

Circuit Court for Anne Arundel County
Case No. C-02-FM-20-002051

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 804

September Term, 2022

ANDREW PAYNE

v.

LAURA ZYWICKI PAYNE

Graeff,
Nazarian,
Tang,

JJ.

Opinion by Nazarian, J.

Filed: May 24, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal brings before us the Circuit Court for Anne Arundel County’s judgment of divorce between Andrew Payne (“Husband”) and Laura Zywicki Payne (“Wife”). After a merits trial, the court issued a Judgment of Absolute Divorce that, in relevant part, awarded Wife alimony and child support, granted Wife a monetary award for dissipated marital assets, and ordered the parties to equalize and divide their bank accounts. Husband appeals, asserting that the trial court erred in its alimony calculations and when it ordered the parties to equalize their bank accounts. We affirm the alimony award, vacate the monetary award and directions to divide bank accounts, and remand with instructions for the court to enter a new judgment granting Wife a single monetary award in the amount of \$22,835.00.

I. BACKGROUND

The parties were married in Annapolis in August 1994 and are the parents of one child who recently turned eighteen. They separated in July 2020 and on August 11, 2020, Wife filed a Complaint for Absolute Divorce alleging adultery. The court ordered Husband to pay *pendente lite* alimony and child support in December 2020, and he paid it continuously until the time of trial. A four-day-long final merits hearing was held, with evidence and testimony taken on March 23–25, 2022 and closing argument and the trial court’s oral ruling on April 6, 2022. The parties reached and placed on the record an oral agreement that resolved many property issues, but by the end of trial the issues of alimony, child support, use and possession of the marital home, attorney’s fees, and other property issues remained.

A. Trial.

Both parties testified at trial as did two other witnesses, Husband's girlfriend and the parties' next-door neighbor. Although there was some testimony about the reasons for the estrangement of the parties and their corresponding contributions to the marriage, most of the trial focused on the parties' financial circumstances. We'll limit our discussion to the relevant contested testimony about Husband's income and Wife's expenses.

1. Wife's income and expenses, including the parties' standard of living during the marriage.

Both parties worked consistently throughout the twenty-five-year marriage. For the last nineteen years, Wife has worked for Anne Arundel Medical Center, most recently as a radiation therapist. Her monthly income was undisputed; she earns a gross monthly income of \$8,794.50 and a net income of \$5,296.96.

Wife testified that during the marriage, the parties regularly took trips to places such as the Dominican Republic, Costa Rica, Italy, Ireland, and England. Wife visited all fifty states before she turned fifty years old and Husband supported her and accompanied her on at least half of those trips, including a trip to Hawaii and an Alaskan cruise. The parties also traveled the country to attend concerts, and Wife took trips out of state every year for her birthday, an annual golf tournament, and for Halloween. It was undisputed that the parties enjoyed the benefit of season tickets for Navy football, Washington professional football, and Capitals games, as well as a membership to the Annapolis Yacht Club, each of which cost several thousand dollars per year. In May 2014, Husband threw a retirement party for himself at the Yacht Club that cost \$30,000, and in 2018, he bought a \$135,000

boat with cash and installed a pier and boat lift at the marital home that cost between \$10,000 and \$15,000. The parties owned three properties in the area, two townhomes and a waterfront property worth over \$1 million, with significant equity.

2. *Husband's income.*

Husband testified that he's a "sales engineer" for Boland, a commercial HVAC company, where he has worked since 2001 after separating from active-duty military service. He is an independent contractor paid entirely on commission, and, apart from some real estate rental and management income, his commissions are his primary source of income. In 2017, Husband earned \$492,566.63 in gross income; in 2018, he earned \$521,013.50 in gross income; in 2019, he earned \$499,195.58; in 2020, his income dropped to \$358,857.51; and in 2021, his income was \$369,845.37. Husband offered into evidence tax returns from the past five years and blamed the decrease in his income beginning in 2020 on the loss of a lucrative contract with the State Department. Husband talked to Wife about the loss of the contract and the impact it could have on his income and he told her not to worry, that "Boland would make it right." His most recent paycheck at the time of trial was in December 2021 and was over \$100,000. Husband admitted that expenses were never an issue during the marriage, including the last two years when he saw a drop in income.

3. *Closing arguments.*

After evidence was received, Wife argued the court should consider Husband's five-year average when calculating his income:

Your Honor, [Husband] made \$492,000 in 2017. He made

\$521,000 in 2018. He made \$499,000 in 2019. None of those are within the 20 percent. So we look at those. But, in 2020, he made 358,000. In 2021, he made \$370,000. And, in December of 2021, he received a check from his company for \$110,000.

It sounds like he's back on the rise and he's coming back. The last two years have shown him going back up. And \$110,000 for a one-month payment, well, that just shows you can't rely upon what he's made for January, February, March, because the end of the year is such a good time of the year for him. . . .

Wife spent considerable time during her closing seeking to discredit Husband's testimony and financial statement. She challenged the expenses on Husband's financial statement, arguing that he can work from home, "yet, he still spends a ton of money on his car, driving back and forth to who knows where," and disputing the write-offs he takes on his tax returns (for things his company would reimburse).

Wife asked for \$6,000 per month indefinite alimony based on the disparity of the parties' incomes and the lifestyle the parties established during the marriage:

I know some judges are not favorable toward indefinite alimony. I know some judges look and say she's making a hundred grand a year. That ain't bad. But it ain't the lifestyle that they had while they were together. You heard about all their trips. I mean, they flew to Ireland to watch . . . Navy play Notre Dame. They'd go out, and they went to all 50 states before [Wife] was 50. They traveled to Hawaii just to watch Jimmy Buffett in concert. . . . This is the lifestyle that they had.

Wife argued that all their trips were "things that happened based on [Husband's] high income." She also referenced \$50,000 in jewelry Husband admitted to buying her during the marriage, and further argued she was "conservative" on her financial statement because it represents "what she spends right now" rather than "what she should have a right to spend" based on the income disparity since "[Husband] had this disposable income that

she doesn't have." Wife also sought reimbursement of private investigator fees to prove the adultery that Husband denied, an award of half of \$27,116.17 in dissipated marital funds Husband had spent on his paramour, reimbursement of her deposition costs, and an award for attorney's fees. Finally, she requested retroactive alimony and child support.

As to alimony, Husband argued that Wife is "going to be walking away from this marriage with \$1.130 million in retirement assets" in addition to her share of Husband's pension, and \$350,000 once the marital home is sold. He contended that Wife's alimony award seeks to "punish [Husband] for allegedly committing adultery" but in Maryland, the cause of the breakup of the marriage is only one factor the court must consider. Husband argued that the evidence showed that Wife can be self-supporting, that she is maxing out her retirement contributions and still has \$5,296.96 a month. Husband accused Wife of seeking to "increase those monthly expenses, for her need for alimony" intentionally by buying a new car without trading in her old one and adding \$549.86 to her monthly financial statement. Husband also highlighted her "cost for repair and replacement of furnishings," vacations, and clothing spending as it "seems as if she's trying to add in expenses to increase her monthly expenses and her need," and characterized her numbers as "extremely inflated." Husband calculated Wife's actual expenses to be \$2,237 for the child and \$6,000 for herself per month.

Husband also discussed the parties' standard of living in his closing argument, in an effort to minimize the spending picture Wife painted. Husband argued that "they were able to do things without worrying about money too much" but the fact that they purchased

vehicles on loans indicated that “[t]hey didn’t have cash sitting around,” adding that their child attends public school “[a]nd they also go on vacations, approximately once a year.” The only “luxurious” purchase the parties made was when Husband bought a boat with cash, a purchase he was able to make when he dissolved a real estate business, but “[t]hat was a one-time thing”

Finally, with respect to his ability to pay, Husband argued that he is “100 percent commission” and his income varies every month. Husband defended his financial statement by arguing that he used his “gross 1099 income” and subtracted only his assistant’s income from the gross number used for child support. He stated his gross income is \$29,762 per month.

Husband urged the court to “look at what [Wife’s] receiving, and their standards of living, when she’s walking away with [\$]383,000 of assets, plus another [\$]350- or so coming from the [marital home], plus 1.130 million dollars in retirement, their standards of living are not that different when they leave” Husband recommended that the court award “3 to 5 years, [\$]1,650 per month,” contending that Wife’s request of \$6,000 per month in alimony is a “windfall.” Husband asked the court to award alimony for a “period of five years” to “cover that transition period where [the child] is, you know, still kind of in the house. And she may have more expenses while [the child] is in the house.”

B. The Circuit Court’s Ruling.

At the conclusion of trial, the trial court issued its oral ruling granting absolute divorce. The court announced its alimony decision first and walked through the statutory

factors:

First is the ability of the party seeking alimony to be wholly or partly self-supporting. So I find, as a matter of fact, that [Wife] makes \$101,178.89. She's a W-2 employee and there's an exhibit in the file that shows exactly that. I find by a preponderance that [Husband's] yearly income over the last five years has been in a range between 358,000 and 520,000. And those are rounded numbers. But there . . . are . . . exhibits in the file that demonstrate that as well.

Pursuant to the statute, when the swing exceeds 20 or 25 percent, in this case either one of those would be met, I have averaged [Husband's] income, for the purposes of this analysis, over that 5-year period.

The court noted the marriage had lasted “25 years, 7 months, 14 days” and that both parties made significant monetary and non-monetary contributions to the marriage. The court focused heavily on the financial disparity of the parties:

Factor eight, the ability of the party from whom alimony is sought to meet that part[y]'s needs while meeting the needs of the party seeking alimony, and you'll notice that your lawyers spent a lot of time arguing the financial statements, because this is an important factor. They're all important factors. But again, the guardrails don't tell me which one—which factors are more important than any others, just tells me I have to look at all of them.

I find by a preponderance that [Wife] lists [a] gross monthly income of \$8,794.50, with a net of \$5,300; and, monthly expenses almost double that, of \$10,400. Her testimony bears these numbers out. And I find by a preponderance that they are accurate. Per her 2021 W-2, her income . . . for 2021 is found to be 8,348.24 per month. And I had a little bit of a difference in what the financial statement showed, but it wasn't really enough for me to decide that there was any kind of credibility problem or evidence problem, because I know, from experience, both on the bench and off the bench, that these financial statements evolve over time, as conditions change and people realize what their actual expenses are. . . .

As I indicated earlier, under the statute that authorizes me to do so, I have averaged the income of [Husband], for the purposes of alimony, from tax year 2017 to tax year 2021. . . .

[Husband's] updated financial statement, filed on or about 3/11/22, indicates roughly \$30,800 per month gross income, and expenditures of \$16,783.80. That expense number does include the cost of the sales associate, . . . my recollection is that it was in the range of about \$18,000 a year, or \$1,500 a month. . . . And that is included in that 16,783. . . . This number also includes [*pendente lite*] alimony and child support. The Court finds, based upon a 5-year average, that [Husband's] actual monthly income is now 37,357.31 gross. And net of taxes should be in the neighborhood of about \$20,000 a month.

The Court is not unaware or insensitive to the fact that [Husband] is paid by a commission. And so that's not a every month \$37,000. It might be one month zero, and, such as the month of December last year, I think, where he gets a check for a hundred thousand dollars.

* * *

I find that, absent an award of alimony in this case, that the parties' living standards would be disparate and arguably unconscionably so. I do not find that—this is a tough call. But I do not find that this is a case that demands the Court grant indefinite alimony to resolve the unconscionability problem.

The court ultimately awarded Wife alimony of \$4,000 per month for a term of 153 months, which ends when Wife's expected full social security benefit begins.

The court calculated child support next. Using the court's previous income calculations, the court credited Wife's payment of health insurance and ordered Husband to pay \$2,122 of child support per month. The court noted that "this is a far above guidelines case" and added that Husband must pay 70% of the child's monthly volleyball expenses, which previously had been ordered *pendente lite*.

With respect to attorney's fees, the court considered the "financial resources of the

parties” and noted that “[t]he incomes are roughly 72-28, 70-30.” The court found that Wife’s “reasonable and necessary attorney’s fees” were \$60,000 and, “[g]iven the dispar[ate] incomes between the parties, and because [it found] that [Husband] has the ability to make a contribution to [Wife’s] attorney’s fees,” the court ordered Husband to pay Wife an award of attorney’s fees of \$30,000 (half of her claimed fees). The court declined Wife’s request for reimbursement of private investigator and deposition costs.

Finally, the court noted that the parties had agreed on how to divide the majority of their personal property, and briefly discussed the parties’ bank accounts, stating, “[T]hat leaves, to me, NFCU Checking [accounts], along with the cash. And I order that those amounts be totaled and distributed in equal shares to the parties.” The court then announced a \$10,000 award to Wife for her “dissipation claim.” By corresponding Judgment of Absolute Divorce entered on May 11, 2022, the court ordered the following:

ORDERED that, having found that [Husband] dissipated marital assets, [Husband] shall pay to [Wife] the sum of \$10,000.00 within 120 days of April 6, 2022. If said amount is not paid in full within 120 days, then the balance owed shall be reduced to a judgment against [Husband] in favor of [Wife]; and it is further

ORDERED that the balances of the parties’ bank accounts, as reflected in the Joint Statement of Marital and Non-Marital Property items numbered 13 - 17[]on the 9-207 filed with the Court on March 23, 2022 shall be totaled and the combined balance equally divided between the parties

After the trial court denied Husband’s motion for reconsideration, Husband timely appealed. He states that he has since paid Wife \$40,000 for the attorney’s fees and the “‘dissipation’ award.” We include additional facts as they become relevant below.

II. DISCUSSION

This appeal presents the following questions:¹ *first*, whether the trial court’s alimony award was based on erroneous findings of Wife’s monthly expenses; *second*, whether the trial court abused its discretion in its calculation of Husband’s income; and *third*, whether the court erred when it ordered the parties to equalize their personal bank accounts.

In an action tried without a jury, findings of fact are reversed only if clearly erroneous, *Bryant v. Bryant*, 220 Md. App. 145, 160 (2014), giving “due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). We view the evidence in the light most favorable to the party who prevailed at trial, and we resolve all evidentiary conflicts in their favor. *Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (2013) (citation omitted). And we review

¹ Husband phrased the Questions Presented, which Wife accepted, as follows:

I. WAS THE TRIAL COURT’S FINDING AS TO MOTHER’S MONTHLY EXPENSES FOR PURPOSES OF ALIMONY CLEARLY ERRONEOUS WHEN IT FAILED TO EXCLUDE CHILD-RELATED EXPENSES THAT WERE SEPARATELY ADDRESSED THROUGH CHILD SUPPORT?

II. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT CALCULATED THE DEFENDANT’S ACTUAL INCOME BY AVERAGING HIS PAST FIVE YEARS OF TAX RETURNS ON THE BELIEF THAT THIS WAS REQUIRED UNDER MD. CODE ANN., FAM. LAW § 12-203?

III. DID THE TRIAL COURT ERR WHEN IT ORDERED THE PARTIES TO EQUALIZE AND DIVIDE THE VALUES OF FIVE SOLELY-TITLED BANK ACCOUNTS?

At oral argument, Husband clarified that because the parties’ child had turned eighteen and was about to graduate from high school, he was not seeking remand on child support.

whether “the [trial] court’s conclusions are “legally correct” under a *de novo* standard of review.” *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quoting *L.W. Wolfe Enters. v. Md. Nat’l Golf*, 165 Md. App. 339, 344 (2005)).

A. The Trial Court Did Not Abuse Its Discretion In Its Alimony Award.

Husband *first* attacks the alimony award in two ways, by challenging the trial court’s calculation of Wife’s expenses and by challenging the court’s method of calculating his income. Maryland Code (1984, 2019 Repl. Vol.), section 11-106 of the Family Law Article (“FL”) governs alimony awards and requires courts to consider twelve statutory factors.²

² FL § 11-106(b) states “the court shall consider”:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;
- (4) the duration of the marriage;
- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (6) the circumstances that contributed to the estrangement of the parties;
- (7) the age of each party;
- (8) the physical and mental condition of each party;
- (9) the ability of the party from whom alimony is sought to meet that party’s needs while meeting the needs of the party seeking alimony;

Continued . . .

An alimony award will not be disturbed on appeal except where “the trial court abused its discretion or rendered a judgment that is clearly wrong.” *Kaplan v. Kaplan*, 248 Md. App. 358, 370 (2020) (quoting *Brewer v. Brewer*, 156 Md. App. 77, 98 (2004)).

Furthermore, decisions about expenses that feed the ultimate alimony amount lie within the trial court’s discretion. See *Reynolds v. Reynolds*, 216 Md. App. 205, 226, 234 (2014); *Corby v. McCarthy*, 154 Md. App. 446, 499 n.7 (2003). And the court is not required to explain every single adjustment to expenses in any event. *Allison v. Allison*, 160 Md. App. 331, 345 (2004) (when calculating monthly expenses to determine financial need, the court is “not required to set forth its exact thought process in arriving at conclusions” because financial statements submitted by the parties may be exaggerated). Moreover, “grossly disparate income ordinarily translates into grossly disparate standards

(10) any agreement between the parties;

(11) the financial needs and financial resources of each party, including:

(i) all income and assets, including property that does not produce income;

(ii) any award made under §§ 8-205 and 8-208 of this article;

(iii) the nature and amount of the financial obligations of each party; and

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

(12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health - General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

of living.” *Rock v. Rock*, 86 Md. App. 598, 613 (1991) (citing *Rogers v. Rogers*, 80 Md. App. 575, 591 (1989)).

1. *The trial court’s calculation of Wife’s expenses was not clearly erroneous.*

Husband argues *first* that the trial court erred clearly when it calculated Wife’s monthly expenses. Husband argues that the circuit court “made a significant and obvious factual error when it made its finding as to Wife’s monthly expenses,” namely, that it considered Wife’s child-related expenses in its calculations for both alimony and child support. He argues that “[o]nly the Wife’s personal expenses should have been considered for purposes [of] alimony since child expenses were separately addressed by the child support award.”

We begin with Husband’s contention of legal error. Nothing required the trial court to separate Wife’s child-related expenses from her personal expenses when considering alimony. In other words, there was no “double-dipping.” Husband argues the trial court erred by considering child-related expenses for alimony by “bas[ing] two separate support awards on the same set of expenses.” But we have acknowledged repeatedly that “the decision to award alimony is ‘not subject to a formulaic resolution.’” *Kaplan*, 248 Md. App. at 374 (quoting *Whittington v. Whittington*, 172 Md. App. 317, 341 (2007)). The only relevant statutory requirement lies in FL § 12-204(a)(2),³ which required the court to

³ That section provides:

Continued . . .

calculate alimony before child support, since the latter changes the calculation of the parties' respective incomes. But that's not true for expenses, which don't change. And in this case, the court decided alimony first, then attributed the \$4,000 alimony award to Wife properly when it determined the child support award.

And in any event, Husband himself asked the court to consider the child's expenses in setting the alimony award and term. He asked the court to consider "that transition period where [the child] is, you know, still kind of in the house. And she may have more expenses while [the child] is in the house." And with the child support award now effectively moot, as Husband conceded at oral argument, we decline to hold that the court abused its discretion in considering the Wife's child-related expenses when setting the alimony award.

2. *The trial court didn't err when it used a five-year earnings average to calculate Husband's income.*

Husband argues *next* that "the [t]rial [c]ourt ignored the evidence and testimony

(2)(i) If one or both parents have made a request for alimony or maintenance in the proceeding in which a child support award is sought, the court shall decide the issue and amount of alimony or maintenance before determining the child support obligation under these guidelines.

(ii) If the court awards alimony or maintenance, the amount of alimony or maintenance awarded shall be considered actual income for the recipient of the alimony or maintenance and shall be subtracted from the income of the payor of the alimony or maintenance under § 12-201(c)(2) of this subtitle before the court determines the amount of a child support award.

FL § 12-204(a)(2)(i)–(ii).

before it in favor of using a 5-year average,” and thus reached a clearly erroneous calculation of Husband’s income. The trial court followed the statutory requirement to verify income with documentation of “both current and past actual income,” FL § 12-203(b)(1), and, because Husband “is self-employed or has received an increase or decrease in income of 20% or more in a 1-year period within the past 3 years,” the court directed him “to provide copies of federal tax returns for the 5 most recent years.” FL § 12-203(b)(2)(ii). Husband suggests that the trial court believed it was *required* to consider five years of income and that it erred in using his five-year average income for child support and alimony purposes (rather than solely for child support purposes).

He’s wrong. In its oral ruling the trial court cited the variability of Husband’s income, an undisputed fact, as the reason it opted to use a five-year average:

As I indicated earlier, under the statute that authorizes me to do so, I have averaged the income of [Husband], for the purposes of alimony, from tax year 2017 to tax year 2021.

* * *

The Court is not unaware or insensitive to the fact that [Husband] is paid by a commission. And so that’s not a every month \$37,000. It might be one month zero, and, such as [Husband’s most recent paycheck,] the month of December last year, I think, where he gets a check for a hundred thousand dollars.

There’s no indication that the court believed it was *required* to use the five-year average. And in fact, the court recognized expressly that Husband is paid irregularly and on commission. Just as Husband asked the court to consider child-related expenses in Wife’s expenses to limit alimony, the record shows that *Husband* offered all five years of his tax returns into evidence (albeit in an effort to argue he had a lower income).

Moreover, and as we explained in the expense discussion above, nothing *required* the court to consider different income for alimony versus child support purposes (unless, of course, alimony is added to the receiving party’s income for the child support calculation under FL § 12-204(a)(2), which obviously doesn’t apply to him). The trial court also clarified its order of operations in real time in response to questions from Husband’s counsel:

[COUNSEL FOR HUSBAND]: Did you state that you—when you did the child support guidelines, that you included the alimony payment ordered?

[COUNSEL FOR WIFE]: Yes.

THE COURT: I did.

[COUNSEL FOR HUSBAND]: I wanted—because you said for us to double-check your guidelines numbers. So that’s—

THE COURT: So there’s a specific order. And, . . . this is a good exercise for me. You have to figure out what the marital property award is. Then you have to figure out what the alimony award is, if any. Then, and only then, can you do the child support.

* * *

I might not have said it in the right order but . . . at least my analysis, I did it in that order.

Although Husband claims the drop in income was “uncontroverted,” the court also considered the uncontroverted evidence of his \$100,000 paycheck for the month preceding trial. The court credited Wife’s argument at closing that Husband’s income is “back on the rise.” Under these circumstances, in an above-Guidelines case, the trial court employed a “rational method” of calculating Husband’s income and did not abuse its discretion. *Kaplan*, 248 Md. App. at 365 (affirming custodial parent’s obligation to pay non-custodial

parent monthly child support, stating “that, in an above-Guidelines case, the trial court, in exercising its significant discretion, may employ any rational method in balancing ‘the best interests and needs of the child with the parents’ financial ability to meet those needs.’” (*quoting Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018)).

Finally, in a catch-all argument, Husband contends that the circuit court failed to consider the FL § 11-106(b) factors properly, thus abusing its discretion and committing legal error. However, a review of the record reveals that the court considered the required statutory factors properly. As we stated before, “the decision to award alimony is ‘not subject to a formulaic resolution.’” *Kaplan*, 248 Md. App. at 374 (*quoting Whittington*, 172 Md. App. at 341). We can see from the transcript and the court’s decision that it weighed the FL § 11-106(b) factors appropriately when making its award, and we find no error in the court’s calculation of Wife’s expenses and in the alimony award.

B. The Trial Court Erred In Ordering The Parties to Equalize Their Separately Titled Bank Accounts.

Lastly, Husband contends that the trial court “erred as a matter of law when it ordered that the parties must equalize and divide their personally titled bank accounts” as it exceeded the court’s authority. Husband characterizes the trial court’s order as a transfer of ownership from one spouse to the other because “equalizing” the value of the accounts constituted an additional monetary award of \$12,835 to Wife. Wife, on the other hand, argues that “[t]he parties understood the intent of the decision regarding the bank accounts and, in the instance in which the court’s wording may be vague or incorrect, it would prove to be harmless error.” Although we agree with Wife that the trial court intended this

exchange of fungible cash to function as a monetary award and that Husband was not prejudiced by the court’s wording, we agree with Husband that the trial court lacked authority to order the parties to combine and equally divide their bank accounts. Fortunately, this mechanical disconnect can be remedied.

In granting an absolute divorce, a court “may resolve any dispute between the parties with respect to the ownership of personal property,” but “may not transfer the ownership of personal or real property from one party to the other” except under limited circumstances not at issue here.⁴ FL § 8-202(a)(1), (3). By statute, the court can issue a monetary award after completing a three-step process:

[F]irst, the trial court identifies the marital property; second, the trial court determines the value of the marital property; and third, the trial court makes an award if it determines that distribution of the marital property according to title would be inequitable.

Ledbetter v. Ledbetter, 255 Md. App. 1, 2 (2022) (citing FL §§ 8-203–205; *Doser v. Doser*, 106 Md. App. 329, 349–50 (1995)). We review the trial court’s decision whether to grant a monetary award, and if so, the amount of that award, for abuse of discretion. *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007).

Husband doesn’t dispute that he stipulated to the first and second determinations, and he also doesn’t seem to complain about the court’s decision to distribute the parties’

⁴ Under FL § 8-205(a)(2), a court may transfer ownership interests in: (i) “a pension, retirement, profit sharing, or deferred compensation plan”; (ii) “family use personal property”; and (iii) jointly owned real property that had been used as the parties’ principal residence.

marital property equitably. The three steps are all there. But “[w]hile a monetary award may be made to adjust the equities of the parties, . . . ownership cannot be changed.” *Blake v. Blake*, 81 Md. App. 712, 722 (1990). This means that “[w]hen implementing the monetary award, the court . . . determine[s] the amount and method of payment of the award,” but “[n]o provision is made for the transfer or property of one spouse to the other.” *Id.* at 725. This is because FL § 8-205 “does not carry with it a right in the court to determine the assets that will be transferred or utilized to *fund* that award.” *Id.* at 726 (emphasis added). It was error for the court to direct that the monies be divided by dividing these specific bank accounts. *See also Abdullahi v. Zanini*, 241 Md. App. 372, 410 (2019).

We also agree with Husband that the court effectively ordered a second monetary award in directing the parties to total and divide the balances of two specific bank accounts:

ORDERED that, having found that [Husband] dissipated marital assets, [Husband] shall pay to [Wife] the sum of \$10,000.00 within 120 days of April 6, 2022. If said amount is not paid in full within 120 days, then the balance owed shall be reduced to a judgment against [Husband] in favor of [Wife]; and it is further

ORDERED that the balances of the parties’ bank accounts, as reflected in the Joint Statement of Marital and Non-Marital Property items numbered 13 - 17[]on the 9-207 filed with the Court on March 23, 2022 shall be totaled and the combined balance equally divided between the parties

FL § 8-205 “contemplates but one net monetary award—or none—but certainly not two.” *Ward v. Ward*, 52 Md. App. 336, 343 (1982); *Hoffman v. Hoffman*, 93 Md. App. 704, 712 (1992) (“[T]he Act requires a three-step process to be completed before a ‘single’ monetary ward may be granted.” (footnote omitted)); *see also Rock*, 86 Md. App. at 622–23 (Wife

was improperly awarded a monetary award along with an additional grant of 1/3 interest in stock which constituted a second award).

But this is all about the mechanics of the monetary award, and we disagree with Husband that any of this affected the alimony and attorney’s fees awards. This is the unusual case where the error in establishing the monetary award has no effect on the alimony award, and thus that reconsideration of alimony is not required. *See Bricker v. Bricker*, 78 Md. App. 570, 579 (1989) (“*If a change is made that affects the amounts awarded, a reconsideration of the remaining segments is required.*” (Emphasis added)); *Blake*, 81 Md. App. at 724 (vacating monetary award for transferring ownership in joint account for “impermissible transfer,” recognizing that “the end result appears the same,” and therefore affirming alimony award).

Unlike both *Ward* and *Rock*, the monetary award the court sought to grant Wife is easily ascertainable because it only involved cash bank accounts with stipulated values. The stock interests granted to Wife in *Rock* were awarded as payment of a future benefit, and the uncertainty about their value was problematic:

We cannot ascertain what, if any, value was established for the . . . investment. If no value was established, it would appear that [Wife] failed to bear her burden of proving the value of the asset and the judgment must be affirmed with the deletion of the award of a one-third interest in the asset. If, on the other hand, [Wife] did establish a value for this asset, the trial judge should consider, if he deems it appropriate, whether to increase the monetary award to adjust the equities.

86 Md. App. at 623; *cf. Hoffman*, 93 Md. App. at 713–14 (error lay in court’s analysis of marital versus non-marital property). Here, the values of the bank accounts were

established because the parties stipulated to their value *and* to their status as marital property. Vacating the improper parts of the order doesn't affect the alimony award, so there is no need to remand on that issue.

The trial court need not specifically address each of the FL § 8-205(b) factors⁵ in considering a monetary award. *Collins v. Collins*, 144 Md. App. 395, 410–11 (2002). And

⁵ That section, in similarity to the alimony statute, requires the court to consider:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;
- (3) the economic circumstances of each party at the time the award is to be made;
- (4) the circumstances that contributed to the estrangement of the parties;
- (5) the duration of the marriage;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
- (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
- (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
- (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

in reviewing the record, we can see that the trial court considered each factor properly. Husband “does not complain about the court’s decision to distribute the parties’ marital property equitably,” *id.* at 411, and there was no abuse of discretion in seeking to divide these marital funds equally. The error comes only in the mechanics of implementing the court’s decisions, which is remedied easily. We vacate the portion of the judgment granting a monetary “dissipation” award and ordering the parties to divide the bank accounts, and remand to the circuit court for the limited purpose of entering a single monetary award to Wife in the amount of \$22,835.00, which will resolve all of the property division issues in the same amounts as the circuit court intended.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED IN PART, AND VACATED IN
PART AND REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. APPELLANT TO PAY
COSTS.**