Circuit Court for Harford County
Case No. 12-C-15-2613

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1207

September Term, 2017

PETER OBEN

v.

MIREILLE NKAMSI

Friedman,
Fader,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, J.

Filed: July 27, 2018

Appellant Peter Oben appeals from a judgment of divorce entered by the Circuit Court for Harford County. The circuit court granted the parties an absolute divorce and awarded appellee Mirielle Nkamsi sole legal and primary physical custody of the parties' three children. The court also granted Ms. Nkamsi use and possession of the marital home and certain marital property, ordered the division of certain marital property, and ordered Mr. Oben to pay child support. Mr. Oben challenges the circuit court's determinations regarding custody, prospective and retrospective child support, and marital property. We affirm the circuit court's judgment except to the extent it ordered Mr. Oben to pay child support retroactively.

BACKGROUND

The Quick Rise and Fast Fall of the Parties' Marriage

The parties first met in person in November 2008 when Mr. Oben traveled to the Republic of Cameroon to meet Ms. Nkamsi. During that visit the parties: (1) participated in a traditional Cameroonian wedding ceremony that was attended by members of both of their families;[1] and (2) conceived their first child, who was born in August 2009. The parties next saw each other in person in the spring of 2011, when Mr. Oben returned for another visit, during which the parties: (1) obtained a marriage license to facilitate Ms.

[1] Mr. Oben contends that the parties did not marry until 2011, and that the circuit court clearly erred in concluding otherwise. However, the circuit court's finding of fact is supported by the evidence introduced at trial, including the testimony of Ms. Nkamsi and pictures from the ceremony. "Maryland recognizes liberally marriages formed validly in foreign jurisdictions," and will recognize such a marriage as binding "even if it would not have been binding legally if formed in Maryland . . . ." *Tshiani v. Tshiani*, 436 Md. 255, 273 (2013).

Nkamsi's immigration to the United States; and (2) conceived their second child, who was born in January 2012.

The parties did not see each other again until December 2012, when Ms. Nkamsi and the children moved to Mr. Oben's home in Bel Air, Maryland. Until that time, both children and Ms. Nkamsi lived in Cameroon with Ms. Nkamsi's mother; Mr. Oben provided financial support from Bel Air.

The parties' marital troubles started almost immediately after Ms. Nkamsi's arrival in the United States, when she apparently felt as though Mr. Oben had misled her regarding his standard of living and ability to support her and her educational goals. Over the next few years, the parties had further disputes related to family planning, their respective educational goals, childcare, money, and physical violence.

Family planning disputes. Ms. Nkamsi wanted to postpone having a third child to focus on her education. She testified that Mr. Oben initially agreed but that he then insisted that they have unprotected sex and refused to take her to a pharmacy to get a morning after pill when it would have been effective. Their third child was born in September 2013.

Education disputes. Both parties sought to further their education during the marriage. Mr. Oben, who worked full-time as a licensed practical nurse, was taking classes to become a registered nurse. He was discharged from his program in 2015 for failing to reach a benchmark in one of his classes. He blames that failure largely on his inability to pay sufficient attention to his education and to show up on time for classes because of Ms. Nkamsi's lack of cooperation with respect to childcare. Ms. Nkamsi, who had dreams of

becoming a doctor, began schooling at a community college to prepare for employment as a nursing assistant. She alleged that Mr. Oben had initially promised to be supportive of her educational goals, but then demanded that she put those aside to raise the children and work to pay household expenses.

Disputes over childcare. Complicating the parties' respective educational goals were frequent disputes over childcare. Each accused the other of being obstinate and refusing to cooperate in a reasonable childcare arrangement. Ms. Nkamsi accused Mr. Oben of refusing to agree to any childcare arrangement in order to keep her at home and prevent her from pursuing her education. Mr. Oben accused Ms. Nkamsi of making childcare arrangements without his approval or knowledge and taking the children on trips and overnights without telling him where they were.

Disputes over money. Also central to the parties' marital discord was money. Mr. Oben was, from the beginning, the primary breadwinner. He alleged that Ms. Nkamsi, with limited exceptions, refused to make any financial contribution to the household. Ms. Nkamsi alleged that Mr. Oben sought to control the family finances to prevent her from pursuing any of her goals. Disputes over who was responsible for paying bills led to accusations that, for example, Ms. Nkamsi removed lightbulbs and Mr. Oben broke the thermostat. The parties had other disputes, including over Ms. Nkamsi never being given a key to the front door and Mr. Oben installing security cameras throughout the house.

Allegations of physical violence. The bitterness of the parties' relationship also resulted in allegations of physical violence. Mr. Oben alleged that Ms. Nkamsi and her

mother physically attacked him. Ms. Nkamsi, who claimed that she was the one attacked, obtained a temporary protective order against Mr. Oben in September 2015. Mr. Oben claimed that Ms. Nkamsi fabricated her injuries.

In sum, the parties' marriage was marked by severe discord, poor communication, divisive financial troubles, and an inability to cooperate.

The Divorce Proceedings

Mr. Oben filed for an absolute divorce in September 2015. In April 2016, the parties, who were still living together, entered a partial interim consent order in which they allocated the payment of household and childcare expenses and determined a shared custody schedule according to which Mr. Oben had responsibility for the children four nights a week and Ms. Nkamsi three nights a week. During the term of the order, Mr. Oben was responsible for paying for "health insurance, food, clothing, medical care costs and medicine costs and all other costs associated with and for the minor children." The parties reserved all other claims "until other agreement or until a hearing."

By the end of May 2016, Mr. Oben had moved out of the marital home and Ms. Nkamsi had filed a counterclaim seeking a limited divorce and other relief. That, however, did not end their disputes. Allegations that Mr. Oben had the utilities shut off and damaged household property led Ms. Nkamsi to seek assistance from the circuit court. The court ordered that Mr. Oben "cease destroying the marital home;" "stay away from the marital home;" "stop destroying property in the marital home;" and "restore water and sewer

service in the marital home immediately" or provide written authorization allowing Ms. Nkamsi to do so.

On May 1, 2017, one week before trial, Mr. Oben filed an amended complaint seeking, among other things, an absolute divorce, sole legal and primary physical custody of the children, child support, a division of marital property, a monetary award, a share of Ms. Nkamsi's pension benefits, and an award of counsel fees and costs. Although Mr. Oben did not seek leave for this belated filing, Ms. Nkamsi did not object.

The court held a three-day trial on May 8-10 during which it heard testimony from Mr. Oben, Ms. Nkamsi, Mr. Oben's sister, and Chris Espinosa, a former renter in the marital home. At the conclusion of the evidence, the court reserved its ruling on all issues and scheduled a further hearing for June 15.

On June 8, Ms. Nkamsi filed an amended counterclaim seeking, among other things, an absolute divorce, sole legal and physical custody of the children, use and possession of the marital home for three years, rehabilitative alimony, division of marital property, a monetary award, a share of Mr. Oben's pension benefits, and an award of counsel fees and costs.[2] Although Ms. Nkamsi did not seek leave for this belated filing, Mr. Oben did not object.

[2] Ms. Nkamsi's prior counterclaim, which was filed in May 2015, had sought a limited divorce. That counterclaim did not expressly ask for custody of the children, although it recognized that custody had already been placed at issue by stating that "a final custody hearing" had been scheduled by the court. The new counterclaim also added a claim for a monetary award. Although the two counterclaims used somewhat different language, both sought use and possession of the marital home, alimony, a division of marital property, and an award of counsel fees and costs. Ms. Nkamsi's amended

The court held a hearing on June 15, 2017, during which it orally placed its findings and conclusions on the record. A written judgment followed on August 1. Among other things, as relevant to this appeal, the court:

- Granted the parties an absolute divorce;
- Awarded Ms. Nkamsi sole legal and primary physical custody of the children, with Mr. Oben getting visitation every weekend;
- Awarded Ms. Nkamsi sole use and possession of the home and of family and household use personal goods in the home for a period of three years, and awarded her most of the family and household use personal goods thereafter;
- Ordered Mr. Oben to continue to pay the mortgage on the marital home, and Ms. Nkamsi to pay all utilities for the duration of the use and possession order;
- Charged Mr. Oben with a retroactive child support obligation of $374 per month for the period of time covered by the interim consent order (May 1, 2016 through June 30, 2017);
- Ordered Mr. Oben to pay child support in the amount of $1,334 per month going forward;
- Found that a retirement account Mr. Oben claimed no longer existed continued to exist, and awarded Ms. Nkamsi a marital share on an "if, as, and when" basis;
- Required an even distribution of the proceeds of a Cameroonian bank account; and
- Denied Ms. Nkamsi's request for alimony.

This appeal followed.

counterclaim, unlike her original counterclaim, did not request child support, but she made that request separately in an answer to Mr. Oben's amended complaint, which she filed on the same day as her amended counterclaim.

DISCUSSION

"When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Maryland Rule 8-131(c). In reviewing divorce proceedings, we "accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity," *Boemio v. Boemio*, 414 Md. 118, 124 (2010) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)), and review contentions that the trial court erred as to matters of law de novo, *Jackson v. Sollie*, 449 Md. 165, 173-74 (2016). "If there is any competent evidence to support the factual findings" of the trial court, "those findings cannot be held to be clearly erroneous." *Omayaka v. Omayaka*, 417 Md. 643, 652-53 (2011) (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)).

I. MR. OBEN FAILED TO PROVE A DUE PROCESS VIOLATION.

Mr. Oben raises three procedural due process claims, all identified for the first time on appeal. His first due process claim seems to originate at least in part from the state of the transcripts of the trial proceedings. As a result, we do not find that claim to have been waived by his failure to raise it at trial. That is not true of his second and third due process claims, which were not preserved.

First, pointing to numerous places in the transcript noting that something Mr. Oben said was "inaudible," he argues that this indicates that his testimony was "largely incomprehensible" and that he was therefore denied due process. Implicit in his argument

is an assumption that the trial court must have been unable to hear and understand his testimony. Critically, however, we see no indication that the trial court was unable to understand Mr. Oben's testimony either as a general matter or as to any specific issue. To the contrary, the record reflects that most of Mr. Oben's responses were recorded and comprehensible, the judge asked Mr. Oben to speak up when she was having difficulty hearing him, and she gave him the opportunity to clarify his responses when appropriate. Nor have we found that the "inaudible" portions of the transcript have interfered with our appellate review. Moreover, Mr. Oben, assisted by counsel, presented his case as he chose to present it. He did not request the assistance of an interpreter or any other accommodation, nor does he contend that anyone else interfered with his ability to present his case.[3] In sum, Mr. Oben was afforded "the opportunity to be heard at a meaningful time and in a meaningful manner" required by due process. *Pitsenberger v. Pitsenberger*, 287 Md. 20, 30 (1980) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

Second, Mr. Oben contends that he was denied due process because Ms. Nkamsi was permitted to file her operative counterclaim for divorce late without leave of court. Because Mr. Oben failed to object to the late filing of the counterclaim, this objection was not preserved and we reject it on that basis. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any [] issue unless it plainly appears by the record to have been raised

[3] Mr. Oben complains that the court dismissed the court reporter, who was having difficulty transcribing his testimony, and instead relied upon the courtroom's electronic recording system. However, Mr. Oben does not present any reason to believe that the continued use of the reporter would have improved the quality of the transcript, much less the quality of the judge's comprehension of his testimony.

in or decided by the trial court.").[4] Moreover, even had the objection been preserved, Mr. Oben failed to demonstrate any prejudice from the late filing. His counsel admitted at oral argument that the facts set forth in the counterclaim simply reflected Ms. Nkamsi's testimony at trial. And although Ms. Nkamsi's filing did update her claims for relief, the only genuinely new requests she made were for an absolute, as opposed to a limited, divorce—which Mr. Oben was already seeking—and for a monetary award—which she did not receive. There was no surprise or lack of notice.

Third, Mr. Oben contends that his due process rights were violated because: (1) Ms. Nkamsi alleged that she had been the victim of domestic abuse and was represented by the Maryland Legal Aid Bureau; and (2) the trial judge has chaired or served on committees of the Judicial Council and the Maryland Professionalism Center that address domestic violence issues and, before becoming a judge, worked for the Maryland Legal Aid Bureau. In addition to being unpreserved, this contention is frivolous. Mr. Oben does not identify any hint of actual bias on the part of the trial judge. *See Scott v. State*, 110 Md. App. 464, 486-87 (1996) (stating that the party requesting recusal must overcome a strong presumption of impartiality and demonstrate that a judge has "a personal bias or prejudice") (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)).

[4] Notably, Mr. Oben also filed his own operative complaint late and without seeking or receiving leave of court to do so. Furthermore, in light of Maryland's liberal standards for amending pleadings, *see* Rule 2-341(c) ("Amendments shall be freely allowed when justice so permits."), and the absence of any apparent prejudice, had Mr. Oben raised a timely objection to Ms. Nkamsi filing her amended counterclaim without leave of court, it seems highly likely that leave would have been granted.

II. MR. OBEN HAS FAILED TO IDENTIFY ANY CLEARLY ERRONEOUS FACTUAL FINDINGS.

Mr. Oben argues that the trial court made a variety of erroneous factual findings. For the most part, his arguments amount to contentions that the trial court erred in accepting Ms. Nkamsi's version of events instead of his. It is, of course, not our role to re-weigh the evidence before the trial court or come to a different conclusion regarding the credibility of the witnesses. *Keys v. Keys*, 93 Md. App. 677, 688 (1992) (recognizing that "especially in the arena of marital disputes where notoriously the parties are not in agreement as to the facts," appellate courts "must be cognizant of the [trial] court's position to assess the credibility and demeanor of each witness"). Because we find support in the record for all of the findings Mr. Oben challenges, we conclude that the trial court did not clearly err in making them.

In particular, Ms. Nkamsi's testimony supports the trial court's findings regarding when the parties got married; whether Mr. Oben misled Ms. Nkamsi regarding his standard of living; Mr. Oben's lack of flexibility regarding Ms. Nkamsi's desire to go to school so that she could get a better job; Mr. Oben's tendency to dictate to, rather than work flexibly with, Ms. Nkamsi; Mr. Oben's failure, relative to Ms. Nkamsi, to take responsibility for many aspects of childcare; Mr. Oben's lack of attention to the interests of the children; whether Mr. Oben, more than Ms. Nkamsi, is responsible for the parties' estrangement; and whether Mr. Oben, again compared to Ms. Nkamsi, lacked a deep relationship with the children. Some of these findings are also supported by the testimony of Mr. Espinosa and even Mr. Oben. They are not clearly erroneous.

Mr. Oben also complains about the court's findings regarding the necessity of certain expenses he listed for purposes of determining child support, including $755 a month for a babysitter and $600 a month for food. As to the babysitter, although the court did express a lack of certainty as to how the babysitter was actually utilized in the past, its ultimate conclusion was that Mr. Oben would not need to pay a babysitter during times in which he would not, going forward, have custody of the children. That logic seems irrefutable. As to the food bill, Mr. Oben complains that the court did not consider that he was providing food for the children as well as himself. But: (1) he failed to identify for the court what portion of his claimed food expenses were for him as compared to the children; and (2) going forward, he would only be providing food for the children on the weekends.

To be sure, Mr. Oben's testimony painted a much different picture regarding many of these issues. In his view, it was Ms. Nkamsi's obstinance, refusal to contribute financially to the family, and general unwillingness to work with him that created the problems. Not having observed the testimony, we must defer to the trial court's findings, which we conclude are not clearly erroneous.

III. THE TRIAL COURT DID NOT ERR IN AWARDING SOLE LEGAL AND PRIMARY PHYSICAL CUSTODY TO MS. NKAMSI.

We review a circuit court's custody determination for abuse of discretion. *Petrini v. Petrini*, 336 Md. 453, 470 (1994); *In re Yve S.*, 373 Md. 551, 586 (2003). Mr. Oben contends that the court's custody order is not in the best interests of the children because the court based its conclusions on "irrelevant factors" and failed to consider each custody

factor. Ms. Nkamsi asserts that the court properly applied the evidence to the custody considerations set forth in *Montgomery County Dept. of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986). We agree with Ms. Nkamsi.

The trial court, which has the "opportunity to observe the demeanor and credibility of both the parties and the witnesses," has the discretion to determine "which parent should be awarded custody." *Braun v. Headley*, 131 Md. App. 588, 596-97 (2000). "[T]o determine what is in the best interests of the child," a court "is required to evaluate each case on an individual basis." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013). "The best interest standard is an amorphous notion, varying with each individual case," which obliges the court to "evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future." *Karanikas v. Cartwright*, 209 Md. App. 571, 589-90 (2013) (quoting *Sanders*, 38 Md. App. at 419).

To determine the best interests of the child respecting custody, a court considers several factors, including but not limited to:

> 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Sanders, 38 Md. App. at 420 (internal citations omitted). The court should "generally not weigh any one [of these factors] to the exclusion of all others," but "should examine the

totality of the situation in the alternative environments and avoid focusing on any single factor[.]'" *Karanikas*, 209 Md. App. at 590 (quoting *Sanders*, 38 Md. App. at 420-21).

The Court of Appeals has identified the following "specific factors particularly relevant to a consideration of joint custody":

> (1) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (2) the willingness of parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of [the] child's social and school life; (7) the geographic proximity of the parental homes; (8) the demands of each parents' employment; (9) the age and number of children; (10) the sincerity of the parents' request for joint custody; (11) the financial status of the parents; (12) the impact on state or federal assistance; (13) the benefit to the parents; and (14) any other relevant factors to be considered.

Reichert, 210 Md. App. at 305-06 (citing *Taylor*, 306 Md. at 304-11).

Here, in making its custody decisions, the court listed both the *Sanders* and *Taylor* factors. The court applied the factors to the evidence, discussing many of them in detail. Observing that the "parents don't communicate well at all," the court generally held Mr. Oben more responsible than Ms. Nkamsi for their inability to cooperate. The court found both parents fit but found Ms. Nkamsi more sincere, more willing to provide care for the children, and to have a closer relationship with them. Additionally, Mr. Oben's attempts to sabotage Ms. Nkamsi and the children's relationship with her had undermined "efforts to provide consistency" and further supported the conclusion that Ms. Nkamsi, and not Mr. Oben, displayed the stability "needed for raising small children." The parties' demonstrated inability to communicate and make shared decisions thus required that one party have sole legal custody, which the court awarded to Ms. Nkamsi. The court also

provided Ms. Nkamsi with primary physical custody and gave her the children during the week so that she could address their educational and medical issues.

Mr. Oben argues that the court erroneously failed to consider the parties' willingness to share custody, as demonstrated by their adherence to the interim custody order during the divorce proceedings. However, the evidence of the parties' inability to communicate effectively and to cooperate in making decisions regarding the children overwhelmingly supports the trial court's conclusion that shared legal custody was not a viable option. Although some improvements were apparently made, each party's complaints about the other with respect to both decision-making and the handling of shared custody predated and postdated the commencement of the interim custody order.

Applying the best interests standard to the evidence, the court concluded that Ms. Nkamsi "demonstrates the consistency in terms of providing for the children's needs in this case by making sure that she gets an education, making sure that she has a stable place to live that she can afford, and continuing to work hard to get an education to be able to get a higher paying job . . . ."[5] Given the record before us and the deference owed to the circuit

[5] We reject Mr. Oben's contention that the court improperly added the factor "fitness to want to get sufficient education to provide for the children" to its analysis. Even if this really were an additional factor not already encompassed in the others—and we do not find that it is—the lists of factors in *Sanders* and *Taylor* are not exhaustive. *Taylor*, 306 Md. at 303 (stating that the "discussion of factors particularly relevant to a consideration of joint custody is in no way intended to minimize the importance of considering all factors and all options before arriving at a decision"); *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503-04 (1992) ("Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interests standard, but possess a wide discretion concomitant with their 'plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]'") (internal citation omitted; quoting *Kennedy v. Kennedy*, 55

court, we conclude that the court did not abuse its discretion in awarding sole legal and primary physical custody to Ms. Nkamsi.

IV. THE TRIAL COURT DID NOT ERR OR ABUSE ITS DISCRETION IN CALCULATING PROSPECTIVE CHILD SUPPORT BUT ERRED IN AWARDING PAST CHILD SUPPORT FOR A PERIOD DURING WHICH MR. OBEN WAS ALREADY RESPONSIBLE FOR PAYING THE CHILDREN'S EXPENSES.

A child support award ordinarily will not be reversed absent an abuse of discretion. *Walker v. Grow*, 170 Md. App. 255, 266 (2006). The court ordered Mr. Oben to pay $1,334 per month in child support prospectively and $374 per month retrospectively for the 14-month period during which the parties had shared custody but lived apart. Mr. Oben does not contend that the court erred in its guidelines calculations, which he acknowledges are presumptively valid. Instead, with respect to prospective child support, he argues that the court abused its discretion in failing to depart downward from the guidelines because of his own financial struggles and obligations.[6]

The Maryland Child Support Guidelines reflect an effort to: (1) ensure that awards "reflect the actual costs of raising children"; (2) "improve the consistency, and therefore the equity, of child support awards"; and (3) "improve the efficiency of court processes for adjudicating child support . . . ." *Voishan v. Palma*, 327 Md. 318, 322 (1992) (quoting U.S.

Md. App. 299, 310 (1983)). Moreover, the sincerity of Ms. Nkamsi's efforts to pursue her education to improve her life and the lives of her children is at least potentially relevant to a custody determination. We discern no error in the court's consideration of this issue.

[6] Ms. Nkamsi contends that Mr. Oben failed to preserve his objection to paying child support by failing to object at trial when that issue was resolved against him. However, child support was a matter the parties litigated and which Mr. Oben lost. He was not required to take any additional action when the court resolved that issue against him.

Dep't of Health & Human Servs. Office of Child Support Enf't, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report*); *see also Gladis v. Gladisova*, 382 Md. 654, 662-65 (2004) (discussing the legislative history of the guidelines). Although the guidelines are presumed to calculate a correct child support award, this presumption may be rebutted "by evidence that the application of the guidelines would be unjust or inappropriate in a particular case." Md. Code Ann., Fam. Law § 12-202(a)(2)(i)-(ii). Mr. Oben bore the burden of overcoming the presumption. *Shrivastava v. Mates*, 93 Md. App. 320, 331 (1992); *see* Fam. Law § 12-202(a)(2)(ii).

The circuit court found that Mr. Oben failed to meet his burden with respect to prospective child support. Based on the presumptive correctness of the guidelines, we find no abuse of discretion. That this obligation will be financially burdensome for Mr. Oben does not change our conclusion because "the law requires a 'parent to alter his or her . . . lifestyle if necessary to enable the parent to meet his or her support obligation.'" *Malin v. Mininberg*, 153 Md. App. 358, 395-96 (2003) (quoting *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993)); *see also Kelly v. Montgomery County Office of Child Support Enf't*, 227 Md. App. 106, 112-16 (2016) (distinguishing between the obligation to pay debts attributable to third-party creditors and the legal duty to pay child support). The award is calculated not according to Mr. Oben's needs, but to provide the children with "the same proportion of parental income[] and . . . standard of living" as if the parties had not

divorced. *Voishan*, 327 Md. at 322. Indeed, child support obligations would not be very effective if parents could avoid them by living beyond their means.[7]

Mr. Oben also contends that the court erred in awarding past child support because he had custody of the children four out of seven nights, he was paying the mortgage on the family home during that time, and he was already responsible for paying their support costs pursuant to the interim consent order. We find no error with respect to the court's consideration of the shared custody arrangement. The child support guidelines expressly accounted for the percentage of time the children spent with each parent during that time.

However, the interim consent order made Mr. Oben responsible for paying, in addition to the entire mortgage, all "health insurance, food, clothing, medical care costs and medicine costs and all other costs associated with and for the minor children" during the term of that order. Notably, that term overlapped completely with the period for which the circuit court awarded retrospective child support. In other words, the court ordered Mr. Oben to pay child support for a period during which Mr. Oben had already been ordered to

[7] To the extent that Mr. Oben complains that the court did not give sufficient consideration to the simultaneous order that he continue to pay the mortgage on the family home during the term of the use and possession order, we disagree. Although the circuit court had discretion to consider "the terms of any existing separation or property settlement agreement or court order, including any provisions for payment of mortgages," in determining the amount of the award, it was not required to do so. Fam. Law § 12-202(a)(2)(iii)(1). Payment of the mortgage is only one factor of many that a court may consider when determining the child support award, and it was within the court's discretion to order Mr. Oben to pay the mortgage in addition to child support. *See Knott v. Knott*, 146 Md. App. 232, 250 (2002) ("Moreover, in addition to any order that the noncustodial parent pay direct child support payments, the trial court may order one or both of the parents to contribute to the mortgage on the family home, insurance, and taxes.").

pay all costs associated with the children. In the absence of evidence that Mr. Oben was not complying with that order, the award of retrospective child support on these facts was an abuse of discretion. As a result, we will vacate that portion of the circuit court's judgment that awarded child support for the period May 1, 2016 through June 30, 2017.

V. THE TRIAL COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DISTRIBUTING MARITAL PROPERTY.

Mr. Oben contends that the circuit court erred in making a monetary award in favor of Ms. Nkamsi. However, Mr. Oben confuses the concepts of a monetary award, which the court did not make, and division of marital property, which it did. Section 8-205(a) of the Family Law Article provides that once a court determines the universe and value of marital property, it has three options: it can "transfer ownership of an interest" in certain marital property, "grant a monetary award, or both." Interests the court is permitted to transfer include "a pension, retirement, profit sharing, or deferred compensation plan"; "family use personal property"; and "real property jointly owned by the parties and used" by them as their principal residence during the marriage. *Id.* Here, the court made no monetary award, but it did transfer interests in marital property. Mr. Oben contends that the court erred in four ways in doing so. We discuss each in turn.

First, Mr. Oben argues that Ms. Nkamsi's request for a monetary award was untimely, as it was first made in her late-filed counterclaim. However, the court did not make a monetary award; it divided marital property. Ms. Nkamsi's original counterclaim, filed in May 2016, asked that "the court . . . make decisions about the part[ies'] marital property."

Second, Mr. Oben contends that the circuit court made its award based on clearly erroneous factual determinations. As discussed in Part II above, we disagree.

Third, Mr. Oben argues that the circuit court failed, before making its award, to comply with the directives in §§ 8-203 and 8-204 of the Family Law Article, respectively, to "determine which property is marital property" and to "determine the value of all marital property." We disagree. The contention that the court did not determine which property was marital is simply wrong. Section 8-203 requires such a determination only "if there is a dispute as to whether certain property is marital property." The parties' joint statement regarding marital property indicated disagreement as to the status of only four items. The court resolved all four disputes, three largely or entirely in Mr. Oben's favor.[8] The only disagreement that was resolved against Mr. Oben was as to a retirement account that he claimed no longer existed. The court determined that it did and that Ms. Nkamsi was entitled to a marital interest.

Mr. Oben's contention that the court failed to value certain marital property is also largely incorrect. As to this issue as well, the parties' joint statement regarding marital property did not reflect many disagreements. Mr. Oben specifically complains that the court did not value the family home or Ms. Nkamsi's vehicle or jewelry. As to these:

[8] The court determined that the parties' home, which was acquired by Mr. Oben before the marriage, was not marital property, and that awarding Ms. Nkamsi use and possession of the home for three years would reimburse any marital interest she might have arising from the mortgage payments that Mr. Oben had been made during the marriage. The court also determined that Ms. Nkamsi had failed to prove the existence of, or any right in, Wells Fargo accounts that Mr. Oben claimed did not exist, and so did not give Ms. Nkamsi any credit for them.

- There was no need to value the family home because the court found that it was not marital property and did not transfer any interest in it to Ms. Nkamsi;

- The parties' property statement did not indicate any dispute as to the value of the vehicle. Ms. Nkamsi valued it at $12,500, with a lien of $16,949.17. Mr. Oben provided no valuation at all.

- Although the property statement identified a dispute as to the value of Ms. Nkamsi's jewelry—which Ms. Nkamsi valued at $100 and Mr. Oben at $1,000—only Ms. Nkamsi provided evidence, in the form of her testimony, to support her valuation. Although it would have been better for the court to have stated expressly its finding as to this valuation, we do not find any abuse of discretion.

Fourth, Mr. Oben argues that the court was wrong to award Ms. Nkamsi a marital share of a Citizens Care/Mass Mutual Retirement Account that he claimed did not exist. However, although Mr. Oben introduced evidence that he had withdrawn the money from that account, Ms. Nkamsi presented evidence that it existed. The court credited Ms. Nkamsi's evidence. Regardless, because the court awarded Ms. Nkamsi an interest in the account on an "if, as, and when" basis according to her marital interest, if Mr. Oben is right that there is nothing to distribute, any error will be harmless.

Mr. Oben also makes a generic contention that the court failed to consider all of the factors it was required to consider before transferring an interest in marital property under § 8-205(b) of the Family Law Article. Again, we disagree. The court was not required to "go through a detailed check list of the statutory factors, specifically referring to each . . . ." *Doser v. Doser*, 106 Md. App. 329, 351 (1995) (quoting *Grant v. Zich*, 53 Md. App. 610, 618 (1983)). To the contrary, "'a trial judge's failure to state each and every consideration or factor' does not, without demonstration of some improper consideration, 'constitute an abuse of discretion, so long as the record supports a reasonable conclusion

that appropriate factors were taken into account in the exercise of discretion.'" *Flanagan v. Flanagan*, 181 Md. App. 492, 533 (2008) (quoting *Cobran v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003)).

Here, the court listed the relevant factors, expressly discussed several of them, and the record generally reflects the court's evaluation of the appropriate considerations in light of the testimony and evidence presented. *See Alston v. Alston*, 331 Md. 496, 507 (1993) (observing that "no hard and fast rule" exists for achieving an equitable division of marital property because "each case must depend on its own circumstances"). We do not find that the court erred or abused its discretion with respect to the distribution of marital property.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED IN PART AND REVERSED IN PART. AWARD OF CHILD SUPPORT FOR THE PERIOD MAY 1, 2016 THROUGH JUNE 30, 2017 VACATED. JUDGMENT AFFIRMED IN ALL OTHER RESPECTS. COSTS TO BE PAID 90% BY APPELLANT AND 10% BY APPELLEE.