found that the trial court did not abuse its discretion under the circumstances of that case.

In *Patrawke*, a father asked the mother that he shared joint custody with of a seven-year-old daughter if he could get a passport for the child. The father sought the passport for two reasons: 1) to visit relatives in France and Germany, and 2) to prepare for travel opportunities offered by the Japanese Immersion Program the child was enrolled in at her elementary school. The mother refused so the father sought an order of the court requiring the mother to cooperate in obtaining the passports.

The trial court refused, noting in its order: "Travel to Europe to see distant relatives may be nice, but more important is how parents treat each other here. The court recommends that the parties work on their attitudes and behavior towards one another right here. A passport is not required for that." *Id.* at 270.

The father appealed and the Supreme Court of Alaska reversed. The court first noted that the best interest of the child is the standard that applies in such a decision and that applying the custody factors was not required for such a determination. *Id.* at 271-72. The appellate court went on to hold that the trial court abused its discretion in denying a motion solely on the basis that the parties cannot cooperate, noting that to do so risks harming the child.[22] The court further pointed out that such an order also restricts one party's rights to maximize the summer visitation schedule when there was no evidence put forth by the other party why attaining the passports would not be in the child's best interest. *Id.* at 272.

Neither of these cases suggest that the trial court in the present matter was mandated to grant Father's request to take the children to the wedding. If anything, they only reaffirm that each case will be looked at on its own merits to determine if the request for a passport is in the child's (or children's) best interest and that such a determination will not be disturbed unless it is found that the trial court abused its discretion.

[22] It was also pointed out that the trial court had maintained a joint custody order despite the fact that the parties "continually demonstrated extreme inability to cooperate in raising" the child and that it has "inevitably been leading to additional conflict" between the parties. *Id.* at 272.

We also find that the best interest of the child is the standard to be used when addressing the acquisition, possession or use of passports for children in a custody determination. Obviously, it is the legal standard used when our courts determine legal (or physical) custody. In child custody cases, the child's best interests "guides the trial court in its determination, and in our review" and " 'is always determinative[.]' " *Santo* 448 Md. at 626 (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). And since a parent who is granted legal custody under this standard may also apply for a child's passport without the other side's consent, that is further support that this is the correct standard to apply. 22 CFR § 51.28(a)(3)(ii)(D).

In the present case, there was evidence that the children, who were two and three at the time, had never been on such a trip or even an airplane flight. It was not disputed that it required long days of travel on both sides of the trip that included an approximately eight-hour flight to Italy, a second shorter flight to Calabria followed by a one or two-hour car ride.[23] Mother testified about the ear infections that the oldest child was having which could be exacerbated by such travel.

There was also testimony that these family wedding celebrations went until the early morning hours which raised the concern of how Father would care for the children during this time.

[23] Mother testified it was a two-hour ride to the family home from Calabria; Father testified that it was an hour and a half drive. Both agreed it was approximately an eight-hour flight to Rome.

The trial court in its ruling indicated that it had concerns about issuing passports for "girls who are two and three years old to engage in international travel to go on a very, very long trip to go to a wedding where, candidly, they are probably not going to have any memory of it. . . ." As in *Benton*, the trial court in this matter properly weighed the benefits of international travel against the possible detriment in considering the best interest of the children. We cannot say under the facts of this case that the trial court abused its discretion in denying the passports to attend the family wedding in Italy.

However, the trial court did not confine its ruling about the passports to the children attending this one requested function. It went on to determine that "no passports shall be issued in this case until the youngest of the parties' children turns ten years of age." Father challenges this ruling as being an illegal *in futuro* determination in violation of *Schaefer v. Cusack*, 124 Md. App. 288 (1998).

In *Schaefer*, a trial court granted physical custody to the Mother but also ordered that the father would acquire physical custody of the child "thirty days following his completion of the fifth grade" and until the child turned eighteen. *Id.* at 291. This court determined that the trial court abused its discretion and reversed, finding that courts in a custody determination "ordinarily look to the situation as it exists at the time." *Id.* It was also pointed out that changes in circumstances are looked at for a change in custody:

> We have not the faintest idea of what the situation of the parents may be at the time when this child completes the fifth grade, obviously a number of years hence. We know not what the living conditions of the parties at that time will be. We know not where the parties will be living. We do not know what their incomes will be. We have no idea of what kind of physical condition the parents or child will be in at that time. We do not know what

> the preference of the child at that time may be. We have no idea whatever as to the condition under which the parents will be living. Although thus far there has been no hint of immorality, we do not know what the situation will be at the time of the contemplated change in custody. We do not know what effect a change in custody might have on the child. All of these are relevant considerations.
>
> It is hard enough to look into the future and to determine what may be perceived as the best interest of the child on the basis of circumstances as they exist at the time of a custody hearing. We consider it to be an abuse of discretion to attempt to look ahead and to determine now that it will be in the best interests of a child who has not yet entered kindergarten to have his custody changed upon completion of the fifth grade.

Id. at 297-98.

Likewise, none of us knows what the world will look like for the children in this case in the next few years. We do not know what opportunities will present themselves, what their respective maturity levels will be, or why the oldest should have to wait until a later age to get a passport than the youngest. What if the passports were for a trip much closer to home when the children are much older but not to the date chosen by the court? There are so many unknown variables that cannot be predicted at present.

Therefore, we do hold that it was an abuse of discretion for the trial court to choose an arbitrary time in the future when both children are permitted to obtain passports.[24] What is in the children's best interest should be determined with references to the facts and circumstances existing at the time in the future when the issue arises.

[24] We do realize that even with reversing this part of the passport determination, the practical effect is that the parties would still need to come back to court if one party seeks to get passports for the children and the parties remain at an impasse. That is because there is a joint custody order and the federal requirements to obtain a passport in such situations that were addressed in footnote 21 require a court order.

Attorneys' Fees

Father argues that the trial court erred in a number of ways by awarding attorneys' fees in this case: by not designating which of the many possible attorney fees statutes regarding counsel fees was being applied, by failing to analyze the financial status or needs of the parties and by not addressing the justification "for bringing, maintaining, or defending the proceeding." *See* FL § 12-103(b).

Mother counters that the court does not have to "recite any magic words" citing *Horsley v. Radisi*, 132 Md. App. 1, 31 (2000). Mother further argues that the court did note the disparity in incomes and the discovery issues that Father caused which increased the cost of the litigation and that the court awarded her less than half of her fees.

We will not address the merits of this issue since we are required to remand determination of the attorneys' fees because of our other rulings. *See Flanagan*, 181 Md. App. at 544 ("[W]here we vacate—as we did here—a monetary award, alimony, or child support, we shall also vacate the attorneys' fees award."); *Sims*, 266 Md. App. at 390 ("Because we have vacated the monetary award, the award of attorneys' fees must necessarily be vacated and reconsidered on remand as well."). On remand the trial court should reference the particular statutory provision(s) upon which it relied for any fee award made and consider the evidence in light of the statutory factors required to be considered.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS

CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY.