

Circuit Court for Montgomery County
Case No. 152536-FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 813

September Term, 2020

KELVIN LAMONT REAVES

v.

LEYA WILKS REAVES

Friedman,
Beachley,
Zic,

JJ.

Opinion by Beachley, J.

Filed: September 13, 2021

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

Following a four-day trial in November 2019, the Circuit Court for Montgomery County granted appellant Kelvin Lamont Reaves and appellee Leya Wilks Reaves a judgment of absolute divorce. Relevant to this appeal, the court awarded Ms. Reaves \$2,500 per month in alimony for a period of nine years and \$2,225 in monthly child support. The court declined to grant a monetary award, implicitly denying Mr. Reaves's request for a portion of Ms. Reaves's teacher pension. The court also awarded Ms. Reaves \$165,000 in attorney's fees. Mr. Reaves timely appealed and presents the following issues for our review, which we have rephrased and consolidated as follows:

1. Did the trial court err in awarding Ms. Reaves alimony where it failed to determine Mr. Reaves's present income?
2. Did the trial court err in failing to re-calculate child support in light of its alimony award?
3. Did the trial court err by failing to distribute Ms. Reaves's pension plan on an "if, as, and when" basis?
4. Did the trial court err in declining to grant Mr. Reaves a monetary award and awarding Ms. Reaves \$165,000 in attorney's fees?¹

¹ Mr. Reaves presented the following six questions for review in his brief:

1. Did the trial court err in its application of Maryland Annotated Code § 11-106 [of the Family Law Article] when it made no findings with respect to [Mr. Reaves's] present income?
2. Did the trial court abuse its discretion in determining alimony by relying too heavily on the family's standard of living during the marriage, when the trial court found that the standard of living was established in large part by depleting assets and overextending credit, and when the trial court found that the recipient spouse already had the requisite education and experience to maintain suitable employment?

(continued . . .)

As we shall explain, the trial court erred by failing to make a finding as to Mr. Reaves's income for purposes of determining the alimony award. The court also erred by failing to revisit its initial child support award in light of its alimony award. Finally, because it is not clear that the court resolved Mr. Reaves's claim for a portion of Ms. Reaves's pension on an "if, as, and when" basis, we shall remand for clarification of that issue. Because the issues of alimony, child support, monetary award and attorney's fees are so closely related, we must vacate the court's judgment and remand as to those issues.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married in July 2001 and have one minor child together. On April 6, 2018, Ms. Reaves filed her initial complaint for absolute divorce, in which she sought primary physical custody, joint legal custody with tie-breaking authority, child support, alimony, and other relief. Mr. Reaves responded with a counter-complaint for a judgment of limited divorce. The circuit court bifurcated the proceedings, and a merits trial on child-related issues was held in January 2019. On May 20, 2019, the trial court provided an oral

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3. Did the trial court err in failing to re-determine child support after making an award of alimony?
 4. Did the trial court err in denying [Mr. Reaves's] Motion to Modify, when [Mr. Reaves's] income fell by nearly fifty percent, and the court[-]ordered support, tuition, and mortgage payments totaled more than [Mr. Reaves's] then income?
 5. Did the trial court err in failing to divide a defined benefit plan when the trial court, and the parties themselves, indicated that the value of the plan was to be determined if, as, and when payments were made?
 6. Did the trial court abuse its discretion in declining to make a monetary award, and awarding [Ms. Reaves] attorney's fees in the amount of \$165,000, thereby awarding the entire marital estate to [Ms. Reaves]?

ruling resolving the issues from the January 2019 proceedings, which it memorialized in a June 5, 2019 order. The court's June 5, 2019 order granted Ms. Reaves primary physical custody of the child as well as tie-breaking decision-making authority pursuant to joint legal custody, awarded Ms. Reaves \$2,225 in monthly child support, required Mr. Reaves to pay the Sidwell Friends school tuition, granted Ms. Reaves use and possession of the marital home pending the outcome of the divorce merits trial, and ordered Mr. Reaves to pay the monthly mortgage payment on the marital home. Mr. Reaves filed a motion to modify, but resolution of this motion was deferred to the divorce merits trial, which was held in November 2019.²

Following four days of trial in November 2019, the trial court took the matter under advisement. On September 10, 2020, the trial court issued a written opinion granting the parties a judgment of absolute divorce. In addition to granting the parties a divorce, the court, among other things, denied Mr. Reaves's motion for modification of the June 5, 2019 custody and support order, upheld its child support award of \$2,225 to Ms. Reaves, awarded Ms. Reaves \$2,500 in monthly alimony for a period of nine years (108 months), and granted Ms. Reaves \$165,000 in attorney's fees. The court did not, however, make any monetary award or pension distribution. We shall provide additional facts as necessary to resolve the issues presented.

² Even though the court did not memorialize its May 20, 2019 oral rulings until June 5, 2019, Mr. Reaves filed his motion to modify on May 31, 2019. His motion to modify referred to the court's "May 20, 2019 order[.]"

DISCUSSION

I. THE ALIMONY AWARD

Mr. Reaves first argues that, in its alimony analysis, the trial court erred by failing to make a specific finding of his present income in contravention of Md. Code (1984, 2019 Repl. Vol.), § 11-106(b)(11) of the Family Law Article (“FL”). We agree with Mr. Reaves that, by failing to make a sufficient finding as to his income, the court erred. We explain.

FL § 11-106 governs a trial court’s alimony award. The statute requires a trial court to consider numerous factors when determining the duration and amount of an alimony award. FL § 11-106(b). Notably, FL § 11-106(b)(11)(i) instructs the trial court to consider “the financial needs and financial resources of each party, including: (i) all income and assets, including property that does not produce income[.]”

In *Brewer v. Brewer*, this Court concluded that the trial court erred in issuing an alimony award where the trial court failed to make any findings regarding the recipient spouse’s income. 156 Md. App. 77, 100-02 (2004). There, the trial court awarded Ms. Brewer \$1,500 per month in indefinite alimony. *Id.* at 98. We began our analysis by noting that, when making an alimony award, the trial court is required to consider all of the relevant factors enumerated in FL § 11-106(b). *Id.* at 98-99. Turning to FL § 11-106(b)(11)(i), we noted that, in considering the financial needs and financial resources of each party, “the trial court must ‘make specific findings of fact with regard to the income of the recipient spouse.’ Otherwise, as this Court has previously noted, we are unable to determine whether the trial court’s findings are clearly erroneous.” *Id.* at 100 (internal citation omitted) (quoting *Reuter v. Reuter*, 102 Md. App. 212, 229 (1994)).

In addressing whether the court’s findings were sufficient to support its alimony award, we stated, “*Nor did the trial court make any findings with respect to [Ms.] Brewer’s present income, as required by FL § 11-106(b)(11).*” *Id.* at 101 (emphasis added) (citing *Reuter*, 102 Md. App. at 229)). Although Ms. Brewer’s financial statement reported her gross monthly income at the time of the divorce as \$1,054.92, the court apparently failed to consider other potential sources of income such as her eligibility for social security benefits or her receipt of half of Mr. Brewer’s pension. *Id.* at 101-02. By failing to determine her present or future income, it was impossible to determine whether the court accounted for those other sources of income. *Id.* at 103.³ Accordingly, we vacated the alimony award with instructions for the court to make the required findings and then reconsider its alimony award. *Id.* at 105; *cf. Walter v. Walter*, 181 Md. App. 273, 288 (2008) (holding that court was required to determine, based on the evidence, what husband “had earned in the past and was earning presently[.]”).

We acknowledge that *Brewer* involved an indefinite alimony award, which requires the court to find that the party seeking indefinite alimony either “cannot reasonably be expected to make substantial progress toward becoming self-supporting” or that “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

³ The trial court in *Brewer* also relied on the “great disparity” in the parties’ assets in awarding alimony. 156 Md. App. at 104. We noted that the court’s calculation of the parties’ assets was inaccurate, but even if there were a “great disparity,” that fact would not be a sufficient basis to award indefinite alimony. *Id.*

will be unconscionably disparate.” FL § 11-106(c). Nevertheless, in *Brewer*, we specifically construed FL § 11-106(b)(11)(i) as requiring the court to make findings with respect to the parties’ present incomes. 156 Md. App. at 101. Although *Brewer* concerned an award of indefinite alimony where the court erroneously failed to determine the income of the recipient spouse, we see no reason why the same principles would not apply to a payor spouse in a rehabilitative or durational alimony case. Accordingly, the court was required to determine Mr. Reaves’s income, and its failure to do so constituted error.

The court’s failure to make a determination of Mr. Reaves’s income likewise hampered the court’s ability to properly consider FL § 11-106(b)(9). That factor requires the court to consider “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[.]” Here, rather than compare Mr. Reaves’s monthly income against his monthly expenses in light of the alimony award, the court simply observed that Mr. Reaves’s “actual income is nearly impossible to discern,” but that he shared an “upper-middle class lifestyle [with his paramour], as did the parties when they lived together[.]” Although the court noted that Mr. Reaves and his paramour have been able to maintain the upper-middle class lifestyle that the parties maintained when they lived together, the court simply concluded, without much explanation, that “as noted elsewhere, [Mr. Reaves] has the ability to pay [Ms. Reaves] alimony, and he will be ordered to do so.”

To be sure, we are sympathetic to the trial court’s plight as it concerns determining

Mr. Reaves's income.⁴ The court noted that he "often inflates or deflates his income for his own benefit. For example, [Mr. Reaves] testified at trial that he inflated his income to receive better loans for his real estate projects but provided a much lower income to modify his financial obligations." Our review of the record vindicates the court's observations. In a January 2017 Personal Financial Statement Mr. Reaves prepared for a financial institution, he reported his annual salary to be \$568,095. Similarly, in a separate Personal Financial Statement prepared ten months later in November 2017, he reported that he earned \$605,493. In a financial statement dated October 1, 2018, filed with the court, Mr. Reaves represented his income to be \$28,975.18 per month, or \$347,702.16 per year. Two months later, in his December 2018 financial statement filed with the court, Mr. Reaves indicated that his monthly income was \$19,969.21, or \$239,630.52 per year. In a May 2019 property rental application, Mr. Reaves indicated his monthly income was \$8,000, or \$96,000 per year.⁵ In his 2019 amended financial statement, Mr. Reaves asserted that his gross monthly income was \$7,032.83 per month or \$84,393.96 per year. And at the November 2019 trial, Mr. Reaves testified that he had earned approximately \$70,000 as of November 14, 2019. Clearly, there was little consistency in the evidence for the court to determine Mr. Reaves's income.

⁴ In fact, the court noted that, "Until trial, [Mr. Reaves] had failed to cooperate with discovery requests, producing critical financial documents and statements during trial instead of complying with the rules."

⁵ In its opinion, the trial court inaccurately stated that Mr. Reaves represented his monthly income to be \$9,000 per month rather than \$8,000 per month. This likely clerical error does not impact our decision.

Nevertheless, in order to comply with FL § 11-106(b)(11)(i), the court was required to determine Mr. Reaves's income. *Brewer*, 102 Md. App. at 101. Without such a determination, we are unable to review the appropriateness of the award. For purposes of appellate review, it makes a substantial difference whether Mr. Reaves's income is in the \$568,095 to \$605,493 range evidenced by financial statements he used for loans, or in the \$70,000 to \$96,000 range he asserted at trial. There is sufficient evidence in the record to support a finding that Mr. Reaves's income was any of those amounts or ranges. And there is likewise support in the record that Mr. Reaves's annual income is either \$347,702.16 or \$239,630.52 as reflected in his October and December 2018 financial statements filed with the court. Indeed, the court used \$239,630.52 when it calculated child support in the earlier proceeding. Unfortunately, absent in the court's September 10, 2020 opinion is any determination of Mr. Reaves's income, or a finding of a range of income. Simply put, the absence of any finding of Mr. Reaves's income makes it impossible for us to determine whether the alimony award here was erroneous. We must therefore vacate the court's alimony award and remand for further proceedings.⁶

⁶ Although we are remanding the court's alimony award, we reject Mr. Reaves's argument that the court erred by placing too much emphasis on the family's standard of living during the marriage, or by failing to consider whether Ms. Reaves was self-supporting. We further note, however, that although Mr. Reaves challenges the alimony award, he does not specifically argue that the nine-year term for payment of alimony constituted error. On remand, if the court is to award alimony for a fixed term, the court should explain its "thought process" in determining the length of the term for payment of alimony. *See Lee v. Lee*, 148 Md. App. 432, 456 (2002).

II. RECALCULATING CHILD SUPPORT IN LIGHT OF ALIMONY

Because we must vacate the alimony award, we must also vacate the court's child support award. This is so because

a court's determinations as to alimony, child support, monetary awards, and counsel fees involve overlapping evaluations of the parties' financial circumstances. The factors underlying such awards "are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other."

St. Cyr v. St. Cyr, 228 Md. App. 163, 198 (2016) (quoting *Turner v. Turner*, 147 Md. App. 350, 400 (2002)).

On remand, we direct the trial court to FL § 12-204(a)(2), which "requires a court to account for alimony transfers between parents before calculating the parents' child support obligations." *Id.* The statute also requires a trial court to treat any alimony award as income for the recipient, and must be subtracted from the income of the payor, before making any child support determination. FL § 12-204(a)(2)(ii). The record shows here, however, that the trial court failed to comply with FL § 12-204(a)(2). The court awarded Ms. Reaves \$2,225 in child support in its June 2019 order, but in the September 2020 judgment of absolute divorce, the court made no attempt to account for the impact of its \$2,500 alimony award. By maintaining the \$2,225 child support award without consideration of its alimony award, the court erred. Finally, we note the possibility that when the court ultimately determines Mr. Reaves's income, the case may fall above the

child support guidelines schedule enumerated in FL § 12-204(e).⁷ Nevertheless, we remind the court that “in above Guidelines cases, calling for the exercise of discretion, the rationale of the Guidelines still applies.” *Malin v. Mininberg*, 153 Md. App. 358, 410-11 (2003) (citing *Smith v. Freeman*, 149 Md. App. 1, 19 (2002)). Indeed, *Malin* makes clear that, even in an above the Guidelines case, a court should consider both parties’ respective incomes. *Id.* at 411 (stating that, in context of an above the Guidelines case, “the court must ascertain the parties’ respective incomes” (citing *Harbom v. Harbom*, 134 Md. App. 430, 460 (2000))).

III. MS. REAVES’S PENSION

Ms. Reaves began working with the Montgomery County Public School System in 1999 (two years prior to the parties’ marriage), and participates in a Maryland State Teacher Pension. As part of the divorce proceedings, Mr. Reaves sought a share of the pension for the years that the parties were married.⁸ Although the court expressly

⁷ We recognize that, effective July 1, 2022, the child support obligations schedule will account for combined adjusted actual income of \$30,000 per month. *See* 2020 Maryland Laws Ch. 384 (S.B. 847).

⁸ In her brief, Ms. Reaves baldly asserts that Mr. Reaves “failed entirely to make a request for the court to transfer an interest in [Ms. Reaves’s] pension to [Mr. Reaves]. No such request was made in [Mr. Reaves’s] Counter-Complaint or at any other time during these proceedings.” (Footnote omitted). On November 14, 2019, at pages 177 and 178 of the transcript, however, Mr. Reaves unequivocally testified that he was requesting an equal division of Ms. Reaves’s school pension for the years that the parties were married. Furthermore, the trial court obviously recognized that Mr. Reaves was requesting an interest in the pension, stating “Husband is requesting the marital share of Wife’s teacher’s pension” in its September 10, 2020 judgment of absolute divorce. Ms. Reaves’s assertion that Mr. Reaves never requested an interest in the pension is inaccurate.

acknowledged this request in its September 10, 2020 judgment of absolute divorce, stating, “Husband is requesting the marital share of Wife’s teacher’s pension[,]” the court never expressly resolved that request.

In its Marital and Nonmarital Property Schedule attached to its written opinion, the court valued Ms. Reaves’s pension at \$72,674.88, but then specifically stated under Husband’s and Wife’s columns, “If, as & when.” Although the court ostensibly valued the pension at \$72,674.88, it did not include that amount in its determination that Ms. Reaves owned \$617,522.12 in marital property, leading us to conclude that the court did not account for the pension in its monetary award analysis. Although we cannot be certain, there is a fair probability that the court simply forgot to address Mr. Reaves’s claim to a portion of Ms. Reaves’s pension. Our holding should not be construed as mandating the court to award Mr. Reaves a portion of the pension; we merely reiterate that the trial court must indicate how and why it intends to resolve Mr. Reaves’s claim for a portion of the pension.

IV. MONETARY AWARD AND ATTORNEY’S FEES

Finally, we turn to Mr. Reaves’s argument that the court erred in failing to grant him a monetary award. As noted above, a court’s determinations regarding alimony, child support, monetary award, and counsel fees are so interrelated that, “when this Court vacates one such award, we often vacate the remaining awards for reevaluation.” *St. Cyr*, 228 Md. App. at 198 (quoting *Turner*, 147 Md. App. at 401). Because we must vacate the court’s alimony and child support awards, the court must reconsider the propriety of any monetary

award (or lack thereof) and any award of attorney's fees.⁹

CONCLUSION

As explained above, the trial court failed to sufficiently make a determination as to Mr. Reaves's income for purposes of its alimony award. Accordingly, the alimony award must be vacated. Additionally, the child support award must be vacated pursuant to FL § 12-204(a)(2) so that the court may take into account whatever alimony it ultimately awards. On remand, the court must also clarify whether it intended to grant Mr. Reaves a portion of Ms. Reaves's pension. Finally, as noted above, because a court's determinations regarding alimony, child support, monetary award, and attorney's fees are so interrelated, we also vacate the award of attorney's fees. *Id.* On remand, the court should reconsider whether to grant a monetary award and revisit the issue of attorney's fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY VACATED.
CASE REMANDED TO THAT COURT FOR
PROCEEDINGS NOT INCONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY APPELLEE.**

⁹ Mr. Reaves asserts that the court clearly erred in its valuation of Ms. Reaves's Fidelity 403(b) and Fidelity 457(b) retirement plans. Although we need not resolve this issue because the court will need to revisit the monetary award calculus on remand, we note that the court valued the 403(b) plan at \$182,378.61, the exact figure that the parties stipulated to for the value of the 457(b) plan. Additionally, the court valued the 457(b) plan at \$227,169.89, exactly \$50,000 less than the parties' stipulated value of \$277,169.89 for the 403(b) plan. The court should resolve these discrepancies as part of its reconsidered monetary award analysis.