Circuit Court for Montgomery County
Case No. 133280 FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 793

September Term, 2017

MARJORIE GOLDMAN

v.

MITCHELL STABBE

Graeff,
Nazarian,
Fader,

JJ.

Opinion by Graeff, J.

Filed: June 22, 2018

On January 8, 2016, Marjorie Goldman, appellant, filed in the Circuit Court for Montgomery County a Complaint for Absolute Divorce from Mitchell Stabbe, appellee. On March 27, 2017, the circuit court issued a Judgment of Absolute Divorce and ordered, *inter alia*, that Mr. Stabbe pay Ms. Goldman alimony in the amount of $5,000 per month for nine years. Ms. Goldman subsequently filed a Motion to Alter or Amend, which the court denied.

On appeal, Ms. Goldman presents for this Court's review multiple questions regarding the alimony award,[1] which we have consolidated and rephrased, as follows:

[1] On appeal, Ms. Goldman presented the following questions:

1. Whether the trial court erred in failing to provide Ms. Goldman with an award of indefinite alimony where the trial court found that she was unable to meet her reasonable monthly expenses from her own income and resources, and, therefore effectively found that she was not self-supporting nor would be self-supporting at any time in the future?

2. Whether the trial court erred in failing to provide Ms. Goldman with an award of indefinite alimony where the parties had been married for 27 years and Ms. Goldman's income ($75,000) was only 15.8% of the amount of Mr. Stabbe's income ($474,000)?

3. Whether the trial court erred in awarding Ms. Goldman monthly alimony in the amount of only $5,000 per month where the trial court found that her gross annual income was $75,000 ($6,250 per month) and her reasonable monthly expenses were $12,185.92, and therefore she would be unable to meet her expenses based upon the amount of alimony awarded?

4. Whether the trial court erred in finding that Mr. Stabbe's monthly expenses were $19,140.58, which included $8,006.91 in outstanding tax liabilities with respect to which Mr. Stabbe testified that he was not actually paying, the amount included was merely his own personal

1. Did the circuit court err in failing to award indefinite alimony?

2. Did the circuit court abuse its discretion in awarding Ms. Goldman alimony only in the amount of $5,000?

3. Did the circuit court err in crediting Mr. Stabbe's monthly expenses of $19,140.58, which included $8,006.93 in outstanding tax liabilities?

For the reasons set forth below, we shall vacate the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 1989, Ms. Goldman and Mr. Stabbe were married in Las Vegas, Nevada. During the marriage, Ms. Goldman and Mr. Stabbe resided in Potomac, Maryland, where the parties purchased their martial home. They had three children, who were over the age of eighteen at the time of the divorce.

In a letter to Ms. Goldman dated February 13, 2015, Mr. Stabbe stated that they needed to talk about money, noting that their "expenses exceed[ed] [his] income." He explained that the family's monthly expenses were $31,000, but his monthly income was only $13,000. To pay for their expenses for the past three years, Mr. Stabbe "made huge withdrawals from [his] retirement plan," but because that money was "almost gone," he could not continue to make withdrawals. He discussed other debts and expenses, including college costs for their youngest child, and he stated that Ms. Goldman was not liable on

> estimate as to what the future expense may be, there was no evidence that he would ever pay such amount and [it] was a joint expense of both parties?

most of those debts, except for the income taxes and the car payments. He requested that they "talk about this."

On June 1, 2015, the parties had a conversation about the contents of the February letter. During the conversation, Mr. Stabbe informed Ms. Goldman that he was going to file for bankruptcy, and he did not know if she would need to file for bankruptcy as well. He further stated that Ms. Goldman should "think about whether [she] wanted to be married to him any longer," stating that he did not want to be married to her. Ms. Goldman subsequently learned that Mr. Stabbe had stopped paying the mortgage on the house in December 2014 and foreclosure proceedings had been instituted.

On January 8, 2016, Ms. Goldman filed for divorce. On January 15, 2016, Ms. Goldman moved out of the marital home and into a townhouse in Rockville, Maryland.[2] Ms. Goldman testified that she "felt uncomfortable living" in the marital home and "needed a clean break" because she "didn't see any way to improve [her] life unless [she] moved out."[3] She informed two of the children, who were in the house, of her move "about a half hour before the moving trucks arrived." Mr. Stabbe called her that evening and asked for a list of the items removed from the house.

[2] On June 1, 2016, the parties entered into a consent order for *pendente lite* alimony, in which Mr. Stabbe agreed to pay Ms. Goldman $5,000 per month. The consent order was signed by the court on June 10, 2016.

[3] Ms. Goldman testified that, to rent the townhouse, she used funds from a $24,000 insurance policy reimbursement she received in October 2015 for jewelry that was stolen from their home.

Ms. Goldman was a self-employed fundraising consultant for nonprofit organizations. She testified that she helped organizations raise money and identify available resources for funding. Although she had other clients in the past, at the time of the proceedings, Ms. Goldman's only client was Housing Unlimited. Ms. Goldman made $70,000 per year pursuant to the contract with Housing Unlimited. The contract was written for Ms. Goldman to work approximately 20 to 24 hours a week, but this year the agreement changed to a flat rate basis, and she was working more hours than that. This contract made it difficult to find other clients.

At the time of the divorce proceedings, Ms. Goldman was 61 years old. Her social security statement was entered into evidence, which indicated that, at age 66 and 4 months, she was eligible to receive $1,774 per month, but if she waited until age 70, she was eligible to receive $2,394 per month.

Early in the marriage, Ms. Goldman worked for the American Diabetes Association as its acting national director of development, which often required her to travel. Following the birth of her oldest child, Ms. Goldman became a consultant to focus on her family. She and Mr. Stabbe employed the assistance of a full-time nanny for their children until they went to college. The parties' children attended private schools in the region, with two of the children graduating from Sidwell Friends, located in Washington, D.C., and one graduating from Bullis School, in Potomac, MD.

Ms. Goldman explained that the family had faced its challenges with respect to each of their three children's health and well-being. During the marriage, her focus was often on her oldest son's treatment, while Mr. Stabbe focused on their two youngest children.

With respect to finances, that was generally the responsibility of Mr. Stabbe. They rarely spoke about finances during the marriage. The income she earned was "primarily [her] own." They had two "separate joint checking accounts at Bank of America," with one account for Ms. Goldman's paychecks and the other account for Mr. Stabbe's paychecks.

At one point, Mr. Stabbe "mentioned . . . in passing that he didn't think he had the resources" to permit their second child to attend private school for her senior year. Ms. Goldman suggested that Mr. Stabbe "talk to the financial aid people about anything that could be done." She assumed everything was fine because their daughter was able to complete her senior year and graduate.

In the summer before their youngest child's junior year, after "the contracts . . . had been sent out," Mr. Stabbe informed Ms. Goldman that he could not afford Sidwell's tuition. She paid the tuition with money she had saved from consulting. With respect to their oldest child's expenses, i.e., college tuition, Mr. Stabbe mentioned to Ms. Goldman in passing that there were loans available to cover the cost, but she "really didn't have any idea what he was talking about."

When asked about the contents of Mr. Stabbe's February 13, 2015, letter, Ms. Goldman testified that he had never mentioned withdrawing money from his retirement

accounts. After she learned that Mr. Stabbe had stopped paying the mortgages on their home in December 2014, she tried to save their home from foreclosure, but due to the amount of indebtedness, her "personal income was insufficient."

With respect to their taxes, Mr. Stabbe handled that and "would produce the documents . . . prepared by [their] accountant." The tax returns contained tabs indicating where to sign, and because she "trusted [Mr. Stabbe]," she would just sign the tax returns without looking at them.

Counsel for Ms. Goldman introduced the parties' joint tax returns, as well as Ms. Goldman's individual tax returns. For 2011, the parties received a federal refund of $26,366, and a refund in the amount of $9,718 from Maryland. For the 2012 tax year, Mr. Stabbe and Ms. Goldman received a refund in the amount of $17,866 from the federal government, and $9,125 from Maryland. For 2013, the parties jointly owed $153,930 to the federal government and $21,712 to Maryland. For 2014, Ms. Goldman had an individual liability to the federal government for $5,484 and $911 to Maryland.[4] For 2015, she owed $14,122 to the federal government and $3,820 to Maryland. Ms. Goldman indicated that she had yet to file her 2016 taxes, but she testified that she would owe money for that tax year. With her accountant's assistance, Ms. Goldman had worked out a monthly

[4] Ms. Goldman testified that she had paid the 2014 state tax liability of $911, but was informed that this amount was instead credited to her outstanding 2013 liability. She explained that she worked with her accountant to determine the difference between her joint tax liabilities and her personal liabilities.

payment plan of $250 to the IRS, and she had already saved approximately $4,500 toward her tax payments on her income.

Ms. Goldman testified that she had expenses of $12,185.92 per month, as set forth in her second amended financial statement. These expenses included: $256.67 for domestic assistance; $758.33 for food, which included vegetarian, organic and healthy foods; $989 for health insurance, which was the amount it would cost to purchase COBRA insurance from Mr. Stabbe's law firm[5]; $250 for dental costs; $275 for clothes; as well as recreation and entertainment and fees associated with maintaining certifications and professional appearance.[6] At the time of the trial, Ms. Goldman had incurred approximately $84,687 in attorneys' fees, at least $58,586 of which remained outstanding. She testified that she borrowed $14,000 from her mother to go toward her legal expenses.

On cross-examination, Ms. Goldman testified that she was in good health and was not claiming to be physically or mentally incapable of working in a full-time capacity. Prior to signing the parties' 2012 joint tax returns, she did not notice that Mr. Stabbe had

[5] Consolidated Omnibus Budget Reconciliation Act ("COBRA") health provision of 1986 was enacted by Congress "to provide continuation of group health coverage that otherwise might be terminated." *COBRA Continuation Health Coverage FAQs*, DEP'T OF LABOR, https://perma.cc/AZG8-78PR (last visited June 19, 2018).

[6] In her second amended financial statement, Ms. Goldman provided the following expenses: "MD Democratic Business Council - $150/year; Carderock Springs Tennis Team - $50/year; Montgomery Women - $125/year; Montgomery Co. Democratic Forum - $300/year; Woman Democratic Club - $50/year; Georgetown Prep Winter Membership - $215/year; US Tennis Assoc. - $50/year; Potomac Swim & Tennis - $100/year."

received a $250,300 IRA distribution. She also was unaware that Mr. Stabbe had received a $186,000 IRA distribution in 2011, or a distribution for $324,000 in 2013.

Regarding her personal tax liabilities, Ms. Goldman testified that she was in receipt of a letter from the IRS stating that her monthly payment plan had yet to be approved. Nonetheless, Ms. Goldman indicated her willingness to continue making those payments. With respect to the marital home, Ms. Goldman testified that she was aware that "there were two lines of credit and two mortgages" on the home, and that she was liable, as she had signed the mortgage documents.

Mr. Stabbe testified that he had been an attorney since 1980. Before he and Ms. Goldman were married, he was employed by Holland & Knight. In March 1997, he moved to Dow, Lohnes & Albertson ("Albertson"), where he worked for approximately 15 years.[7] At Albertson's, Mr. Stabbe started with a salary of approximately $225,000, which increased each succeeding year. On average, his salary was "about $375,000," but there were two years where he grossed $425,000 per year.

In September 2011, Mr. Stabbe moved to Edwards, Angel, Palmer, and Dodge, which was acquired by Locke Lord in 2015. His salary at Edwards Wildman was "supposed to be $375,000," but he actually only made $365,000 in his first year there. The following year, his salary was reduced, and it was decreased to $235,000 in the succeeding

[7] The transcript states that the firm is "Dallonis and Albertson," but it appears that the firm is actually named Dow, Lohnes & Albertson.

year, although he was given a supplemental draw, i.e., an advance, of approximately $28,000 because "he couldn't get by" on $235,000.[8]

In June 2015, he began employment with Wilkinson Barker Knauer ("WBK"), where he practiced trademark law. Mr. Stabbe testified that his initial salary was $360,000, but it was prorated. In 2016, he received a monthly draw of $12,500 for a total of $150,000, plus supplemental draws totaling $50,000 for the partners' quarterly tax payments, expenses for insurance and parking, and a bonus of $285,000, for a total compensation of approximately $474,000. Mr. Stabbe subsequently was elected as an equity partner, and in 2017, his monthly draw increased to $17,500. He stated, however, that his year-end bonus would decrease by approximately $60,000, which he attributed to the difference in the monthly salary change from $12,500 to $17,500.[9]

Mr. Stabbe then discussed his tax liability. Although he had not yet established a payment plan for his outstanding debt, it was Mr. Stabbe's understanding that the IRS and Comptroller of Maryland would only allow a payment plan of five years, or at most six

[8] Mr. Stabbe testified that he moved to Edwards Wildman to access his retirement account at Dow, Lohnes & Albertson. While employed with the firm, his retirement funds were inaccessible, and at that time, he needed to use the money for expenses and taxes, so "the only way to access [them] was to leave the firm."

[9] Mr. Stabbe testified that, as an equity partner, he was required to make an $80,000 capital contribution to the firm, but this could be spread out over a 10-year period, with $8,000 being taken out of his bonus each year until the contribution was satisfied.

years, to pay the outstanding obligations.[10] This was reflected in his financial statement, where he estimated his monthly payment by dividing the total sum of his obligation, $480,414, by 60 months, i.e., five years, arriving at an expense of $8,006.93 per month. He testified, however, that his estimate did not include any accruing interest.

Mr. Stabbe's testimony then shifted to his family and their household finances. He and Ms. Goldman "had an implicit understanding" that he "would be primarily responsible for family expenses, including the mortgage," but once the children were born, both parties were "somewhat responsible." They had two joint accounts, one primarily for him and one that Ms. Goldman used.

Initially, he covered the children's private school expenses, but as time went by, they refinanced their house, taking out a second and third mortgage to pay for some of the tuition. Mr. Stabbe obtained other loans to pay for the private school tuition as well, but those loans were later discharged in bankruptcy. He also took out loans in the form of parent plus loans for his oldest child's college expenses. As of January 14, 2017, based on

[10] With his bonus, Mr. Stabbe paid $120,000 to the IRS for the balance of federal taxes he believed he owed for 2016; $27,000 to the Comptroller of Maryland for 2016 state taxes owed; $12,000 for 2017 estimated first quarter taxes owed to the IRS; and $3,000 to Maryland for the same. When asked why he did not use his bonus to pay down his liability from the previous years, Mr. Stabbe explained that his tax lawyer informed him that he had to first be in compliance for 2016 and 2017 before the IRS would discuss his liabilities for years 2013 – 2015. In explaining his 2016 taxes, Mr. Stabbe testified that, because he was waiting for additional documentation related to his partnership interest, he had not filed for 2016, but he based his obligation from an estimate provided by his accountant. Mr. Stabbe acknowledged that, at that moment, he was unsure of the payment plan the IRS or the State of Maryland would agree upon.

the "sum of the monthly payments [he] was supposed to [make] before they put the loans in abeyance," Mr. Stabbe owed $220,514.10 on the parent plus loans, and he estimated that his total payments were 2,956.93 per month. The purpose of the abeyance was to determine his payments to Ms. Goldman, the IRS, and the State of Maryland. During this time, the parent plus loans continued to accrue interest. He would start payments in September. His outstanding tax debt to Maryland and the IRS, as well as the debt associated with the parent plus loans were not discharged in bankruptcy.

Mr. Stabbe admitted that, at some point, he had stopped paying the mortgages on the marital home because his cash flow would not allow it. He did not ask Ms. Goldman for help because he was "[a]fraid of her and her reaction," and his fear was based upon "most of [their] conversations," which "involved either criticism of [him]" or "had that tone of criticizing [him]." He noted that they had a previous fight where Ms. Goldman called him a "loser." Mr. Stabbe stated that he was afraid of disappointing his youngest child because he did not know how he was going to pay for college tuition.

After filing for bankruptcy, Mr. Stabbe testified that he asked Ms. Goldman to develop a family budget, and he would provide the funds. Ms. Goldman told him that she could not develop a budget, so he suggested that she provide him the receipts for the household expenses incurred, and he would ensure that the funds were deposited. This process, however, led to disagreements about what items should be reimbursed as a household expense.

Regarding his finances, Mr. Stabbe's amended statement detailed that he had a total monthly income of $16,577.77 and incurred $19,771.58 in monthly expenses. He determined his 2017 income based on the monthly draw of $17,500, as this was the only guaranteed income amount he knew he would receive. His financial statement included an additional $22,007.51 in "other gross income," which he attributed to the difference between the monthly draws and his total compensation received in 2016. His monthly income figure of $16,577.77 was derived after he subtracted his total deductions, including taxes, insurance and parking.[11]

With respect to bank accounts, Mr. Stabbe testified that, at the time, he had approximately $14,538, which represented an average of his savings for two accounts. He provided the average amount because the amount therein fluctuated based on pay and expenses.

Mr. Stabbe's amended financial statement listed liabilities of $700,928, which included the parent plus loan debt ($220,514) and the outstanding tax debts to the federal and state governments for 2013 to 2015.[12] He listed monthly expenses of $19,140.58.

[11] Mr. Stabbe indicated that he received $2,647.75 in health coverage costs, but those costs would decrease after the divorce, when he would no longer pay for Ms. Goldman.

[12] Although the evidence was that the 2013 tax debt was a joint one, Mr. Stabbe included all of it as his liability, and Ms. Goldman did not include it as a liability on her statement.

Although he was residing in the marital home, he included an expense of $2,850 for rent because eventually he would have to move, i.e., upon the completion of the foreclosure process. He included medical and dental costs of $1,188.47 for himself and $631.00 for his children.[13] Mr. Stabbe also testified that he had outstanding legal bills from the divorce case.[14]

Mr. Stabbe, who was 61 years old, testified that he was in mostly good health, but he was overweight, suffered from depression, and had high cholesterol. To address his mental and physical health, he started exercising and seeing a counselor once a week, as well as a psychiatrist. He testified that he does have concerns about his ability to work, and this was something he thought about every day. Mr. Stabbe stated that WBK treated him fairly, that he was happy with his firm, and he intended to stay. He was not sure how long he would remain in practice, however, as this was determined by his health and the amount of business he could generate.

Mr. Stabbe testified that he "regretted immediately" his agreement to pay Ms. Goldman $5,000 in *pendente lite* alimony, asserting that the number was too high.

[13] During cross-examination, Mr. Stabbe explained that the amount he was paying for his children actually was $781.00 per month. He also paid $990 a month for COBRA insurance for his oldest child, who was 26 and no longer eligible for insurance coverage with his firm.

[14] Mr. Stabbe paid his current attorney $20,000 from his bonus, in addition to the $7,500 retainer. He testified that $11,340 remained in his client account, but he had yet to be billed for the trial. Additionally, Mr. Stabbe testified that he paid another attorney $48,000, but the lawyer had filed a complaint, which was still pending, claiming an outstanding balance of $23,000.

Although, at the time of trial, he was making more money than he had been making at the time of that agreement, it was his position that Ms. Goldman should receive less alimony. He suggested alimony in the amount of $4,000, based on his income, the money necessary to pay off his tax liabilities and loans, his monthly expenses, and the $8,000 capital contribution being deducted from his bonus. Mr. Stabbe stated that, if he were to pay Ms. Goldman $4,000 a month, she "would have more available for living expenses than [he] would." He denied that their children's living expenses were placed above Ms. Goldman's living expenses.

In closing argument, Ms. Goldman's counsel asked for indefinite alimony in the amount of $9,000 per month. Counsel argued that, given Ms. Goldman's age of 61, "she's making what she's going to be able to," and retirement was on the horizon.[15] Counsel argued that, "[n]o matter what happens over the next ten years, the income disparity is always going to be unconscionable," and the court needed to make this adjustment.

With respect to Mr. Stabbe, counsel argued that his draw had increased to $17,500, and he was able to pay $5,000 in *pendente lite* alimony when the draw was only $12,500. Counsel argued that the court had no evidence that Mr. Stabbe was having financial difficulties at the end of each month, and some expenses were not being incurred at that

[15] Counsel reiterated that, at 66 and four months, Ms. Goldman would get $1,774 a month in social security benefits, whereas at age 70, she would receive $2,394.

time, the foreclosure of the home had not occurred and he was living in the house, the student loans were deferred, and he was not paying any of the tax liabilities.

Mr. Stabbe's counsel requested that the court award alimony in the amount of $4,000 per month until Ms. Goldman reached the age of 67.[16] Counsel stated that Mr. Stabbe would incur approximately $8,000 per month in payments on his tax debt, as compared to Ms. Goldman's payment of $250, and if this sum was subtracted from his $17,500 monthly draw, that left him with approximately $9,000 in gross income per month. Calculating a bonus of approximately $225,000, minus taxes on the bonus, plus his capital contribution as an equity partner, left him with bonus income of approximately $60,000, or $5,000 per month, for a total of $14,000 a month. With Ms. Goldman's current salary of $70,000 or $74,000, her income was approximately $5,583 or $6,166 a month. Counsel calculated an $8,000 difference of income between them, and she stated that alimony of $4,000 would "equalize their income."[17] Counsel stated that both parties would have to "curb expenses," noting: "They're not going to enjoy the lifestyle they had or thought they

[16] Counsel noted that the parties had agreed to an equalization of the retirement accounts that would give each party approximately $88,000 toward retirement. Additionally, Mr. Stabbe would have $15,000 in non-marital retirement from a previous IRA, and Ms. Goldman would have $19,000 in cash contained in a separate bank account that was non-marital property.

[17] Counsel noted that Mr. Stabbe had two of the children living with him, and he was paying one child's COBRA expenses, but the children's expenses were not included in Mr. Stabbe's financial statement. She asserted that Ms. Goldman actually had more discretionary spending than Mr. Stabbe did.

had during the marriage because it was actually a bit of a façade. They were living way beyond their means, which is how they got to this point."

On March 27, 2017, the court granted the parties an Absolute Divorce and, *inter alia*, ordered that Mr. Stabbe pay alimony to Ms. Goldman in the amount of $5,000 per month for nine years. In its written opinion, the court stated that, "[a]lthough the parties enjoyed significant income during the marriage, they lived above their means." The court made the following findings of fact:

- Ms. Goldman's 2016 earnings were $74,945.15.
- Mr. Stabbe's 2016 earnings were $474,000.
- Mr. Stabbe and Ms. Goldman are jointly liable for a 2013 tax liability of $195,022.93 for federal taxes and $65,266.45 for state taxes.
- Mr. Stabbe has an individual tax liability of $36,987.73 in federal taxes and $17,997.55 in state taxes for 2014. For 2015, his tax liability was $162,585 in federal taxes and $28,482.00 in state taxes.
- Mr. Stabbe owes $220,514.10 in parent plus loans for the children's college tuition costs, and he was to begin making payments of $ 2,956.93 in September 2017.
- Mr. Stabbe had $223,850.00 in assets and monthly expenses of $19,140.58; and
- Ms. Goldman had monthly expenses of $12,185.92.

After determining that Ms. Goldman was not entitled to a monetary award, the court turned to Ms. Goldman's request for indefinite alimony. In that regard, the court considered each of the factors set forth in Md. Code (2012 Repl. Vol.) § 11-106(b) of the Family Law Article ("FL"), stating:

1. *The ability of the party seeking alimony to be wholly or partly self-supporting.*

   [Ms. Goldman] earns approximately $75,000 per year. She is well-educated and has worked for the duration of the marriage. She is wholly 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.*

   [Ms. Goldman] does not require additional education or training. She currently has suitable employment.

3. *The standard of living that the parties established during their marriage.*

   [Mr. Stabbe] consistently earned a significant salary during the marriage. [Mr. Stabbe] is a trademark attorney and earned $364,455 in 2013, $235,524 in 2014, $418,724 in 2015, and $474,000 in 2016. The parties' children attended private schools, and the parties lived in a $1,050,000 home in Potomac, Maryland. However, there was testimony that the parties lived beyond their means. [Mr. Stabbe] withdrew from his IRA to fund the children's private school tuitions, resulting in heavy tax penalties. He also owes a significant amount of money in federal and state back taxes. [Mr. Stabbe] filed for bankruptcy in 2015, and many of his debts were discharged in bankruptcy. However, the Parent Plus loans for the children's college tuition and his federal and state tax liabilities were not discharged in the bankruptcy proceeding.

Regarding factors four through eight, the court stated: "Discussed above." With respect to factor four, the duration of the marriage, the court previously found that "the parties were married on June 11, 1989, and have therefore been married for more than 27 years." With respect to the fifth factor, "the contributions, monetary and nonmonetary, of each party to the well-being of the family," the court previously stated:

> [Mr. Stabbe] was the primary financial provider for the family; [Ms. Goldman] worked during the marriage, but her income was significantly less than [Mr. Stabbe's] income. [Ms. Goldman] primarily took care of the

> parties' children. However, now, Dylan and Bryan live with [Mr. Stabbe] in the marital home, and [Mr. Stabbe] continues to pay many of their expenses.

For the sixth factor, "the circumstances that contributed to the estrangement of the parties," the court found that "financial difficulty primarily led to their estrangement." With respect to the seventh factor, "the age of each party," the court found that each party was 61 years of age. For the eighth factor, "the physical and mental condition of each party," the court found Ms. Goldman to be "in good physical and mental condition," and Mr. Stabbe "suffer[ed] from depression and anxiety and has high cholesterol and blood pressure."

The court continued to address the requisite factors, as follows:

> 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.*
>
> [Mr. Stabbe] has the ability to pay alimony. In fact, [Mr. Stabbe] suggested to the [c]ourt that he pay $4,000 per month in alimony for a period of six years. At the time of trial, there was testimony that [Mr. Stabbe] earned $474,000 in 2016. [Mr. Stabbe] incurs monthly expenses in the amount of $19,140.58, according to his Financial Statement. . . . [Mr. Stabbe] has assets in the amount of $223,850.00.[18]
>
> 10. *Any agreement between the parties.*
>
> The parties entered into a consent pendente lite order on June 13, 2016 whereby [Mr. Stabbe] agreed to pay [Ms. Goldman] $5,000 during the pendency of this litigation. With regard to alimony, the parties have not made

[18] The court noted that this total differed from the amount listed on Mr. Stabbe's financial statements. The court calculated Mr. Stabbe's assets based on testimony and evidence, as follows: "$150,378 in retirement accounts, $64,704.00 for bank accounts, $1,708.00 for stocks and investments, $5,000 for personal property, and $2,060 for automobiles." The court ultimately ordered Mr. Stabbe to transfer $61,889.50 in retirement accounts, leaving both parties with approximately $88,000 in retirement accounts.

any agreement for post-judgment alimony, but [Mr. Stabbe] is willing to pay [Ms. Goldman] $4,000 per month for six years.

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; (iv) the right of each party to receive retirement benefits.*

    All of these factors have been considered elsewhere in this Opinion. Briefly the M-NMP Chart (Marital-Nonmarital Property) details what each party has by way of assets including retirement benefits; the [c]ourt has considered the awards made pursuant to § 8-205 and § 8-208; and the parties' incomes and obligations are detailed on their financial statements.

12. *Whether the court 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.*

    N/A

Because Ms. Goldman was requesting indefinite alimony, the court next addressed the factors set forth in FL § 11-106(c). It determined that "an award of indefinite alimony [was] not appropriate." The court first addressed whether, "due to age, illness, infirmity or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting." FL § 11-106(c)(1). It found that this factor was not applicable.

The court then addressed whether, "even after [Ms. Goldman] 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." FL § 11-106(c)(2). The court recognized that the parties' incomes were significantly different,

approximately $75,000 for Ms. Goldman and $474,000 for Mr. Stabbe, but the court stated that it "does not find that they are unconscionably disparate." The court stated:

> The [c]ourt heard testimony that [Ms. Goldman] has the ability to make in excess of $70,000.00 per year, and she only works 30 hours per week. The [c]ourt also heard testimony that at age 70, [Ms. Goldman] has the ability to receive $2,394.00 per month in social security benefits, . . . and she will also have significant retirement assets after the [c]ourt's equalization of retirement accounts.

The court then determined that "an award of term alimony in the amount of $5,000 per month for nine years is appropriate," stating that this award would give her "the ability to save for retirement and [to] meet her monthly needs." This appeal followed.

DISCUSSION

Ms. Goldman argues that the court erred in its alimony award, both in its duration and the amount of award. In reviewing Ms. Goldman's contentions, we note that "'appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.'" *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)). We review the award of alimony under an abuse of discretion standard and uphold the factual findings of the trial court unless clearly erroneous. *Solomon v. Solomon*, 383 Md. 176, 196 (2004).

I.

Duration of Alimony

Ms. Goldman contends that the circuit court erred in awarding alimony for a period of nine years. She asserts that she satisfied the requirements to receive indefinite alimony.

The statutory scheme governing alimony "'generally favors fixed-term or so-called rehabilitative alimony, rather than indefinite alimony.'" *Solomon*, 383 Md. at 194 (quoting *Tracey*, 328 Md. at 391). The preference for rehabilitative alimony stems from "the conviction 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).

Notwithstanding the general rule favoring fixed-term alimony, the statute recognizes two "exceptional circumstances" in which a court may award indefinite alimony. *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 142 (1999), *cert. denied*, 358 Md. 164 (2000). Pursuant to FL § 11-106(c), the circuit court may award a requesting spouse alimony for an indefinite period, if it finds that:

> (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.

Ms. Goldman contends that she satisfied the "burden as to both alternative bases for the grant of" indefinite alimony. She asserts that: (1) she "does not have the ability to be self-supporting"; and (2) there is an "unconscionable disparity in the parties' respective standards of living." Under these circumstances, she argues that "the trial court's failure to award indefinite alimony amounts to an abuse of discretion."

A.

Ability to be Self-Supporting

We address first Ms. Goldman's contention that the court erred in finding that she was "wholly self-supporting." She asserts that this finding is inconsistent with the factual findings regarding her income and expenses, "which reflect a substantial monthly deficit." And because the court "did not find that [Ms. Goldman] [would] be able to meet her expenses without an award of alimony at any time in the future," the "decision to arbitrarily end the alimony award at a fixed period in time (as opposed to an award of indefinite nature) is an act 'without reference to any guiding [rules] or principles,' which in this case are the principles set forth in [FL] § 11-106(c)(1)."

Mr. Stabbe contends that the court did not abuse its discretion in denying indefinite alimony. He argues that Ms. Goldman made an annual salary of approximately $75,000 working part-time, and she "alleged no basis in age, illness, infirmity or disability."

As indicated, the first circumstance warranting indefinite alimony is if, "due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting." FL § 11-106(c)(1). Ms.

Goldman, at 61 years old, testified that her health was good, and she was not claiming to be incapable of working full time. The court found that she was making $75,000 a year, in a job she had worked for many years,[19] and her counsel argued, and Mr. Stabbe did not dispute, that "she's making what she's going to be able to." Under these circumstances, we perceive no abuse of discretion in the circuit court's findings that FL § 11-106(c)(1) was not applicable.

B.

Unconscionably Disparate Standards of Living

Ms. Goldman next contends that she satisfied the second prong of FL § 11-106(c). She asserts that there is a "stark disparity in the parties' projected standards of living [that] cannot be overcome by any means less than an award of indefinite alimony." She argues that, "as a matter of common sense, a person earning $474,000 does not . . . have a similar manner of living as a person who earns $75,000." She further notes that her $75,000 salary accounts only for 15.8% of Mr. Stabbe's income, which she calculates to mean that he "earns 6.3 times the income that [she] earns."

Mr. Stabbe contends that there was no unconscionable disparity in the standards of living of the parties. He argues that the court properly considered not only the gross incomes of the parties, but also their expenses. In that regard, he asserts that, "[b]ased upon

[19] Ms. Goldman testified that she made $70,000 working for Housing Unlimited. Her tax returns for 2016 reflect earnings from Housing Unlimited of $66,425.15 and from Arc of Prince George's County of $8,520, which was approximately $75,000.

the parties' respective gross incomes of $74,945.15 and [$474,090.16], taxes on said income, monthly expenses of $12,185.92 and $19,140.58, and the alimony award . . ., each party will be operating at approximately the same monthly deficit."

The burden of proof regarding unconscionable disparity is upon the "economically dependent spouse who seeks alimony for an indefinite period." *Thomasian v. Thomasian*, 79 Md. App. 188, 195 (1989). "[T]he issue of unconscionable disparity must be determined by projecting into the future, to a time of maximum productivity of the party seeking the award, and not by looking solely to the past." *Whittington v. Whittington*, 172 Md. App. 317, 340 (2007). *See St. Cyr v. St. Cyr*, 228 Md. App. 163, 197 (2016) (explaining FL § 11-106(c) "requires a comparison of the disparity in the parties' future standards of living at the hypothetical point in time when [the requesting spouse] will have made as much progress toward becoming self-supporting as can reasonably be expected."); *accord Francz v. Francz*, 157 Md. App. 676, 701 (2004) (to be eligible to receive indefinite alimony, the appellant must show that, projecting into the future, even after he or she will have made as much progress toward self-sufficiency as reasonably can be expected, there will be an unconscionable disparity between their standards of living). As such, the court's forward projection should be "*based on the evidence*, beyond the point in time when a party may be expected to become self-supporting." *Roginsky*, 129 Md. App. at 146 (emphasis added).

"Whether the respective standards of living of the parties post-divorce will be unconscionably disparate is a question of fact." *Whittington*, 172 Md. App. at 337. *Accord*

Karmand v. Karmand, 145 Md. App. 317, 338 (2001) ("Whether the post-divorce standards of living of former spouses are unconscionably disparate only can be determined by a fact-intensive case-by-case analysis."). Therefore, we review it under the clearly erroneous standard of review. *See Solomon*, 383 Md. at 196; Md. Rule 8-131(c). As the Court has explained:

> It is a second-level fact, however, that necessarily rests upon the court's first-level factual findings on the factors, listed in FL section 11-106(b), that (so long as they are applicable) are relevant to all alimony determinations, and "all the factors," including those not listed, "necessary for a fair and equitable award"; and upon how much weight the court chooses to give to its various first-level factual findings.

Whittington, 172 Md. App. at 337-38.

In *Ware v. Ware*, 131 Md. App. 207, 232 (2000), we explained that a "finding of mathematical disparity will not automatically trigger an award of indefinite alimony," and "the trial judge must carefully consider all of the twelve factors spelled out by FL § 11-106(b) that are pertinent to a particular case." "The interplay of those factors may frequently have a strong bearing on whether a particular disparity can fairly be found to be an unconscionable disparity." *Id.* at 232-33. Indeed, there is no "hard and fast rule regarding any disparity" in income for purposes of awarding indefinite alimony, *Tracey*, 328 Md. at 393, but to be unconscionable, the disparity in the post-divorce standards of living must work a "gross inequity." *Brewer v. Brewer*, 156 Md. App. 77, 100, *cert. denied*, 381 Md. 677 (2004). *Accord Karmand*, 145 Md. App. at 338 (Indefinite alimony warranted where "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.").

Here, in finding that an award of indefinite alimony was "not appropriate," the court found that the incomes of the parties were not unconscionably disparate. Based on a pure income analysis, Ms. Goldman's salary of $75,000 was approximately 16% of Mr. Stabbe's salary of $474,000. Although there is no "hard and fast rule regarding any disparity" in income for purposes of awarding indefinite alimony, *Tracey*, 328 Md. at 393, a mathematical comparison of income is "'the starting point of the analysis.'" *Roginsky*, 129 Md. App. at 146 (quoting *Blaine v. Blaine*, 336 Md. 49, 71-72 (1994)). The court's finding here of no unconscionable disparity based on income, where Ms. Goldman's income is approximately 16% of Mr. Stabbe's income, is not consistent with other cases finding unconscionable disparity based on the relative percentage of the dependent spouse's income when compared to the other spouse's income. *See Tracey*, 328 Md. at 393 (28 percent); *Caldwell v. Caldwell*, 103 Md. App. 452, 463-644 (43 percent), *cert. denied*, 339 Md. 166 (1995); *Blaine v. Blaine*, 97 Md. App. 689, 708 (1993) (23 percent), *aff'd on other grounds*, 336 Md. 49 (1994); *Rock v. Rock*, 86 Md. App. 598, 613 (1991) (20-30 percent); *Bricker v. Bricker*, 78 Md. App. 570, 577 (1989) (35 percent); *Benkin v.*

Benkin, 71 Md. App. 191, 199 (1987) (16 percent); *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985) (20 percent); *Kennedy v. Kennedy*, 55 Md. App. 299, 307 (1983) (33 percent).[20]

And other than income, the court did not discuss how there would not be an unconscionable disparity in the parties' standards of living.[21] A finding that there is no unconscionable disparity based solely on the parties' income was clearly erroneous. *See Holston v. Holston*, 58 Md. 308, 323-24, *cert. denied*, 300 Md. 484 (1984) (failure to award indefinite alimony when salary of dependent spouse is less than 15% of the economically superior spouse is clearly erroneous).

To be sure, Mr. Stabbe had significant tax liabilities. The court's order, however, did not explain how that factored into the analysis, including that the tax liabilities, according to the evidence, would be paid off in five or six years.[22] The court did not project into the future and explain how it found that the expected standards of living of the parties

[20] The court considered Ms. Goldman's ability to receive social security income at age 70. No evidence addressed Mr. Stabbe's anticipated social security benefits, but if it is appropriate to consider one party's social security income in determining unconscionable disparity, it would seem appropriate to consider the availability of such income for the other party.

[21] The court did not set forth any factors that would support a finding that the disparity between the parties' standards of living may be tolerated. The court found that the parties had been married for 27 years, Ms. Goldman primarily took care of the children, and Mr. Stabbe was the primary financial provider. *See Holston v. Holston*, 58 Md. App. 308, 324, *cert. denied*, 300 Md. 484 (1984).

[22] We also note that Mr. Stabbe's and Ms. Goldman's financial calculations provided that Mr. Stabbe would pay the tax liabilities. The tax debt for 2013, however, is listed as a joint debt.

would not be unconscionably disparate. We will, therefore, vacate the alimony award and remand for further proceedings.

II.

Amount of the Alimony Award

Although we have determined that the alimony award will be vacated and remanded for further proceedings, we will address briefly a couple of Ms. Goldman's other contentions concerning the alimony award.

Ms. Goldman contends that "the court abused its discretion in awarding [her] only $5,000 in monthly alimony where the court's factual findings as to her income and needs reflect a need for an award substantially greater in amount." She asserts that the amount of the award did not cover her monthly deficit of $5,935.92, and that this deficit is increased to $7,904.69 when her income tax liability is taken into consideration.

Mr. Stabbe contends that the court "did not abuse its discretion in awarding $5,000 per month in alimony." He argues that the "award was appropriately calculated upon review of all the evidence, including, but not limited to, Ms. Goldman's alleged need for alimony and [his] ability to pay said alimony."

In *Birdsall v. Birdsall*, 23 Md. App. 502, 514 (1974), this Court declined to address an argument regarding a tax liability that was raised for the first time on appeal, noting that it was not "within the proper scope of appellate review to undertake income tax analyses on the basis of computations presented for the first time in appellate briefs." We reasoned that it was "misleading to discuss . . . the tax consequences to one party without considering

the tax consequences to the other." *Id.* at 514-15. Here, the issue of tax liabilities may be considered, as warranted, by the circuit court in its analysis on remand.

With respect to Ms. Goldman's argument that the alimony award leaves her with a deficit in income each month, we note that Mr. Stabbe also claims a monthly deficit. The ultimate amount of alimony to be award is a matter of discretion for the trial court on remand.

III.

Husband's Expenses

Ms. Goldman's final contention is that the "trial court's findings as to Mr. Stabbe's claimed monthly expense for back federal and state income taxes was clearly erroneous as there was no evidence in the record to support such claimed amounts." She asserts that Mr. Stabbe included monthly expenses of more than $8,000 a month but: (1) "he [was] not actually paying these expenses"; and (2) "the bulk of these expenses are for tax year 2013, for which the parties filed joint returns and are both jointly and severally responsible." Ms. Goldman also argues Mr. Stabbe's health care expenses in the amount of $2,647.75 are "inaccurate and duplicative" based upon Mr. Stabbe's testimony. These contentions should be addressed by the circuit court on remand.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.