Circuit Court for Wicomico County
Case No. C-22-FM-24-000205

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 936

September Term, 2025

DEBEBE FIKREMARIAM

v.

GENET BURKA

Wells, C.J.,
Friedman,
Zic,

JJ.

Opinion by Zic, J.

Filed: May 20, 2026

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

This case arises from divorce proceedings between appellant/cross-appellee, Debebe Fikremariam ("Husband"), and appellee/cross-appellant, Genet Burka ("Wife"), in the Circuit Court for Wicomico County. Husband filed for absolute divorce in February 2024, and Wife filed a counter-complaint in April 2024. Wife's counter-complaint included requests for "[c]hild [s]upport, both *pendente lite* and permanently[,]" a monetary award, and "attorney's fees and litigation costs[.]" Following a three-day merits hearing in December 2024, the circuit court issued its opinion in May 2025 and entered a judgment of absolute divorce on June 13, 2025. Husband filed a timely appeal, contending that the circuit court erred in each of these determinations. Wife cross-appealed, arguing that the alimony award was too low.

QUESTIONS PRESENTED

Husband presents six questions for our review, which we have recast as five and rephrased as follows:[1]

[1] Husband phrased the questions as follows:

> I. Did the [t]rial [c]ourt err in granting a monetary award based on non-extant property that had not been dissipated?
>
> II. Did the [t]rial [c]ourt err in calculating Husband's income and in assessing the parties'[] respective finan[ci]al circumstances for purposes of its financial award?
>
> III. Did the [t]rial [c]ourt err in calculating child support in an above-guidelines case without considering any of the factors under *Voishan v. [P]alma*?
>
> IV. Did the [t]rial [c]ourt err in making an award of retroactive alimony that precluded Husband from

(continued)

1. Did the circuit court err in granting the monetary award to Wife?

2. Did the circuit court err in determining Husband's actual income?

3. Did the circuit court err in calculating retroactive and prospective child support?

4. Did the circuit court err in awarding indefinite alimony to Wife?

5. Did the circuit court err in awarding attorney's fees to Wife?

Wife presents one question for our review, which we have rephrased as follows:[2] Did the circuit court err in awarding indefinite alimony in the amount of $5,000 per month to Wife?[3]

For the following reasons, we answer Husband's first and third questions in the affirmative, vacate the monetary award and interrelated financial awards of child support, alimony, and attorney's fees, and remand for further proceedings not inconsistent with this opinion. We answer Husband's second, fourth, and fifth questions in the negative,

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receiving a credit against a retroactive award of child support?

V. Did the [t]rial [c]ourt err in finding that there was an unconscionable disparity warranting an award of indefinite alimony?

VI. Did the [t]rial [c]ourt err in awarding Wife her full amount of attorney's fees?

[2] Wife phrased the question as follows: "Did the [t]rial [c]ourt abuse its discretion in awarding Wife alimony in the amount of $5,000 per month?"

[3] At oral argument before this court, Wife's counsel confirmed that this question "is in the nature of . . . a conditional cross-appeal." Wife's counsel asserted that Wife noted a cross-appeal to "preserv[e] that right [to seek higher alimony], just for the abundance of clarity" in the event this Court should vacate and remand the interrelated financial awards.

affirm the circuit court's determination of Husband's income, and express no concern with the court's decision to award indefinite alimony in the amount of $5,000 per month and its approach as to the attorney's fees award.

BACKGROUND

The Parties and the Marriage

Husband and Wife were married in July 2000 in Ethiopia. Both were trained as physicians in Ethiopia. Wife came to the United States in 1995 and, after failing to match for a medical residency, pursued a Master of Public Health degree. Husband joined Wife in the United States in October 2003, arriving three days before the birth of their first child, "J."[4] J. was born with Down Syndrome and significant, life-threatening conditions requiring multiple surgeries during the first year of his life. The parties agree that J., now a young adult, will never be fully independent or self-supporting. The parties' second child, "L.," was a minor teenager at the time of trial.

From 2010 forward, Husband served as the family's primary breadwinner through his work as an anesthesiologist. Husband also held a position as the Vice Chairman of his department, for which he received an additional stipend, and he periodically took on part-time, on-call work through medical staffing agencies. Wife, meanwhile, found employment as an epidemiology consultant for the Worcester County Health Department in 2011, which she maintained through the time of trial. Her contract permitted her to earn up to $114,400 per year for up to 40 hours per week, but the circuit court found,

[4] The names of the parties' children have been anonymized to protect their privacy.

consistent with Wife's own testimony, that she had worked approximately 37.5 hours per week for the majority of her career, resulting in an actual income of $107,250.

The Partial Marital Settlement Agreement and Joint Property Statement

On October 8, 2024—the eve of the originally scheduled trial—the parties executed a Partial Marital Settlement Agreement ("PMSA"), which the circuit court accepted following voir dire of both parties. The PMSA resolved, among other things, legal custody, holiday and summer vacation access schedules, health insurance, the disposition of the marital home, vehicles, personal property, retirement accounts, and investment accounts, resulting in each party receiving approximately $1.5 million in assets before trial. The PMSA expressly reserved to the circuit court the issues of alimony, alimony arrears, monetary award, attorney's fees, non-summer physical custody, child support, and child support arrears. Significantly, the PMSA reserved the right of either party to seek a monetary award or to claim dissipation. The parties stipulated that their respective retirement, pension, and related accounts constituted non-marital property.

The parties subsequently filed an amended joint property statement, pursuant to Maryland Rule 9-207, on December 13, 2024—three days prior to the merits hearing. The amended statement identified only two items of marital property: (1) Husband's 2024 distribution from Robit, LLC (valued at $16,500, per the parties' agreement placed on the record at trial); and (2) Husband's interest in Ethio-American Doctors Group, Inc. (which the circuit court ultimately valued at zero). All remaining property, including

every asset addressed in the PMSA, was designated as non-marital property, excluded by the parties' prior agreement.

The Merits Hearing

The circuit court held a merits hearing from December 16 through 18, 2024, after which it held the matter sub curia. The parties submitted written closing arguments. The circuit court did not issue its opinion and judgment of absolute divorce until May 20, 2025, six months after the conclusion of trial. The court entered the judgment of absolute divorce on June 13, 2025.

At the merits hearing, the parties presented evidence regarding Husband's gambling activity. Husband acknowledged that, beginning in 2019, he withdrew $273,936.80 at casinos to gamble, and he testified that he lost $237,266 during that period. Evidence was also presented that Husband deposited up to $113,678.66 from his other accounts and from unknown sources, of which $64,723.87 remained unexplained. Wife had been unaware of the extent of Husband's gambling.

The parties also presented evidence regarding Husband's pre-judgment support payments to Wife. In the months preceding July 2024, Husband paid Wife $6,000 per month, and also paid her credit card bill. Beginning in July 2024, Husband paid $5,000 per month to Wife. At the merits hearing, Husband characterized these payments as "undifferentiated support payments."

The Circuit Court's Opinion and Awards

The circuit court awarded Wife the following: (1) a monetary award of $169,330.33; (2) child support of $6,294 per month, with a retroactive child support

arrearage of $81,822; (3) indefinite alimony of $5,000 per month; and (4) attorney's fees of $72,546.80.

With respect to the monetary award, the circuit court expressly found that it was "unpersuaded that dissipation occurred here." Nevertheless, the court considered Husband's gambling expenditures under the "any other factor" catch-all provision of Md. Code Ann., Family Law ("FL") (1984, 2019 Repl. Vol.) § 8-205(b)(11), and awarded Wife "half of the unexplained deposits as well as half of the gambling withdrawals, for a total marital award of $169,330.33." The court acknowledged that "the only item of marital property left for the court to decide [was] [Husband's] interest in [] Ethio-American Doctors Group, Inc.[,]" which it determined had no financial value.

With respect to income, the circuit court averaged Husband's income across his three most recent tax years—$431,492 in 2021; $1,009,902 in 2022; and $823,732 in 2023—to arrive at an actual income of $755,042. The court found Wife's actual income to be $107,250.

With respect to retroactive child support, the circuit court's opinion contains the following statement:

> As the court is not awarding retroactive alimony, . . . it is reasonable for [Husband] to pay child support retroactively. In other words, he received credit for the payments he made during litigation as alimony rather than child support. He has the ability to pay. Since May 2024 until present, his arrearage is therefore $81,822.00[.][5]

[5] We note for completeness that the circuit court's opinion and order state different values for the child support arrears order. The court's opinion states that the child support arrears owed by Husband to Wife is $81,822, while the court's order states that (continued)

Later, in the alimony section of the opinion, the court stated: "As [Husband] has been paying $5,000[] per month during this litigation, the court is not awarding any arrearage and alimony will begin on June 1, 2025, and continue monthly thereafter. He is therefore receiving credit for those payments that occurred during litigation and separation as alimony."

With respect to indefinite alimony, the circuit court analyzed each of the factors set forth in FL § 11-206(b) and found that "[h]ere, the household income is $862,292.00, with [Wife's] income approximately 12[percent] of that total" and that, "[g]iven the vast disparity in income, the fact that [Wife's] earning potential will likely never increase, and the standard of living of the parties, indefinite alimony is warranted in this case."

With respect to attorney's fees, the court found that both parties had substantial justification for their positions in the proceeding and awarded Wife $72,546.80, representing the full amount of attorney's fees that she incurred through trial.

We supplement with additional facts as necessary below.

STANDARD OF REVIEW

We review the circuit court's ultimate decision to grant a monetary award and the amount of such an award for abuse of discretion. *Flanagan v. Flanagan,* 181 Md. App.

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the arrears value is $76,822. The court reduced the arrears based on new information that, following trial, but before the court's opinion and order, Husband had paid to Wife $6,000 per month for a period of five months. This monthly payment amount was $1,000 greater than that in evidence before the Court. The parties agreed that this additional $5,000 amount "will be deducted from the child support arrearage amount ($81,822[]) ordered by the [c]ourt."

492, 521 (2008) (citing *Alston v. Alston*, 331 Md. 496, 504 (1993)) (further citations omitted).

"Ordinarily, child support orders are within the sound discretion of the trial court." *Reichert v. Hornbeck*, 210 Md. App. 282, 316 (2013) (citation omitted). "Nonetheless, where the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review." *Id.* (internal citations and quotation marks omitted). "A trial court's child support award in an 'above-guidelines' case is reviewed under the abuse of discretion standard." *Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013) (quotation omitted). In reviewing for abuse of discretion, we "ask[] whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable." *In re Dany G.*, 223 Md. App. 707, 720 (2015) (citation omitted).

"An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong." *Solomon v. Solomon*, 383 Md. 176, 196 (2004) (quotation and internal marks omitted). The determination of whether an unconscionable disparity exists is a finding of fact reviewed for clear error. *Id.*

Following a bench trial, we "review the case on both the law and the evidence." Md. Rule 8-131(c). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, . . . giv[ing] due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* "If there is any competent evidence to support [a] factual finding[] . . . [it] cannot be held to be clearly erroneous." *Omayaka v.*

Omayaka, 417 Md. 643, 652 (2011) (quotation and internal marks omitted). We review the trial court's determinations on questions of law *de novo*. *Flanagan*, 181 Md. App. at 521 (citation omitted).

DISCUSSION

I. THE CIRCUIT COURT ERRED IN GRANTING A MONETARY AWARD THAT EXCEEDED THE VALUE OF THE MARITAL ESTATE.

We begin with Husband's challenge to the monetary award. For the following reasons, we hold that the circuit court abused its discretion by granting a $169,330.33 monetary award, which vastly exceeded the value of the identified marital estate.

A. Parties' Contentions

Husband contends that the circuit court committed legal error by granting a monetary award based entirely on funds that were neither identified as marital property nor found to have been dissipated. He argues that the court, having declined to find dissipation, had no legal mechanism to treat Husband's spent gambling funds as extant property available for equitable distribution.

Wife argues that the circuit court "retained the ability to make a monetary award through the assets addressed in the [PMSA]," arguing that the PMSA expressly reserved the parties' right to seek a monetary award from those assets. Wife further contends that a finding of dissipation was not a prerequisite to a monetary award, and that the circuit court was entitled to consider Husband's gambling activity as a relevant factor under FL § 8-205(b)(11).

B. Legal Framework

Under Maryland law, a monetary award serves as "an adjustment of the equities and rights of the parties concerning *marital* property[.]" FL § 8-205(a)(1) (emphasis added); *see also Hart v. Hart*, 169 Md. App. 151, 160 (2006) ("[T]he purpose of the monetary award . . . is to achieve equity between the spouses where one spouse has a significantly higher percentage of the *marital assets* titled [in] his name.") (second alteration added) (emphasis added) (quotation omitted). A monetary award is governed by a well-established three-step process: first, the circuit court must determine which property is "marital property" subject to equitable distribution; second, the court must determine the value of that marital property; and third, the court must consider the factors set forth in FL § 8-205 before fashioning any monetary award. *Flanagan*, 181 Md. App. at 519. Critically, a monetary award must be derived from identified marital property; it "relates back to marital property." *Collins v. Collins*, 144 Md. App. 395, 416 (2002).

Property "excluded by valid agreement" is non-marital. FL § 8-201(e)(3)(iii); *see Flanagan*, 181 Md. App. at 532 ("[A]n agreement reflected in a joint statement under Rule 9-207, to the effect that the parties have resolved the disposition of certain marital property, serves to render that property non-marital[.]"). An agreement articulated in a Rule 9-207 statement "specifically exclude[s] the property from the scope of the Marital Property Act, and *thus removes the property from the marital property pool that is subject to division*." *Flanagan*, 181 Md. App. at 531 (internal quotation omitted) (emphasis added). Facts and averments in a Rule 9-207 statement constitute judicial

admissions. *See Beck v. Beck*, 112 Md. App. 197, 205 (1996) (holding the same for Rule S74[6] statements). Parties are bound by their Rule 9-207 designations of property as non-marital even where the underlying facts might suggest otherwise. *See Brown v. Brown*, 195 Md. App. 72, 112 (2010) (holding property owned by parties as tenants by the entirety was nontransferable because the parties had designated the property as non-marital in their Rule 9-207 statement).

"[P]roperty disposed of before commencement of the trial under most circumstances cannot be marital property." *Gravenstine v. Gravenstine*, 58 Md. App. 158, 177 (1984). The doctrine of dissipation offers an important exception to this rule: where a spouse expends *marital* funds for his own benefit "for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown[,]" the trial court may treat those funds as extant marital property. *Sharp v. Sharp*, 58 Md. App. 386, 401 (1984) (emphasis added) (citation omitted). But the dissipation doctrine operates as a prerequisite to treating non-extant funds as "extant marital property" subject to equitable distribution. *See Sims v. Sims*, 266 Md. App. 337, 370 (2025) ("[O]nce the circuit court determines that a spouse dissipated marital assets, the court must consider the dissipated assets as extant marital property and then value it with the other marital property.") (citation omitted). Absent a finding of dissipation, funds already spent and no longer existing as assets cannot form the basis of a monetary award. *See, e.g.*, *Collins*, 144 Md. App. at 417 (holding that a spouse was not "entitle[d] . . . to reimbursement [for

[6] "This Rule is derived from former Rule S74." Md. Rule 9-207.

non-dissipated funds] as part of an adjustment of the equities between the parties" because those funds were non-extant).

Although the court may consider "any other factor . . . necessary or appropriate . . . in order to arrive at a fair and equitable monetary award" under FL § 8-205(b)(11), these factors are aids in fashioning a monetary award from the identified marital estate—they are not independent bases for creating a monetary award from non-marital (or non-extant) funds. *See Rosenberg v. Rosenberg*, 64 Md. App. 487, 519 (1985) ("The [court] must consider the factors, not as ends in themselves, but as aids in reaching the ultimate goal."). "How much weight should be given to each factor in each case is a matter entirely within the [court's] sound discretion." *Wilen v. Wilen*, 61 Md. App. 337, 355 (1985).

C. Analysis

Here, the parties' amended joint property statement, filed pursuant to Maryland Rule 9-207 on December 12, 2024, identified only two items of marital property: (1) Husband's 2024 Robit, LLC distribution ($16,500), and (2) Husband's interest in Ethio-American Doctors Group, Inc. All property disposed of in the PMSA, including all bank accounts,[7] was designated as non-marital property, excluded by the parties' agreement. The circuit court found, and both parties acknowledged at trial, that "the only item of marital property left for the court to decide [was] [Husband's] interest in []

[7] Wife argued that Husband had dissipated funds from two bank accounts at Bank of America and one bank account at M&T Bank. The parties, however, explicitly designated all three accounts as non-marital property on the amended 9-207 statement.

Ethio-American Doctors Group, Inc.[,]" which the court determined had no financial value. Because the parties' designations in their amended joint property statement constitute judicial admissions, *Beck*, 112 Md. App. at 206, the entire marital estate amounted to $16,500.

Despite this, the circuit court awarded Wife $169,330.33—a sum more than ten times the value of the entire identified marital estate. The court derived this award entirely from Husband's gambling expenditures: funds that were (a) not included in the marital property identified in the amended Rule 9-207 statement, (b) not included in the PMSA, and (c) expressly found by the circuit court to not constitute dissipation. The court's monetary award, therefore, was not drawn from any identified or valued marital property, as required by the first two steps of the monetary award analytical framework. *Flanagan*, 181 Md. App. at 519 (requiring the court to determine (1) which property constitutes "marital property" and (2) the value of that marital property).

We acknowledge that a court may lawfully consider a spouse's gambling under FL § 8-205(b)(11) when fashioning an award from the identified marital estate, and that the court was entitled to give significant weight to "the fact that [Husband] spent vast amounts of money during the marriage that [] [W]ife did not agree with or know about[.]" *See Wilen*, 61 Md. App. at 355. But the court's consideration of those facts under FL § 8-205(b)(11) does not authorize a monetary award that exceeds, let alone vastly exceeds, the value of the marital estate. *Collins*, 144 Md. App. at 416. The catch-all factor in FL § 8-205(b)(11) is an aid to equitable distribution, not a license to redistribute funds that were neither extant nor dissipated. *Rosenberg*, 64 Md. App. at

519. We agree with Husband that granting a monetary award based on such funds would render the dissipation doctrine meaningless, because "a court would be empowered to grant an identical 'dissipation' award *even where dissipation is found not to have occurred*."

Wife's argument that the PMSA reserved the parties' right to seek a monetary award from assets already divided in the PMSA does not save the court's award. The PMSA's reservation clause permitted either party to seek a monetary award to be "paid from [the] division of assets as set forth [in the PMSA]." But this clause did not, and could not, substitute for the court's determination that dissipation had not occurred as a predicate to treating those non-extant funds as an available source of equitable distribution. *Sims*, 266 Md. App. at 370. The PMSA also could not supersede the parties' designation of all bank accounts as non-marital on the Rule 9-207 statement, including any and all accounts from which Wife contends Husband dissipated funds for gambling. *Brown*, 195 Md. App. at 112. Based on the parties' own designation, the circuit court could not have properly found dissipation from the bank accounts that the parties had deemed non-marital. *Sims*, 266 Md. App. at 368-70. Thus, the court had no legal basis to treat those already-spent funds as part of the marital estate, and it may not do so on remand.

Accordingly, we vacate the monetary award. We express no opinion as to whether, on remand, the circuit court should grant a monetary award from the marital estate of $16,500, or in what amount; that determination is left to the court's sound discretion. *Wilen*, 61 Md. App. at 355.

Because the monetary award, child support, alimony, and attorney's fees are interrelated financial provisions of the divorce judgment, we also vacate the awards of child support, alimony, and attorney's fees. *See Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 283 (2021) ("The factors underlying alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other."); *see also Sims*, 266 Md. App. at 390 (holding that where the appellate court vacates "a monetary award, alimony, or child support, [the court] shall also vacate the attorney['s] fees award) (citation omitted). "[I]n light of [] challenges to [those] award[s], we offer some guidance so that the issues aren't relitigated from scratch." *Sims*, 266 Md. App. at 374; *see also* Md. Rule 8-131(a) (Appellate courts "may decide [] an issue if necessary or desirable to guide the trial court").

II. THE CIRCUIT COURT DID NOT ERR IN DETERMINING HUSBAND'S ACTUAL INCOME.

We turn next to Husband's challenge to the circuit court's income determination, which, for the following reasons, we affirm.

A. The Parties' Arguments

Husband contends that the circuit court erred in calculating his actual income by including his earnings of $1,009,902, which he characterizes as anomalously inflated by one-time payments. He specifically argues that the court improperly included his part-time and on-call income from agency work that he had already discontinued. Husband proposed that the court adopt an income figure of $659,532.

Wife responds that the court properly averaged Husband's income across three years, consistent with his documented tax returns, and that Husband's self-reported income figures were unreliable and not supported by the evidence.

B. Legal Framework

Maryland FL § 12-201(b) defines "actual income" broadly as "income from any source[,]" including salaries, wages, commissions, bonuses, and other compensation. The court must verify income statements "with documentation of both current and past actual income." *Ley v. Forman*, 144 Md. App. 658, 669 (2002) (citing FL § 12-203(b)). FL § 12-203(b)(2) explicitly provides that "suitable documentation of actual income includes . . . copies of each parent's 3 most recent federal tax returns" and that, where a parent's income has fluctuated by 20 percent or more in a one-year period in the past three years, the court may require tax returns for the five most recent years.

The determination of actual income is a factual finding reviewed for clear error. *Ley*, 144 Md. App. at 670. "The clear intention of the legislature requires the trial court to consider actual income and expenses based on the evidence. The court must rely on the verifiable incomes of the parties, and failure to do so results in an inaccurate financial picture." *Id.* "[B]onuses already paid to a parent should be used to calculate child support even though it is unknown whether such a bonus will be paid in the future." *Johnson v. Johnson*, 152 Md. App. 609, 622 (2003). If a parent's income changes in the future, he may petition for a modification of the child support obligation. *Id.* at 620-21.

C. Analysis

We see no error in the circuit court's income determination. Husband is an anesthesiologist who, at the time of trial, had a base contract compensation of $550,000 per year, a $20,000 quality incentive bonus, and an additional $50,000 per year as Vice Chairman of his department, in addition to part-time work and on-call work through staffing agencies. As previously stated, his tax returns reflected income of $431,492 in 2021; $1,009,902 in 2022; and $823,732 in 2023.

The circuit court was "not persuaded that picking any one number or that removing [Husband's] part-time income [was] the correct way to analyze his income[,]" and instead averaged Husband's income over his three most recent tax years, arriving at an actual income of $755,042. The court explained that this methodology was intended "to capture the average income, meaning actual earned income over the past three years, to reflect a reasonable and equitable amount[,]" and included both part-time and on-call income "because that has been [Husband's] practice over the last several years."

The circuit court's approach was squarely consistent with FL § 12-203(b)'s mandate that the court consider verified documentation of actual income, including the three most recent tax returns. The General Assembly clearly contemplated income averaging over a multi-year period precisely because fluctuating incomes require a longitudinal approach. Moreover, Husband's part-time and on-call earnings were a regular and recurring component of his compensation, rather than a one-time windfall, and his 2022 income, though higher, was derived from the same employment structure as the other years. Including these earnings in the income calculation was consistent with

our holding in *Johnson*, which requires courts to consider past receipt of bonus payments in the child support calculation. 152 Md. App. at 622. Should Husband's income change materially in the future, he may seek a modification. *Id.* at 620-21.

We discern no clear error in the circuit court's finding that Husband's actual income was $755,042, and we accordingly affirm that determination.

III. THE CIRCUIT COURT'S ORDER PERTAINING TO RETROACTIVE ALIMONY AND CHILD SUPPORT REQUIRES REMAND FOR CLARIFICATION.

We turn to the circuit court's treatment of Husband's pre-judgment payments and its calculation of the retroactive child support arrearage and prospective child support obligation—issues that independently require vacatur and remand.

A. The Parties' Arguments

Husband argues that the circuit court's opinion is internally contradictory—simultaneously disclaiming a retroactive alimony award while crediting his payments as alimony—and that if the court indeed awarded retroactive alimony, it was required to adjust the parties' incomes accordingly before calculating retroactive child support. Husband additionally contends that the "court failed to consider the factors for an award of above-guidelines child support under *Voishan v. Palma*[, 327 Md. 318, 331-32 (1992)]."

Wife argues that the circuit court expressly awarded retroactive alimony and properly credited Husband's $5,000 monthly payments against the alimony arrearage. Wife contends that the court therefore properly imposed a retroactive child support arrearage for the same period, because the payments had already been applied to

alimony.[8] As to the prospective child support obligation, Wife argues that "[t]here was no evidence before the [circuit c]ourt to overcome the presumption that the child support guidelines are not in the best interests of the [c]hildren[,]" and that "the [] [c]ourt did consider the factors set forth in *Voishan* in its overall analysis of the case." Wife specifically contends that the court considered the children's reasonable expenses because it addressed "expenses in educating the children" in its analysis of the custody factors, and it considered the children's health insurance expenses.

B. Legal Framework

1. Retroactive Child Support

A court "may award child support for a period from the filing of the pleading that requests child support." FL § 12-101(a)(3). The court must credit pre-judgment payments made from the filing date of the pleading requesting child support. FL § 12-101(b).

When a court awards alimony in a proceeding that also involves a child support determination, FL § 12-204(a)(2) imposes a specific, sequential mandate: the court must first determine the amount of alimony, and then "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

[8] Wife's counsel, however, took a different position at oral argument before this Court, asserting that "the [circuit] court . . . [did not] order retroactive alimony and retroactive child support" and instead "credit[ed] the $5,000 for what [the court] would have given in retroactive alimony and then realize[d] there still need[ed] to be an award for retroactive child support."

maintenance . . . before the court determines the amount of a child support award." This income adjustment is mandatory; without it, the child support calculation will misstate both parents' actual incomes and, therefore, produce an inaccurate support obligation.

2. Child Support in Above-Guidelines Cases[9]

FL § 12-204 establishes a comprehensive, income-based method for calculating child support obligations. The framework employs an "Income Shares Model," where the basic child support obligation is determined based on the combined adjusted actual incomes of both parents and the number of children, with the obligation divided proportionally according to each parent's income. *Sims*, 266 Md. App. at 385 (citing *Voishan*, 327 Md. at 323). The statute mandates that the court decide alimony or maintenance awards before child support and factor those awards into the income calculations. FL § 12-201(c)(2).

The Supreme Court of Maryland has explained that, in an above-guidelines case, "'the court may use its discretion in setting the amount of child support[,]' FL § 12-204(d), but . . . 'the guidelines . . . establish a rebuttable presumption that the maximum support award under the schedule [in FL § 12-204(e)] is the *minimum* which should be awarded[.]'" *Matter of Marriage of Houser*, 490 Md. 592, 622 (2025) (quoting *Voishan*, 327 Md. at 331-32).

[9] Cases are "above-guidelines" when the parties' combined adjusted actual income exceeds the highest level specified in the schedule, which is $30,000 per month. FL § 12-204(e); *see also Sims v. Sims*, 266 Md. App. 337, 384 (2025) ("[W]here that monthly income exceeds $30,000, the General Assembly 'left the task of awards above the guidelines to the [trial judge] precisely because such awards defied any simple mathematical solution.'") (quotation omitted).

"[I]n an above-[g]uidelines 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.'" *Houser*, 490 Md. at 624 (quotation omitted). "But in those discretionary cases, like those within the guidelines, the rationale behind the guidelines still controls." *Sims*, 266 Md. App. at 385 (quotation omitted). "The conceptual underpinning of th[e Income Shares Model] is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together." *Voishan*, 327 Md. at 322 (citations omitted); *see also Houser*, 490 Md. at 625-27 (holding the trial court properly rejected the parties' request to award no child support when the parties failed to show why a downward deviation from the child support guidelines would have been in the child's best interest) (citation omitted).

The Court has further explained that "the trial judge should examine the needs of the child in light of the parents' resources and determine the amount of support necessary to ensure that the child's standard of living does not suffer because of the parents' separation." *Houser*, 490 Md. at 624 (quoting *Voishan*, 327 Md. at 332). "[I]t is an abuse of discretion for a trial judge to mechanically extrapolate from the guidelines without making a determination regarding the needs of the child." *See Voishan*, 327 Md. at 332 n.5 (explaining that "[t]he Maryland guidelines were 'patterned after the Colorado child support guidelines'") (citing *In re Marriage of Van Inwegen*, 757 P.2d 1118, 1121 (Colo. App. 1988)).

"[S]everal factors are relevant in setting child support in an above[-]guidelines case. They include the parties' financial circumstances, the reasonable expenses of the child, and the parties' station in life, their age and physical condition, and expenses in educating the child." *Sims*, 266 Md. App. at 385 (citation omitted). In "an above-guidelines case, the court can consider various expenses and weigh them accordingly[,]" including "discretionary activities such as camp, music lessons, tutoring, and other programs[.]" *Id.* at 387 (citation omitted).

Finally, "the judge should give some consideration to the Income Shares method of apportioning the child support obligation." *See Voishan*, 327 Md. at 330, 332 (holding that trial court "acted properly in apportioning the [child support] obligation based upon the parties' respective percentages of their combined adjusted actual income"). Both "the Income Shares Model as well as pre-guidelines caselaw" express the principle "that each parent 'share the responsibility for parental support in accordance with their respective financial resources.'" *Id.* at 330 (quotation omitted); *see also Sims*, 266 Md. App. at 387-88 ("The award should ensure that even with [h]usband earning significantly more than [w]ife, the parties share the child's expenses.") (citation omitted).

This Court has held that a court abuses its discretion by "fail[ing] to place any of the child support burden on [one parent.]" *See Lee v. Andochick*, 182 Md. App. 268, 293 (2008) (noting that, "[a]lthough Mr. Lee should shoulder the majority of the child support burden because he earns so much more than his ex-wife, it was an abuse of discretion" because the trial court did "not allocat[e] the child support between the parties based on their respective annual incomes"). For children of wealthy parents, however, it is

appropriate for a court to order child support exceeding the actual "needs" of the child. *See Sims*, 266 Md. App. at 387 ("[T]he [] child 'is entitled to a standard of living that corresponds to the economic position of the parents.'") (quotation omitted). *See, e.g. Jackson v. Proctor*, 145 Md. App. 76, 91-92, 94 (2002) (affirming a child support award higher in value than the mother's expenses incurred for the child, which "clearly were not extravagant" and "not very much," when father's income was over $500,000 as a professional football player); *see also Smith v. Freeman*, 149 Md. App. 1, 31 (2002) ("[T]he determination of 'need' in awarding child support takes into account more than just the basic necessities of survival. . . . The child of a multi-millionaire would be entitled to share in that standard of living . . . and would accordingly be entitled to a greater award of child support[.]") (quotation omitted). In sum, though the parties must share the expenses of raising their children, *Voishan*, 327 Md. at 330, the child support award may exceed the "basic necessities of survival" for a child of a wealthy parent. *Smith*, 149 Md. App. at 31.

Ultimately, to determine the minimum child support obligation in an above-guidelines case, a court must (1) determine the parties' income, (2) calculate the base support obligation, (3) add the child-related expenses, and (4) allocate the total between the parents, "with the obligor parent paying the obligee parent." 1 Bender's Maryland Family Law § 6-3(c) (2025).

C. Analysis

1. The circuit court abused its discretion in granting retroactive child support.

The circuit court's opinion contains an internal inconsistency that renders its retroactive child support award erroneous. The court's opinion stated the following with respect to retroactive child support:

> [Husband] paid [Wife] $6,000.00 per month in the months prior to July 2024, as well as paid her credit card bill. He then paid $5,000.00 per month beginning in July 2024 and no longer provided the credit card. [Wife] filed her request for child support on April 19, 2024. *As the court is not awarding retroactive alimony, as indicated below, it is reasonable for* [*Husband*] *to pay child support retroactively*. In other words, *he received credit for the payments he made during litigation as alimony rather than child support*. He has the ability to pay. Since May 2024 until present, his arrearage is therefore $81,822.00.

(Emphases added).

Subsequently, in the alimony section of its opinion, the circuit court stated: "As [Husband] has been paying $5,000.00 per month during this litigation, the court is not awarding any arrearage[,] and alimony will begin on June 1, 2025, and continue monthly thereafter. *He is therefore receiving credit for those payments that occurred during litigation and separation as alimony*." (Emphasis added).

The court calculated the retroactive child support arrearage of $81,822 by simply multiplying the monthly child support award by the number of months since Wife's filing. Wife's counsel conceded at oral argument that the court provided no analysis or

basis for crediting Husband's payments as retroactive alimony other than the bare fact of the payments and the "expect[ation] that [Husband] would continue that status quo."

If Husband's pre-judgment payments were substantively an award of retroactive alimony, as Wife's brief suggests, then FL § 12-204(a)(2) required the court to treat those alimony payments as income to Wife and subtract them from Husband's income before calculating the retroactive child support obligation. The record does not show that the court took this mandatory step. Instead, the court simply multiplied its prospective child support award by the number of months in the retroactive period, without any apparent income adjustment for the retroactive alimony that it appears to have awarded—a calculation that cannot be squared with the statutory mandate. If, on the other hand, the payments were not retroactive alimony, then the court erred in failing to credit them against the retroactive child support arrearage. *See* FL § 12-101(b) ("The court shall give credit for payments that the court finds have been made during the period beginning from the filing of the pleading that requests child support.").

On remand, the circuit court must clarify the characterization of Husband's pre-judgment payments. If the court determines that those payments constituted retroactive alimony, it must, consistent with FL § 12-204(a)(2)(ii), adjust the parties' actual incomes accordingly—adding the alimony to Wife's income and subtracting it from Husband's—before recalculating retroactive child support.

2. The circuit court must clarify its award of prospective child support.

Here, the circuit court properly determined that this was an above-guidelines case because the parties' monthly combined adjusted income exceeded $30,000. After running the guidelines "using the income figures[,] . . . as well as the actual number of overnights, the alimony, and the health insurance payments by [Husband,]" the court used an extrapolated guideline[10] and determined that "the guidelines . . . resulted in a payment of $7,237[.]" The court then reduced this extrapolated guideline amount by J.'s monthly SSI payment ($943)[11] to reach a total obligation value of $6,294.

We note that "there is a potential error in how the circuit court calculated child support that the court should consider on remand." *Sims*, 266 Md. App. at 385. Although the court noted "consideration of the factors[,]" it did not appear to make the requisite determinations regarding J.'s and L.'s needs to warrant use of an extrapolated guideline. *See Voishan*, 327 Md. at 332 n.5 (noting that "it is an abuse of discretion for a trial judge to mechanically extrapolate from the guidelines without making a determination regarding the needs of the child") (citation omitted); *see also Sims*, 266 Md. App. at 386 ("We cannot say how the court arrived at th[e basic child support

[10] The maximum child support obligation for two children under the guidelines is $4,596. FL § 12-204(e).

[11] Although Wife's counsel contends that the court reduced the extrapolated guideline amount by the amount of "the health insurance payments by Husband for the benefit of the children of $152[] per month[,]" the subtraction indicates that the court only reduced the extrapolated guideline amount by the value of J.'s monthly SSI payment.

obligation figure], as its [] ruling doesn't describe the child's expenses."). "The court's broad discretion could readily have led it to that figure. But on remand, the court should connect the ultimate conclusion (as recalibrated in light of all of these decisions) to the evidence before it, and especially to how the figure addresses the [children's] expenses." *Sims*, 266 Md. App. at 387 (citation omitted).

Further, Wife's financial statement only lists the children's expenses as $2,548, whereas the court awarded Wife child support of $6,294. Wife argues, without citing to legal authority, that "it is not appropriate for any [t]rial [c]ourt to look at the [c]hildren's portion of a party's financial statement alone." We agree that it is appropriate for the court to grant a child support award higher than those basic living expenses for children of a wealthy parent. *Smith*, 149 Md. App. at 31. Our case law makes clear, however, that a court's grant of child support in a manner higher than the children's basic living expenses listed on the obligee parent's financial statement could indicate, absent a finding of greater "[r]easonable needs of affluent children[,]" *id.* at 32 (quotation omitted), that the court "fail[ed] to place any of the child support burden on [the obligee.]" *Lee*, 182 Md. App. at 293. Accordingly, on remand, the court should make its findings as to the reasonable expenses of the children especially clear to avoid scrutiny of the child support award.

Additionally, though the circuit court noted that it calculated the child support obligation based on the number of overnights, it did not specify what that number was. Because we cannot say how the court reached the $7,237 figure, we recommend that the court clarify the number of overnights on remand.

Accordingly, we vacate and remand the prospective child support award for further clarification.

IV. THE CIRCUIT COURT PROPERLY GRANTED AN INDEFINITE ALIMONY AWARD TO WIFE.

A. Parties' Contentions

Husband contends that the circuit court erred in awarding indefinite alimony because Wife is self-supporting and had already received substantial assets through the PMSA. On cross-appeal, Wife argues that the circuit court should have awarded a higher amount of monthly alimony.

B. Legal Framework

FL § 11-106(b) sets forth the 12 factors[12] that a court must consider in fashioning an alimony award. The court may, pursuant to the statute, award indefinite alimony upon

[12] The FL § 11-106(b) factors are:

(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)

a finding that "due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting[.]" *Boemio v. Boemio*, 414 Md. 118, 125-26 (2010) (quoting FL § 11-106(c)). Alternatively, the court may award indefinite alimony upon a finding 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 will be unconscionably disparate." *Id.*

The statutory scheme generally favors rehabilitative alimony over indefinite alimony, which "should be reserved . . . for exceptional circumstances[.]" *Goicochea v. Goicochea*, 256 Md. App. 329, 357 (2022). Self-sufficiency alone, however, "does not bar an award of indefinite alimony" where an unconscionable disparity in the parties' standards of living exists. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 189 (2016) (quotation omitted).

C. Analysis

We see no basis to disturb the circuit court's determination that indefinite alimony is warranted in this case. The court carefully analyzed each of the FL § 11-106(b) factors. The court found that Wife, at age 61, holds a master's degree in public health

(10) any agreement between the parties;

(11) the financial needs and financial resources of each party; and

(12) whether the award would cause a spouse who is a resident of a related institution to become eligible for medical assistance earlier than would otherwise occur.

and earned $107,250 per year—approximately 12.4 percent of the household income of $862,292. The court found that Wife's monthly expenses exceed her monthly earnings, that it was "unrealistic to find that any further education is practical or possible at this time[,]" and that Wife's "earning potential will likely never increase." The court considered the parties' 24-year marriage, Wife's sacrifice of a medical career, and Wife's significant nonmonetary contributions as the primary caregiver for both children, including J., a disabled child requiring lifelong care. In light of this record, the court did not abuse its discretion in concluding that an unconscionable disparity in the parties' respective standards of living exists and that indefinite alimony is warranted.

We are likewise unpersuaded by Wife's cross-appeal. The circuit court's determination of the appropriate amount of alimony lies within its sound discretion. *Boemio*, 414 Md. at 125-26. The court considered all applicable statutory factors and arrived at a monthly amount of $5,000 that is supported by the record and reflects a reasonable exercise of its equitable discretion.

Although we discern no abuse of discretion in the indefinite alimony determination, for reasons stated above, we must vacate the alimony award along with the interrelated financial awards. *Sims*, 266 Md. App. at 390; *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 283 (2021). On remand, we encourage the circuit court to undertake a fair and equitable determination of the amount of indefinite alimony that considers all of the FL § 11-106(b) factors, such as "the contributions, monetary and nonmonetary, of each party to the wellbeing of the family[.]"

V. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN GRANTING AN ATTORNEY'S FEES AWARD TO WIFE.

Although we vacate the attorney's fees award along with the interrelated financial awards, we offer the following for guidance. Md. Rule 8-131(a).

A. Parties' Contentions

Husband argues that the circuit court erred in awarding Wife her full attorney's fees and failed to adequately consider both parties' relative abilities to pay. Wife argues that the "[c]ourt applied all relevant standards, made all necessary considerations[,] and did not err in its [attorney's fees] award to Wife[.]"

B. Legal Framework

The circuit court has discretion to grant or deny attorney's fees in divorce proceedings, and "[t]hat discretion must be exercised in conformity with FL § 12-103." *Simonds v. Simonds*, 165 Md. App. 591, 616 (2005). This Court recently explained the three-step process that a court must undertake in determining whether to grant an attorney's fees award:

> 1. [D]etermine whether each party was justified in pursuing the case;
> 2. [I]f no, the court MUST award fees to the justified party, without the need for any consideration of either party's financial status or needs, or the unjustified party's ability to pay;
> 3. [I]f yes, the court must determine whether fee shifting is appropriate by analyzing fees incurred and the parties' relative abilities to pay.

George v. Bimbra, 265 Md. App. 505, 525 (2025) (quoting Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 15-4 (LexisNexis, 7th ed.)).

Consideration of the financial status and needs of both parties is mandatory, and the court must "consider[] all three criteria[,]" including determination of the parties' relative ability to pay. *McMorrow v. King*, 264 Md. App. 708, 737 (2025) (citing *Davis v. Petito*, 425 Md. 191, 201 (2012)); *see also Sayed A. v. Susan A.*, 265 Md. App. 40, 91 (2025) (holding no abuse of discretion in awarding attorney's fees to the mother where "the court considered the financial statuses of each party, the needs of each party, and [m]other's substantial justification in bringing the action"). An award of attorney's fees should not be disturbed on appeal "unless it is arbitrary or clearly wrong[.]" *Gravenstine v. Gravenstine*, 58 Md. App. 158, 182 (1984).

"What we derive from [FL § 12-103] is that financial status and needs of each of the parties must be balanced in order to determine ability to pay the award to the other; a comparison of incomes is not enough." *Davis*, 425 Md. at 205 (citation omitted). "Section 12-103 contemplates a systematic review of economic indicators in the assessment of the financial status and needs of the parties[.]" *Id.* at 206; *see also Frankel v. Frankel*, 165 Md. App. 553, 582-83 (2005) (considering a child support award as part of a parties' relative financial circumstances, such that it "help[ed] level the playing field").

Although courts are required to consider these three factors, they need not do so explicitly to fulfill the statutory mandate. *Sayed A.*, 265 Md. App. at 90, 90 n.18 (concluding that the court had sufficiently evaluated the FL § 12-103 factors when "[it] only explicitly mentioned [f]ather's financial status and needs in its ruling, [and] the record reflect[ed] that the court considered evidence of both parties' financial statuses

and needs"). We concluded that the court properly considered both parties' financial circumstances by evaluating evidence of both parties' incurred expenses for the litigation, the parties' individual incomes, and testimony regarding the wife's ability to pay for legal services. *Id.* at 90 n.18. We also determined that the court "expressly acknowledged . . . that it was familiar with, and had made findings concerning, both parties' incomes." *Id.*

C. Analysis

Here, the circuit court found that "both parties had substantial justification" for their positions in the proceeding. We are not persuaded by Husband's argument that the court did not consider both parties' relative abilities to pay. Here, as in *Sayed A.*, though the court only mentioned Husband's financial status and needs in its ruling, "the record reflects that the court considered evidence of both parties' financial statuses and needs" in granting an attorney's fees award to Wife. *Id.* The court explicitly considered both parties' incurred expenses during the litigation[13] and made findings regarding the parties' actual incomes. Moreover, the court considered "[t]he financial needs and resources of each party" under its analysis of the FL § 11-106(b) alimony factors. "Thus, although the better course would have been for the court to further explicate the factors that it considered [within its attorney's fees analysis], we are able to conclude from the record

[13] The court expressly stated in its opinion that Wife's "attorney['s] fees are reasonable and justified. Certainly, [Husband] has his own counsel fees to pay, which the court takes into account *as relevant to the determination of the parties' ability to pay*." (Emphasis added.)

that the court considered the necessary FL § 12-103(b) factors in awarding attorney's fees." *Id.* (citation omitted)

Accordingly, we discern no independent error in the circuit court's attorney's fees analysis. The award reflects a reasonable exercise of its discretion given the significant disparity in the parties' incomes and financial resources. Nevertheless, we must vacate the attorney's fees award alongside the interrelated financial awards, as explained above. *Sims*, 266 Md. App. at 390; *Wasyluszko*, 250 Md. App. at 283.

We note that, until the circuit court completes the proceedings required by this opinion, "the existing orders for alimony and child support will continue to have the force and effect of a *pendente lite* award." *St. Cyr*, 228 Md. App. at 198 (quotation and internal marks omitted).

CONCLUSION

We hold that the circuit court erred in granting Wife a $169,330.33 monetary award because the court based the monetary award on funds not included in the parties' marital property. Accordingly, we vacate the interrelated awards for child support, alimony, and attorney's fees.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE DIVIDED EQUALLY.