

Circuit Court for Baltimore County
Case No. 03-C-17-001588

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1214

September Term, 2019

TAMI YU

v.

YOUNGJIN YU

Beachley,
Gould,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S.

Filed: April 2, 2021

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

This divorce case between Tami Yu (“Wife”), appellant/cross-appellee, and Youngjin Yu (“Husband”), appellee/cross-appellant, was tried for four days in the Circuit Court for Baltimore County. After putting findings of fact on the record, the trial court issued a memorandum opinion and order making additional findings, granting Wife an absolute divorce, awarding Wife indefinite alimony of \$3,000 per month, directing that the parties share equally in the value of Husband’s 401(k), granting Wife one-half of the marital portion of Husband’s pension, and awarding Wife attorneys’ fees.¹

Wife noted an appeal and filed motions to amend and for reconsideration. Husband also noted an appeal. The trial court held a motions hearing and issued a supplemental memorandum opinion and amended order. Thereafter, the parties again filed notices of appeal.

Wife presents the following questions for our review, which we have rephrased:

1. Did the trial court err by valuing Husband’s 401(k) as of the date of the parties’ separation instead of as of the date of the divorce?
2. Did the trial court err by not making its award of alimony retroactive?

In his cross-appeal, Husband presents the following questions for our review, which we have reordered and rephrased:

3. Did the trial court abuse its discretion by erroneously valuing certain items of marital property and “offsetting” the values of that marital property?
4. Did the trial court abuse its discretion by failing to account for Wife’s use of marital funds to purchase her home?

¹A child support arrears was granted and later vacated.

5. Did the trial court abuse its discretion by finding that Wife did not dissipate marital funds?
6. Did the trial court abuse its discretion by awarding Wife indefinite alimony?
7. Did the trial court abuse its discretion by granting Wife attorneys' fees?

For the reasons set forth below, we shall affirm in part and vacate in part the judgment of the trial court.

FACTS AND PROCEEDINGS

The evidence at trial showed the following.

Wife graduated from high school and completed some college courses. In 1984, she met Husband while working in South Korea. Husband and Wife were married in South Korea on June 1, 1988.

Shortly thereafter, the couple moved to St. Louis, Missouri, where they lived with Wife's parents while Husband attended college and Wife worked as a medical claim examiner for Prudential Insurance. Although Husband worked part-time through college, he made little money and Wife paid for all his living expenses, including an apartment near his school. Husband's education was financed with a student loan that was paid off during the parties' marriage.

Husband earned degrees in electrical engineering and computer engineering. In April 1997, he accepted a job with Lockheed Martin, and the parties moved to Maryland, where they purchased a townhouse. Due to the move, Wife left her job. She used the \$7,589.78 in her Prudential 401(k) toward Husband's student loans and the purchase of the

parties' townhouse. Wife also had a small pension from Prudential that she forgot about until the divorce proceedings.

Wife was pregnant when the parties moved to Maryland. They agreed she would not seek employment and, instead, would be a stay-at-home mother. The parties' first child was born in September 1997, and their second child was born in December 1999. According to Wife, there was no discussion of her returning to the workforce after the birth of both children. According to Husband, when the children reached middle school, he urged Wife to reenter the work force, but she did not.

In 2004, the parties moved to a large house in Perry Hall ("the marital home"). Wife cared for the children, saw to the upkeep of the marital home, and handled the parties' finances. Husband travelled frequently and worked long hours. The parties took vacations to visit relatives when the children were young, but, as they got older and focused on sports, the family travelled only for the children's sports trips. Husband took a more active role in the children's upbringing then, assisting them with their academic endeavors and sports programs. By the time of trial, both of the parties' children were in college at the Naval Academy.

Financially, the parties focused on savings and lived a modest lifestyle. They paid off their credit cards every month and had no debt except their mortgage. Husband sent money to his relatives in South Korea monthly. Wife testified that this caused stress when there were significant credit card bills to pay.

Husband thought the marriage was “perfect.” Wife described the marriage very differently. She painted Husband as controlling and abusive. Although she could “follow along with whatever [was] going on” when the children were young, “things became more difficult” as the children grew up.

In August 2016, Wife’s mother became seriously ill, and Wife spent a substantial amount of time in Arizona with her parents. The parties’ marriage, which already was strained, became more stressed. In November 2016, Wife’s mother died. Right after Wife returned home, she and Husband had a “big blow up,” during which, according to Wife, Husband grabbed her by the throat and said, “don’t make me regret what I may do to you,” terrifying her.

Wife claimed that she and Husband had had past physical altercations. She introduced into evidence photographs of scratches and bruises she claimed she had sustained during those altercations.

According to Husband, the “blow up” happened because Wife told him she wanted a divorce and suggested that there was a way they could get a divorce without waiting two years. Husband denied that he ever physically abused Wife, saying that he never hit anyone and did not even spank the children.

On December 15, 2016, Husband went to the emergency room with chest pain and was admitted to the hospital. Late that night, a sheriff served him with a temporary protective order that forbid him from returning to the marital home, as a result of the alleged

“blow up” the month before. Wife testified that she did not proceed with obtaining a final protective order for fear that doing so might affect Husband’s employment.

On February 16, 2017, Wife filed a complaint for limited divorce in the Circuit Court for Baltimore County. Throughout the pendency of the case, the parties entered into a series of consent orders, punctuated by contempt petitions, none of which were ruled on. In the first consent order, in March 2017, the parties agreed to ready the marital home for sale, use their Discover credit card only for that purpose, and list the marital home for sale by April 1, 2017. Husband agreed to pay the mortgage and utility bills, make minimum monthly payments on the parties’ Chase Visa and Discover credit cards, and pay \$900 per month to Wife as support. That sum was to be adjusted in June of 2017, or when there was a contract on the marital home, whichever occurred first.

On August 24, 2017, Wife filed a contempt petition alleging that the April 1, 2017 deadline had passed, but the marital home still was not listed for sale. She asserted that Husband was dragging his feet about selling the house. She further alleged that after June 1, 2017, Husband stopped paying her \$900 per month and that, as of June 22, 2017, he stopped making the minimum monthly payments on the Discover credit card.

On September 22, 2017, the parties entered into a second consent order, in which they agreed that on or before September 29, 2017, Husband would buy Wife’s share in the marital home for \$77,000, through a refinance of the mortgage in Husband’s name. According to Wife, she agreed on that sum because she “wasn’t going to get out of the house” if she refused. According to Husband, that sum was more than what Wife should

have received. The consent order permitted Wife to live in the marital home until November 15, 2017. Under the second consent order, Husband paid off balances Wife had incurred on the Chase Visa and Discover credit cards.

Husband purchased Wife's share of the marital home, and Wife moved out on November 15, 2017. By then, she had received an inheritance of \$238,270 from her mother's estate. She used the \$77,000 from Husband, part of her inheritance, and \$15,000 from a marital account to purchase a house in Rosedale ("Wife's house") for \$213,000, furnishings, and a vehicle. Until Wife moved out of the marital home, Husband paid the mortgage and utility bills, using dividends and other marital assets.

On February 2, 2018, Wife filed an amended complaint seeking an absolute divorce. On March 8, 2018, the parties entered into a third consent order that required Husband to pay Wife \$1,500 that day and thereafter pay her \$900 on the 15th of each month. On March 28, 2018, Husband filed his answer to Wife's complaint and a counterclaim. On April 18, 2018, the parties filed a Joint Statement of Parties Concerning Marital and Non-Marital Property ("Joint Statement"). In it, Husband valued his Lockheed Martin Salaried Savings Plan, *i.e.*, his 401(k), at \$815,989 at the time the parties separated in 2016 and \$1,023,542 as of April 2, 2018.

On July 9, 2018, Husband filed a contempt petition alleging that Wife had "gamed" the system, causing him "significant financial damage" by delaying the buyout process for the marital home, using the Chase Visa and Discover credit cards for personal expenses

unrelated to the sale of the marital home, failing to return personal property, and submitting joint tax returns without his approval.

On December 3, 2018, Wife filed a second contempt petition, alleging that as of September 1, 2018, Husband had failed to pay her the required \$900 per month. Referencing her previous contempt filing, she asserted that Husband also owed an additional \$4,000 in arrears, although she acknowledged that the court had not ruled on that contempt petition (or any of them).

During the January 2019 trial, Wife, then aged 57, testified that in June 2017, she started working as a stocker at Target. She usually works between 32 to 38 hours per week and earns \$12 per hour. Her W2 for 2018 reflected an income of \$19,267.

Wife does not have health insurance because Husband did not renew her coverage under his plan after 2018. She projected that health insurance would cost between \$600 and \$1,300 per month. She takes high blood pressure medication and has plantar fasciitis, which caused her to miss 15 to 20 days of work. Her income would have been \$20,450 had she been able to work those days. When she turns 65, her Prudential pension will pay \$170 per month.

Wife claimed to have expenses of \$5,800 per month, as reflected in her most recently submitted financial statement. That amount includes housing expenses of \$1,089.92 for gas and electric, water, insurance, and a home warranty (she has no mortgage). Although her house is in good shape, it was a “flip” that will require future repairs, so she took those into consideration in preparing her financial statement. Her

monthly vehicle expenses for gas, maintenance, and insurance are \$328, and her monthly credit card expenses are \$110. She has a balance of \$5,000 on her Discover card and approximately \$200 outstanding on her Bank of America card. She also listed \$1,962.88 for legal expenses.

Wife acknowledged that her checking account statements show that, except for one month, her monthly expenses did not exceed \$3,000, and her typical monthly expenses range between \$1,800 and \$2,400.² Other charges she listed as monthly expenses, such as furniture, were one-time expenses and not recurring obligations, and other sources of income, such as dividends, are not reflected on her financial statement.

Wife claimed to be running a monthly financial deficit of \$4,489 and requested that amount in indefinite alimony. She testified that she is not in a position to receive education or other training, as the programs are cost prohibitive, and even if she did, she would not earn substantially more income or receive more benefits than she already was earning working at Target.

Wife also testified about the parties' various accounts. When they separated, there was approximately \$33,000 in their Lockheed Martin Federal Credit Union savings account ("LMFCU savings account"). She withdrew \$15,000 but left the \$18,477 in remaining funds for Husband. He later withdrew most of that money, leaving a balance of \$34. In addition, when they separated, the parties had an E-Trade account, titled to

² This does not include health insurance, however.

Husband, valued at \$19,367.25. Husband had made a withdrawal from that account and the balance later dropped by approximately 49%. Wife testified that she believed the value of the E-Trade account at the time of trial was \$6,320.03.

Wife estimated that the value of the marital home was \$470,000 to \$480,000.

Wife asked the court to grant her attorneys' fees. She testified that she owed her lawyer about \$50,000 and was deserving of an award of attorneys' fees because of delays and postponements Husband had caused. Wife explained that because Husband frequently changed attorneys,³ she had to resubmit documents, and Husband's previous counsel often ignored her submissions. She maintained that this problem slowed down the transfer of the marital home, and therefore it was Husband's fault that the marital home was not transferred to him (or sold) sooner.

Husband, also aged 57 at the time of trial, testified that his mortgage after refinancing the marital home is \$2,075 per month. He estimated the existing balance on the mortgage to be around \$295,000 and the resale value of the marital home to be between \$350,000 and \$380,000. He assigned such a low value because the house needs repairs and does not compare well to other homes in the neighborhood, due to its age and lack of amenities. The marital home is also encumbered by a sewer facilities obligation of \$18,200, which Husband pays at a rate of \$700 per year.

³ The record shows that Husband employed four different attorneys throughout the litigation.

Husband explained that he suffers from a seizure disorder, periodontal disease, cholesterol issues, heart problems, and issues with his eyelids. He testified that he will need several surgeries for his periodontal disease, which he estimates will cost approximately \$45,000 and are not covered by his insurance. He further estimated his eyelid surgery will cost \$4,390. To help pay for the surgeries, Husband took out two lines of credit, one from Wells Fargo for \$6,900, and another from Care Credit for \$6,000. He stated that these ailments have a tremendous impact on his daily life, and his vision issues are so severe that he had to purchase a vehicle with automatic braking.

Husband acknowledged taking out a \$42,000 loan against his 401(k) in mid-2017, to cover the purchase of the vehicle with automatic braking (a 2013 Mercedes), his legal fees, the closing costs associated with his new home loan,⁴ and the support payments to Wife. At the time of trial, the balance on the loan was \$32,325. The loan was amortized over a four-year period, with \$201.62 deducted automatically from each paycheck.

Figures Husband provided showed his gross annual pay to be roughly \$172,000. He testified that after subtracting taxes, disability, life and health insurance, and loan payments, his net pay is \$1,290 per week.⁵ He stated that he sold stock in the E-Trade account to pay the mortgage on the marital home because otherwise he could not afford to

⁴Husband testified that he incurred \$5,000 in closing costs with his new loan because Wife delayed the refinancing process by refusing to allow inspectors to see the marital home.

⁵ This figure is much lower than what he provided in his financial statement.

do so, as he also had to pay for a place to live himself. He anticipates receiving \$3,600 per month from his pension once eligible, but the pension is not yet in pay status.

Husband testified that since the separation he has lived paycheck to paycheck, even after cashing out his E-Trade account and selling stocks, and he has a “negative budget” each month. He testified: “So right now is pretty much I depleted my savings, I sold my stocks, I got a loan. But I cannot get another loan to pay off the loan and I have a six-month grace period. So that’s not an option anymore.” He acknowledged holding title to the LMFCU checking account having a balance of over \$1,000 but testified that he owes \$5,665.70 on his Chase Visa, \$1,596.25 on a second Chase Visa, and \$268.69 on his Discover card.

Husband acknowledged “the best decision” he and Wife made was for her to stay home with the children, but he complained that once the children entered middle school, Wife did not take steps to find work, as he had asked her to. Nevertheless, he dismissed concerns that Wife had been out of the workforce for decades, testifying that she could find a job as a medical claim examiner with a beginning salary of \$45,000 per year, which would likely increase to \$115,000 per year within two or three years, once she was promoted to a supervisory position.

Husband testified that his 2001 Honda and 2001 BMW do not run. He paid \$28,488.50 for the 2013 Mercedes, and at the time of trial still owed \$23,285 on the loan. On the Joint Statement, he valued that vehicle at \$16,348.

Husband claimed that his medical and automobile expenses had increased from what was shown on his July 8, 2018 financial statement, but even based on that statement he ran a monthly deficit of \$5,746.24. He claimed that this was not caused by excessive spending and described his lifestyle as “miserable” and “horrid.” Despite his monthly deficit, however, he still was sending \$525 per month to South Korea. He also was voluntarily depositing over \$1,100 of his income per month into his 401(k) and was repaying over \$800 a month for a loan taken from Lockheed Martin. (As of the time of oral argument in this case, that loan had about two years left on its term.) And, he eats out for lunch every day and often eats out for dinner, as well. On average, his dining expenses are \$800 per month, although he asserted that the amount fluctuated.

In his trial testimony, Husband accused Wife of stealing money from the parties’ accounts during the marriage. Wife typically handled paying the bills, and “100 percent” of Husband’s paycheck went into the LMFCU and the Bank of America checking accounts. In 2012, when he bought Wife a diamond ring at Costco, Husband was shocked to see that there only was about \$11,000 in the LMFCU checking account; he expected it to have a balance of at least \$60,000. According to Husband, Wife acknowledged making withdrawals from the LMFCU checking account but said they were used to pay off the parties’ credit card bills each month; she transferred money from that checking account into the Bank of America checking account (titled in her name) to do so.

During discovery, Husband noticed that some of the funds Wife had withdrawn were not used to pay off the credit cards. He then noticed “a lot of charges in grocery store,”

meaning that Wife would receive “cash back” when she shopped. Husband testified that after reviewing the parties’ bank statements and records from several grocery stores, he created a chart that tracked the amount of money he thinks Wife took. The chart, which was admitted into evidence, listed the value of a purchase against the amount paid, revealing the amount of “cash back” withdrawn.⁶ According to Husband’s chart, between 2011 and 2016, Wife “stole” approximately \$86,000 of marital funds. He asked to be compensated for that amount, or at least one-half of that amount.

Contrary to Wife’s testimony, Husband asserted that the sale of the marital home never occurred because Wife “refused to show the inside of the house” or provide a list of what needed to be repaired. While the dispute over the sale of the marital home was ongoing, Husband paid the utilities and the mortgage. And, despite the provision in the consent order, Wife removed most of the furniture from the marital home without Husband’s consent when she moved out.

Husband testified that he paid Wife spousal support the “[e]ntire time until she closed the bank account that was the method to deliver the weekly checks to her.” After June 2017, he reduced his monthly payment. By then, both children had entered the Naval Academy, and he told Wife he could not “continue this negative budget.” Because Wife did not respond or attempt to come up with an alternative amount, he began sending her

⁶ In explaining the chart to the court, Husband’s counsel stated: “So to use your example, the purchase of the items was \$22.93. The amount given was \$42.93. The change returned, \$20.”

\$50 per week in support payments. He testified that by the time of trial he was “completely caught up” with the \$900 monthly support payments and, therefore, owed nothing more.

Husband agreed that Wife was entitled to a portion of his pension and a share of his 401(k) but opined that those assets should not be distributed evenly. He proposed that Wife receive 30% of his pension and 401(k), which would make them “finish equal,” because his parents had helped them financially during the early years of their marriage and Wife has the benefit of the inheritance from her mother.

Like Wife, Husband requested attorneys’ fees.⁷ He testified that Wife had not been forthcoming in the discovery process and argued that she had withheld information pertaining to her pension, credit cards, and employee benefits. As of the time of trial, she still had not provided him with requested tax returns, her explanation of benefits from Target, or a list of property she had taken from the marital home.

The trial ended on April 4, 2019. On July 15, 2019, the parties returned to court, and the court made the following findings of fact from the bench: the parties had been married for approximately 30 years; Wife had “paid for virtually everything” while Husband was attending college; Wife had paid down Husband’s student loan by cashing out her 401(k) with Prudential; when the children were young, Wife was their “primary caretaker”; and Wife took care of the household, including yardwork, and handled the finances. The trial court found Wife’s testimony to be “very straightforward, very credible.”

⁷ Husband’s counsel introduced his billing statements.

As to testimony regarding the parties' finances, the trial court stated that it had "extensively" examined Husband's exhibits pertaining to Wife's alleged stealing but did not find any truth to Husband's allegations. The court found that Wife did not steal \$86,000 in funds, but instead withdrew cash "to operate the daily home environment" during the marriage.

In discussing the parties' assets, the trial court found that the value of Husband's 401(k) at the time of divorce was \$878,806.24. The court based that on the account statement with a closing date of December 30, 2018.

The trial court credited testimony that, prior to separation, the parties never carried balances on their credit cards. Because the financial philosophy of the family was to save first, money was deposited in savings accounts and then Wife moved it to checking accounts to pay the monthly bills. The court also credited uncontroverted testimony that Husband sent money to his family in South Korea every month.

Regarding physical altercations, the trial court found that Husband was controlling and that Wife's testimony about specific instances of physical contact was "much more persuasive" than Husband's testimony denying them.

As to the physical health of the parties, the trial court noted that Wife "has a couple medical issues," including blood pressure problems and plantar fasciitis. Husband's medical issues included poor eyesight, dental problems, and a seizure disorder. The court found that both parties likely will require future surgeries.

The trial court noted that “some fat could be trimmed off of certainly [Wife’s] financial statement as well as [Husband’s].” Specifically, “[t]here are expenses that are listed that aren’t existent now or won’t be in the future.”

The court also credited Wife’s testimony that Husband was to blame for the delays in the sale of the marital home, stating that Husband “dragged his feet.”

Noting the difference in the parties’ income, the court found that indefinite alimony to Wife was appropriate. It stated that the income disparity was “a huge factor” in its decision to award indefinite alimony. The court did not specify the amount of alimony it was going to award.

On July 25, 2019, the trial court issued its memorandum opinion, which supplemented its July 15, 2019 factual findings. The opinion included a schedule that showed the total value of marital property to be \$888,661.73, with \$863,351.69 titled to Husband and \$25,310.04 titled to Wife. Due to the transfer/buyout of the marital home, the court did not include either the marital home or Wife’s house as marital property; instead, they were included in a schedule of non-marital property. That schedule determined that Wife held title to \$263,415.64 in non-marital property, consisting mostly of her house and accounts funded from her inheritance. It also determined that Husband held title to \$450,000 in non-marital property, consisting of the value of the marital home, as found by the court. The actual equity value of the marital home would be \$153,275, however, after subtracting the mortgage on the property.

The court ruled that one-half of the value of Husband's 401(k) should be transferred to Wife. In its schedule of marital property, that asset was valued at \$815,989, which was its value in December 2016, when the parties separated. It was not the number the court had used to value that asset at the time of the divorce in its oral ruling on July 15, 2019. The court determined that one-half the equity in the marital home at the time Husband bought Wife out was slightly more than the \$77,000 Wife accepted from Husband. The court also ruled that Wife would receive one-half of the marital portion of the Lockheed Martin Pension on an "if, as and when" basis.

Regarding alimony, the court stated that it had "considered all the factors set forth in FL § 11-106 which were addressed in the [c]ourt[']s findings of facts on July 15, 2016 and supplemented herein." The court found that Wife's net monthly income was \$1,322.46, and after removing certain items from her financial statement, such as attorneys' fees, her monthly expenses were \$3,721.50, leaving her with a monthly deficit of \$2,399.04.

The court stated that it had considered "the ability of [Husband] to meet his needs while also meeting the needs of [Wife]." It noted that Husband listed his gross annual income as \$172,158.96, approximately \$14,346.58 per month, which is "89% greater than [Wife's] gross annual income." The court found that, after numerous deductions, expenses, and taxes, Husband's net monthly income was \$6,688.19. It compared Husband's net monthly income to his alleged monthly expenses, which he had listed on his financial statement as \$12,434.34.

The court noted that Husband could save money by eating out less and cooking on the weekends. It also took issue with Husband's sending money to South Korea every month while claiming he could not afford to pay Wife \$900 per month for spousal support and being "\$6,350.00 in arrears of court ordered spousal support." The court also questioned Husband's claimed medical expenses, stating that "it is unclear the current balance he owes for dental work already completed." Ultimately, the court found Husband's reasonable monthly expenses to be \$6,969.86, which leaves him with a monthly deficit of \$281.67. The court noted that Husband was voluntarily contributing \$1,159.21 to his 401(k), and there would be no deficit if he simply stopped doing that.

The court found the standards of living of the parties and their differences in income to be "unconscionably disparate." It noted that, although the parties did not live lavishly while married, they were able to pay off their monthly bills as they came due and could afford to live debt free, while still contributing to their savings and retirement. The court explained that Husband now was living alone in a house that, despite its age and condition, is worth approximately \$450,000, whereas Wife's house only is worth approximately \$213,000. Because of the difference between Husband's yearly gross income of approximately \$172,000 and Wife's yearly gross income of roughly \$20,000, and "for reasons stated on the record" at the July 15, 2019 hearing, the court awarded Wife indefinite alimony.

The court noted that both Husband and Wife were seeking attorneys' fees, and neither had objected to the reasonableness of the attorneys' fees that counsel had submitted

during the four-day trial. The court credited Wife’s testimony that Husband’s equivocation about the sale of the marital home had caused delays and had increased Wife’s attorneys’ fees. It also credited Wife’s testimony that Husband’s retention of four separate attorneys throughout the divorce proceedings had increased Wife’s attorneys’ fees.

The court rejected Husband’s argument that he incurred additional attorneys’ fees because Wife “was not forthcoming with discovery,” finding that Wife “did not intentionally conceal assets” from Husband.⁸ Additionally, the court found Husband’s allegations of theft meritless, stating that he made them “without substantial justification.” The court remarked that it had “considered the necessary factors,” and then awarded attorneys’ fees to Wife.

Together with the memorandum opinion, the court issued an order granting Wife a judgment of absolute divorce, ordering Husband to pay Wife indefinite alimony of \$3,000 per month and attorneys’ fees of \$20,000, and denying Husband’s request for attorneys’ fees.

On August 16, 2019, Wife noted her appeal and filed motions to amend and for reconsideration. Among other things, she asked the trial court to determine the date on which alimony would be payable and argued that it should be awarded retroactively, to

⁸ Husband had claimed that Wife had tried to conceal the fact that she will receive a pension from Prudential Insurance. Wife said that she simply forgot that she was entitled to a pension from her time working there many years ago. The court credited Wife’s testimony in this regard.

February 16, 2017, when she filed her first complaint. She also challenged the court's valuation of Husband's 401(k) as of the date of separation, rather than the date of divorce.

On August 20, 2019, Husband filed a notice of appeal, and on September 4, 2019, he filed an opposition to Wife's motions. He argued that the court should not have awarded indefinite alimony because Wife is "self-supporting and enjoys a more comfortable lifestyle than [Husband] even without working full-time and without pursuing the higher earning employment she previously held." With respect to his 401(k), he took the position that the court valued it as of the time of divorce but awarded Wife less than a one-half interest, considering her assets and his lack of assets, debt, and failing health. (That clearly is not what the court had done, and Husband does not repeat that argument on appeal). He argued that it would be inequitable for Wife to share in contributions he made to the 401(k) post-separation, and, asserting that the correct value of the 401(k) was \$828,562.18 with a loan balance of \$30,000 as of the date of trial, the court's \$815,989 value actually favored Wife.

After a hearing, the trial court issued an amended order and supplemental memorandum on October 28, 2019. It kept the indefinite alimony award to Wife at \$3,000 per month and directed it to begin on July 19, 2019, *i.e.*, did not make it retroactive. With respect to Husband's 401(k), the court simply stated that it had "weighed all the evidence and considered all the factors set forth in FL § 8-205[.]" Both parties filed timely second notices of appeal.

Additional facts will be added as necessary to our discussion.

DISCUSSION

We shall address the parties' issues together when they relate to the same subject matter.

I.

Wife's Question 1: Valuation of Husband's 401(k) **Husband's Questions 3, 4, and 5: Valuation of Items of Marital Property, Use/Dissipation of Marital Property by Wife, and Equitable Distribution**

Maryland is an equitable distribution of marital property state. To determine how to distribute marital property, the trial court employs a three-step process. *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). First, it accounts for all marital property, and for any property that is disputed, decides whether it is marital or non-marital.⁹ *Id.*; Md. Code, § 8-203 of the Family Law Article ("FL"). "Our case law is clear that the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property." *Murray v. Murray*, 190 Md. App. 553, 570 (2010). Whether an item of property is marital or non-marital is a question of fact, so we review the court's findings for clear error. *Id.* at 568. If there is any "credible evidence" to support the court's findings of fact on these issues we will not disturb them on appeal. *Id.*

Second, the court assigns a value to the marital property. This also is a factual decision that we review for clear error. *Abdullahi*, 241 Md. App. at 405; FL § 8-204.

⁹ FL section 8-201(e)(1) defines marital property as "property, however titled, acquired by 1 or both parties during the marriage."

Moreover, “[i]n a proceeding for absolute divorce, the value of marital property must be decided as of the date on which divorce is actually entered.” *Doser v. Doser*, 106 Md. App. 329, 348 (1995).

Finally, “if the division of marital property according to title would be unfair,” the court “may make a monetary award to rectify any inequity ‘created by the way in which property acquired during marriage happened to be titled.’” *Flanagan v. Flanagan*, 181 Md. App. 492, 519-2 (2008) (quoting *Doser*, 106 Md. App. at 349); FL § 8-205(a). “[T]he decision whether to grant a monetary award is generally within the sound discretion of the trial court.” *Abdullahi*, 241 Md. App. at 407 (quoting *Collins v. Collins*, 144 Md. App. 395, 409 (2002)).

Under FL section 8-205(a)(1), if, after completing the first and second steps, the court decides the equities should be adjusted, it can do so without making a monetary award by ordering the transfer of all or a part of certain retirement assets from one spouse to the other (or it can do both). As relevant here, ownership “in a pension, retirement, profit sharing, or deferred compensation plan” may be transferred from one party to either or both parties. FL § 8-205(a)(2)(i).

Husband’s 401(k) and Lockheed Martin pension and Wife’s Prudential Insurance pension fall into one or more of those categories. The court did not grant a monetary award. Instead, after determining which property was marital and valuing the marital property, the court adjusted the equities by directing that one-half of Husband’s 401(k) be transferred to Wife and that Wife receive one-half of the marital share of Husband’s pension on an “if,

as, and when” basis. *See Bangs v. Bangs*, 59 Md. App. 350, 367-68 (1984). (The court left Wife’s small pension as titled, *i.e.*, she will receive it when eligible.)

The issues the parties raise in Wife’s Question 1 and Husband’s Questions 3, 4, and 5 all concern either the valuation of items of marital property or the equitable distribution of marital property.

(a)

Valuation of Husband’s 401(k)

Wife contends the trial court erred in one of two ways in valuing Husband’s 401(k). Either it erred as a matter of law by applying a 2016 valuation to the 401(k) or it clearly erred as a matter of fact by mistakenly using the valuation for the 401(k) as of 2016 when it meant to use the valuation as of December 30, 2018 (immediately before the start of trial in January 2019). The court did not explain its use of the 2016 figure.

Husband responds that the trial court was not bound by the valuations provided by the parties, that it is presumed to know the law and apply it correctly, and that it was not required to fully articulate its reasons for valuing the 401(k) as it did. Husband points out that, in the court’s supplemental memorandum opinion, it stated that it had “weighed all the evidence and considered all the factors set forth in FL § 8-205.”

The evidence adduced at trial showed that in December 2016, when the parties separated, Husband’s 401(k) was valued at \$815,989. Subsequent to that, there were times the 401(k) was worth over a million dollars. As of December 30, 2018, however, the 401(k) was worth \$878,806.24.

In its oral ruling from the bench on July 15, 2019, the trial court recounted those values and found, “as of December 3rd, 2018, [the 401(k)] was valued at \$878,806.24. *That’s what the value at the time of the divorce is.*” (Emphasis added.)¹⁰ Yet, in the schedule of marital property set forth in its July 25, 2019 memorandum opinion, the court listed Husband’s 401(k) with a value of \$815,989, *i.e.*, the value at the time of separation, not at the time of divorce. In its hearing on Wife’s motion for reconsideration, the court did not specifically address the issue of valuation of Husband’s 401(k), and in its amended memorandum opinion, it merely stated that it had considered the factors in FL section 8-205.

We conclude from the evidence in the record that the court made a clerical mistake in assigning a value of \$815,989 to Husband’s 401(k) in its schedule of marital property set forth in its memorandum opinion. The court already had made clear during the July 15, 2019 proceeding that it had found the value of that asset as of the date of divorce to be \$878,806.24. The law required that Husband’s 401(k) be valued as of the time of divorce, and the court did not give an explanation from which one might understand that it knew it was deviating from that requirement (and from its finding ten days earlier) and was doing so for a reason. Without any such explanation, and given that courts indeed are presumed to know the law and apply it correctly, *see Bangs*, 59 Md. App. at 370, the only logical inference we can draw is that the court knew the law but made a clerical error, mistakenly

¹⁰ The court mistakenly misspoke in using the date December 3, 2018; the correct date is December 30, 2018.

inserting into its schedule of marital property the valuation figure for Husband's 401(k) at the time of separation instead of at the time of divorce.

(b)

E-Trade Account

Husband contends that "the court's valuation of the E-Trade account was clearly erroneous," because the evidence at trial showed that that account, titled to Husband, had a value of \$6,625.55, but in the schedule of marital property in its memorandum opinion, the court valued it at \$19,367.25. In the same schedule, the court found the value of a Charles Schwab IRA account, titled to Wife, to be \$19,962.96. It then found that the roughly equal sums in those two accounts offset each other, *i.e.*, they did not require balancing of equities because their values were similar. Husband asserts that the court improperly used this offset analysis because his E-Trade account was worth about \$13,000 less than Wife's Charles Schwab IRA. Wife responds that the court "properly valued and properly accounted for the relatively equal values of Husband's E-Trade and Wife's Charles Schwab accounts."

The evidence showed, and the trial court found, that on June 30, 2018, Husband withdrew funds from the E-Trade account. Before he made the withdrawal, the value of the account was \$19,367.25; afterward, it was \$6,320, the sum in the account at the time of trial. In his testimony, Husband agreed that before he withdrew funds from the account, its value was "a little over \$19,000." Wife testified that if Husband had not made that

withdrawal, the E-Trade account would have increased in value and been worth more than her Charles Schwab IRA by the time of the divorce.

We think this issue really pertains to distribution, not valuation. To be sure, as we explain below in discussing dissipation, for purposes of equitable distribution in a divorce case, “property disposed of before trial cannot be marital property.” *Omayaka v. Omayaka*, 417 Md. 643, 653 (2011) (quoting *Turner v. Turner*, 147 Md. App. 350, 409 (2002)). The E-Trade account properly should have been valued at \$6,320. What the court was recognizing in assessing its value before Husband withdrew over \$13,000 from it was that Husband already had received that amount of benefit from the account, and he would receive the remaining \$6,320 value of the account, as it was titled in his name. The value Wife would receive from keeping her Charles Schwab IRA account was roughly equal to the value Husband already had received from the E-Trade account plus the value he would receive from keeping the account. Therefore, the equities did not favor a monetary award.

When a court puts values on marital assets, the process does not include offsetting assets against each other. However, that kind of analysis may reflect that, in balancing the equities for purposes of deciding whether a monetary award is necessary, the court considers the parties to be on what amounts to an equal footing that is not inequitable. We conclude that that is what the trial court did here in ultimately deciding not to grant a monetary award while keeping these assets as titled, and that it did not abuse its discretion in doing so.

(c)

Wife's Use of Marital Funds

Husband contends the trial court erred by failing to account for Wife's use of \$15,000 in marital funds toward the purchase of her house by "adjusting. . .the equities" in her house. He maintains that the court's finding that the \$15,000 Wife withdrew from the jointly titled LMFCU savings account was offset by the \$18,477.68 that remained in that account after she made the withdrawal was clearly erroneous, as the amount remaining at the time of trial was \$34, and "these amounts do not come close to offsetting each other."

Wife responds that the court "properly classified Wife's home as non-marital property." She recognizes that the \$15,000 she withdrew from the LMFCU savings account was marital property but argues that after she made that withdrawal, \$18,902.68 remained in the account, and Husband subsequently withdrew all but \$34 from it. Therefore, she withdrew less than her marital share from the account. She asserts that Husband's withdrawal from the account operated as a division of the marital asset.

In its schedule of marital property, the trial court included the \$34 balance in the LMFCU savings account. It did not include either Wife's house or Husband's house (the marital home) as marital property. Although not stated expressly, it is clear the court excluded the marital home from marital property because Husband had bought out Wife's interest during the separation. It also is clear that the court excluded Wife's house from marital property because, although purchased during the marriage, the transaction was funded primarily by the \$77,000 Husband paid Wife for her interest in the marital home and by \$121,000 in money Wife received from her inheritance.

In its July 25, 2019 memorandum opinion, the court found that Wife also used the \$15,000 she withdrew from the LMFCU savings account toward the purchase of her house, but recognized that she withdrew less than half the funds in that account and that Husband thereafter withdrew almost the entire remaining balance. Under the circumstances - - in which Husband in fact withdrew more from the account than Wife withdrew and used in the purchase of her house - - it would not have been sensible for the court to have given Husband an interest in Wife's house. The court did not fail "to account for [Wife's] use of marital funds" in the purchase of her house but exercised its discretion not to classify either party's home as marital property. The court did not clearly err or abuse its discretion in doing so.

(d)

Wife's Alleged Dissipation of Marital Funds

As noted, when a court determines equitable distribution of marital property, "property disposed of before trial cannot be marital property." *Omayaka*, 417 Md. at 653 (quoting *Turner*, 147 Md. App. at 409). An exception exists, however, "when a court 'finds that [marital] property was intentionally dissipated in order to avoid inclusion of the property towards consideration of a monetary award. . . .'" *Id.* (quoting *Sharp v. Sharp*, 58 Md. App. 386, 399 (1984)).

The Court of Appeals has explained that "[d]issipation [occurs] where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown." *Id.* at 651 (quoting

Sharp, 58 Md. App. at 401). “[T]he party alleging dissipation has the initial burden of production and burden of persuasion.” *Id.* at 653 (quoting *McCleary v. McCleary*, 150 Md. App. 448, 463 (2003)). “A trial court’s judgment regarding dissipation is a factual one and, therefore, is reviewed under a clearly erroneous standard. ‘If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.’” *Id.* at 652-53 (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)).

Husband contends the trial court clearly erred in finding that Wife did not dissipate marital funds. He argues that “[i]t is clear from the evidence that [Wife] used the parties’ joint accounts as her own and did it with the purpose of hiding it from [Husband].” In support, he points to withdrawals from the LMFCU checking account, transfers from the Bank of America checking account to an account Wife shared with her mother, and cash Wife withdrew at grocery stores. As he did at trial, Husband maintains that Wife “surreptitiously drained” over \$86,000 in marital funds.

Wife responds that “the timing alone of the withdrawals and transfers do not support a finding of dissipation, as they occurred years prior to the litigation in this matter.” Specifically, the alleged dissipation occurred between 2012 and 2016, before the parties separated; therefore, Wife did not use those funds for a purpose unrelated to the marriage while the marriage was undergoing an irreconcilable breakdown, as must be shown to support a finding of dissipation. Moreover, the funds were used for family purposes, and not for Wife’s own benefit.

At the July 15, 2019, hearing, the trial court rejected Husband's allegations of dissipation, stating multiple times that they were unfounded and unsupported:

[Husband] suggested that [Wife] was stealing money.

I don't find that to be true. If you look at the tally sheets, I mean, I started looking at what was bought for God's sake. And if you look at the tally sheets, you could see there was kind of somewhat of a pattern.

She would go to the store and she would purchase, let's say, things for 26 bucks and then get 50 bucks back. And then a couple of days later – it wasn't a daily thing. But a couple of days later, she would go back to the store.

[Wife's] testimony was that that was the routine, that she really didn't have any cash. That is how she got her cash. And she said even [Husband] did it from time to time. That's how they got their cash to operate on a daily basis, buy the children things they needed, go out to happy hours is one of the comments.

So if those exhibits were submitted to support [Husband's] testimony or belief -- and I should say belief -- that [Wife] somehow squandered away this money or squirreled away this money and stole from the family, the [c]ourt is not persuaded that that is true.

In its July 25, 2019 memorandum opinion, the court found as follows:

[Husband] alleges, without substantial justification, that between 2011 and 2016, [Wife] stole \$86,000.00. In support of that assertion, [Husband] introduced statements going back to 2012 from Weis Super Market. *Defendant Exhibit 38*. [Husband] also introduced similar statements from Giant Foods. *Defendant Exhibit 39*. [Husband] asserts that over those years, [Wife] would grocery shop and receive cash back. It was that cash received that [Husband] alleges funded [Wife's] theft of \$86,000.00. [Wife] had to defend those allegations. For the reasons stated on the record, the Court finds [Husband's] assertion that [Wife] stole money from the family to be completely illusory and unsubstantiated.

The evidence at trial showed that during the marriage, Wife handled the family's finances. Wife testified that she moved money to and from checking accounts and savings

accounts to pay the family bills, such as the balances on their credit cards. Taking “cash back” from the grocery store simply was one way to get cash - - like going to an ATM or the bank - - and Wife explained that she used all this money for family purposes. Wife also testified that transfers she made between one of the parties’ accounts and an account she shared with her Mother were for convenience, not to fleece marital funds, as she utilized the transfers to pay the family’s bills without having to go to the bank.

The court did not make any clearly erroneous factual findings respecting dissipation. The \$86,000 Husband focused on was money moved by Wife among various accounts, before the parties’ separation, when the marriage was not irretrievably broken, as part of her management of the family’s finances. The “cash back” was an innocent and convenient way to obtain needed cash for family use. There was absolutely no evidence that Wife was “stealing” money from these accounts, as Husband claimed. The court’s factual findings regarding dissipation were not clearly erroneous.

* * * *

As discussed, we have determined that the trial court erred in one respect with regard to marital property: by mistakenly assigning a value of \$815,989.00 to Husband’s 401(k) instead of assigning it the proper value (which the court had itself found) of \$878,806.24. The court determined in its memorandum order that Wife was entitled to receive one-half of Husband’s 401(k). We understand that, based on the incorrect valuation, the parties each have received \$407,994.50. Had the proper valuation been used, they each would have

received an additional \$31,408.62. On remand, the judgment is vacated for the limited purpose of transferring that sum to Wife, from Husband's 401(k).¹¹

Ordinarily, when we vacate a monetary award, we also vacate an associated award of alimony and attorneys' fees. *See Turner v. Turner*, 147 Md. App. 350, 400-01 (2002) ("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. . . . Therefore, when this Court vacates one such award, we often vacate the remaining awards for re-evaluation."). We shall not do so here, because there was no monetary award, and the error with respect to the transfer of one-half of Husband's 401(k) was a clerical matter that should not be difficult to correct and does not call into question the court's decision to divide that 401(k) asset equally between the parties.

II.

Husband's Question 6 and Wife's Question 2: Alimony¹²

Husband contends the trial court abused its discretion by awarding Wife indefinite alimony because it rested that decision on the clearly erroneous factual finding that he had

¹¹ If for some reason we have not anticipated, that is impossible to do, the court may enter a judgment in that amount against Husband and in favor of Wife.

¹²Wife included the issue of arrears for past-due support in her brief as a question presented but did not make any supporting argument. Accordingly, we shall not address it. *See Federal Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 457-58 (1979) ("In prior cases where a party initially raised an issue but then failed to provide supporting argument, this Court has declined to consider the merits of the question so presented but not argued.). *See also Diallo v. State*, 413 Md. 678, 692 (2010) (quoting *Klauenberg v.*

the ability to pay. He maintains that although the court recognized that he experiences a monthly financial deficit, his actual deficit is far greater than what the court found it to be.

According to Husband, the court “mistakenly removed certain items” from his expenses, including a number of medical bills. He asserts that, according to his financial statement, his monthly income (net) at the time of trial actually was \$6,688.19. His monthly home expenses and car payment came to \$6,993.10, so, without considering other costs, such as clothing, food, and medical expenses, paying \$3,000 a month in alimony would leave him with a \$304.91 monthly deficit.

He argues that, once his other reasonable expenses are considered, “[a]llowing the award of alimony to stand would result in [his] having a monthly shortfall of \$3,281.67” and that his true shortfall is more accurately \$3,937.12 because his pay statement introduced at trial showed a monthly income of \$6,032.74 - - \$655.45 less than the income figure the trial court used. Finally, Husband also asserts that the court erred in finding that Wife needed *any* alimony, given that the evidence showed that she enjoys a higher standing of living and has greater liquidity of assets than he has post-separation.

Wife responds that the trial court did not base its decision to grant her indefinite alimony on any clearly erroneous factual finding. The court credited evidence showing that she would not be able to become self-supporting and that the parties’ standards of living were and would remain unconscionably disparate without an award of indefinite alimony.

State, 355 Md. 528, 552, (1999)) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”).

She is earning a little over \$20,000 in gross annual income, and her net income averages only \$1,322 per month. Husband, on the other hand, claimed a net income of at least \$6,700 per month. Wife points out that “Husband’s ‘deficit’ of \$281.67 [as claimed at trial] includes his continued contributions of over \$1,000 per month to his retirement benefits.” Moreover, the trial court found that Wife has a monthly financial deficit of \$2,399.04. Wife also asserts that the court in fact considered Husband’s medical bills.

In her appeal, Wife contends the trial court abused its discretion by not making her alimony award retroactive to the date she first filed suit for limited divorce and for failing to clearly articulate the reasons why it decided not to do so. She asserts that after the parties’ separation, she was forced to use her inheritance to cover her living expenses while Husband was not paying her the support payments he owed. She maintains that, “[b]y failing to award any retroactive alimony, the court rewarded Husband for his failure to pay any meaningful support.”

Husband responds that whether to award alimony retroactively is within the sound discretion of the trial court. He maintains that, although he was not required to do so, he “continued to pay the repairs for the vehicles, health insurance costs for the children and [Wife], the children’s cell phones extra-curricular and sports fees, college application and tests, children’s car maintenance, and music and gym membership fees.” In addition, he paid Wife \$900 per month, despite not being required to do so, and also paid her \$77,000 for her share of the Marital Home, even though she received a sizable inheritance. He

maintains that Wife would have received a financial windfall if alimony had been awarded retroactively and the trial court recognized this.

FL section 11-101 authorizes a court to award alimony to either spouse. The court’s decision to award alimony is discretionary. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 246 (2000). “When reviewing a lower court’s award of alimony, an appellate court defers to the findings and judgments of the trial court, acting in their equitable capacity, and will not disturb such judgments ‘unless it concludes that “the trial court abused its discretion or rendered a judgment that is clearly wrong.”’” *Id.* (quoting *Digges v. Digges*, 126 Md. App. 361, 386 (1999) (additional citation omitted)). The procedures and factors for determining the amount and duration of an alimony award are set forth in FL section 11-106.

“The purpose of alimony in Maryland is the ‘rehabilitation of the economically dependent spouse.’” *K.B. v. D.B.*, 245 Md. App. 647, 667 (2020) (quoting *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184 (2016)). ““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.” *Boemio v. Boemio*, 414 Md. 118, 124 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 196 (2004)). “A trial court’s determination of whether an unconscionable disparity exists is a finding of fact, which we review applying the clearly erroneous standard of review.” *K.B.*, 245 Md. App. at 669. “Under that standard, “[i]f there is any competent evidence to support the factual findings [of the trial court], those findings

cannot be held to be clearly erroneous.” *St. Cyr*, 228 Md. App. at 180 (quoting *Solomon*, 383 Md. at 202).

Under FL section 11-106(b), the court must consider “all the factors necessary for a fair and equitable award[.]” As relevant here, those factors include:

- (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;
- (10) any agreement between the parties; and
- (11) the financial needs and financial resources of each party, including:
 - a. all income and assets, including property that does not produce income;
 - b. any award made under §§ 8-205 and 8-208 of this article;
 - c. the nature and amount of the financial obligations of each party; and
 - d. the right of each party to receive retirement benefits[.]

FL section 11-106(c) addresses indefinite alimony. It provides that, if the court determines 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,” it may award indefinite alimony. As mentioned, whether an unconscionable disparity exists is a finding of fact that we review under the clearly erroneous standard. *K.B.*, 245 Md. App. at 669.

During the July 15, 2019, hearing, the trial court stated that it was going to award indefinite alimony, that it was “not going to mention everything” it had considered, but that it “certainly reviewed all of the evidence.” The court discussed and clearly considered all of the FL section 11-106(b) factors, including that Wife does not have the ability to be wholly self-supporting, in that future training or education will be cost-prohibitive and will not assist her in earning more income; that the parties’ standard of living during the marriage was not extravagant; that the parties were married for about 30 years; that after the children were born Husband supported the family financially and Wife raised the children and maintained the house; that Husband’s exerting a strong level of control over Wife contributed to Wife’s wanting to leave the marriage, *i.e.*, the estrangement of the parties; that the parties were 57 years old at the time of trial and Husband had just turned 58 when judgment was entered; that they each had some physical conditions; that Husband had the ability to pay alimony; that there were no agreements between the parties; and that the financial needs and resources of each party were being examined and would be set forth in the court’s memorandum opinion.

Elaborating on Husband's ability to pay alimony, and explaining Wife's need for indefinite alimony, the court stated:

Alimony can be modified. The Court has to deal with the facts and circumstances at the moment in time. The big -- even the suggestion by the defense is that when [Wife] receives a marital award, [Husband] suggests -- he, the defense -- he suggests it shouldn't be 30 percent of the overall value I think of the credit account or of the Lockheed Martin account and any other retirement benefits.

The suggestion is that [Wife] doesn't need to have -- not entitled to alimony. I shouldn't say doesn't need. But is not entitled to alimony.

But the real big difference is their income. Now, when and if that happens, when she collects retirement benefits and the Court awards a final award of marital property or marital award I should say, then that may change things.

But the Court, at this point, sees that the disparity in income is a huge factor in terms of the difference between the two parties. And, based on that, while I have not calculated the actual amount because I have to do some more calculations, the Court believes that permanent alimony at this junction is appropriate, and I am going to award it.

In its July 25, 2019 memorandum opinion, the court once more discussed Husband's ability to pay alimony, stating:

[Husband] lists his monthly net income as \$6,688.19. [He] lists his total monthly expenses as \$12,434.43.

The [c]ourt carefully examined [Husband's] monthly expenses (Defendant exhibit 29).

* * *

After careful consideration, the [c]ourt finds that [Husband's] reasonable monthly expenses to be \$6,969.86, which leaves a deficit of \$281.67. That deficit includes that [Husband] continues to make a \$1,159.21 monthly contribution towards his retirement benefits.

* * *

Having considered the factors set forth in FL § 11-106(b) as stated on the record and supplemented herein, the [c]ourt finds that the current living standards of the [p]arties is unconscionably disparate. Among the most compelling facts contributing to this [c]ourt's determination that indefinite alimony is appropriate are the disparity in the [p]arties' standards of living and income.

Notwithstanding Husband's complaint on appeal, the income statement in evidence at trial showed that his gross monthly wages were \$14,346.58, which comes to slightly more than \$172,000 a year. The court's finding in this regard was not clearly erroneous.

We note that the evidence of Husband's monthly net income on the same income statement was not calculated to exclude voluntary payments. Husband continued to voluntarily deduct \$1,159.21 per month from his income to deposit into his 401(k). Post-divorce, during the time period in which the alimony award applies, this deduction benefits Husband only and is voluntary. It should not be counted as a deduction from his income. In addition, Husband pays \$873.69 per month from his income toward a loan he took out from his employer. The loan was for his own benefit and will be paid up in two years from the date of oral argument in this case. Funds deducted to repay a loan Husband took out for himself also should not be counted as a deduction from his income. Husband's properly calculated monthly net income - - which still includes a deduction for health insurance, an expense Wife cannot even afford - - is \$8,721.09. By contrast, Wife's net income is \$1,322.46 per month, based on a gross income of slightly over \$20,000 a year.

The court did not properly calculate Husband's net income, but the mistake it made by not eliminating those deductions worked in Husband's favor. With respect to claimed

expenses, both parties' numbers exceeded their incomes, but Husband's position was entirely unrealistic. He claimed to have over \$12,000 per month in expenses, on gross income of just over \$14,000 per month and, by his own calculations, around \$6,700 in monthly net income. The court found that Husband's reasonable monthly expenses were \$6,969.86, leaving a deficit of \$281.67. If Husband's gross income is properly calculated at \$8,721.09, that deficit is vanishes and Husband has a surplus of \$1,751.23.

The trial court did not explain how it calculated the figure it arrived at for Husband's reasonable monthly expenses. The court did comment that Husband had many monthly expenses that were unreasonable or could be eliminated entirely: over \$800 for eating out at restaurants; \$500 to relatives in South Korea; over \$160 for money for sports coaching, which he no longer does; and \$900 for *pendente lite* alimony, which no longer will apply. The court also commented that Husband remains living in the marital home, which is very large. He could sell that house, which would reduce his expenses and result in his having access to the remaining equity in it. Husband also has three automobiles, for which he claimed large sums for repair expenses. The court also expressly considered Husband's claimed medical expenses.

We conclude that the court did not err or abuse its discretion in deciding that Wife needs alimony due to her extremely low income, that \$3,000 per month is a reasonable sum of alimony, and that Husband is able to pay that sum. From the standpoint of gross income, Husband's \$172,000 annual income minus \$36,000, which is the yearly total of the ordered alimony payments, produces an annual income of \$136,000. Wife's gross annual income

of \$20,000 supplemented by \$36,000 a year in alimony comes to an annual income of \$56,000. Although the court found Husband to have almost \$7,000 a month in reasonable expenses, that does not mean that those expenses all are necessary and that he is unable to pay \$3,000 a month to Wife. The court found that “the current living standards of the [p]arties is unconscionably disparate” and that there was a huge disparity between the parties’ residences and between their income. This factual finding is supported by evidence in the record and validates the court’s decision to make the alimony award indefinite.

We also conclude that the trial court did not abuse its discretion in not awarding alimony retroactively. Under FL section 11-106(a)(2), “[t]he court may award alimony for a period beginning from the filing of the pleading that requests alimony.” In arguing that the court abused its discretion, Wife relies on language from *Guarino v. Guarino*, 112 Md. App. 1 (1996).

In that case, Ms. Guarino left the marital home with only her purse and had nowhere to live. She and her husband were in their 50s and had been married more than 30 years. She had worked in her husband’s very lucrative company, but as soon as she left, he cut off her pay. She had no resources and made ends meet by borrowing money from her father. Her husband gave her some small sums of money that were not sufficient for her to subsist. She filed suit for a limited divorce and sought *pendente lite* alimony. *Id.* at 4-5.

After Ms. Guarino showed that her reasonable monthly needs were \$3,500, the court ordered that sum in *pendente lite* alimony, retroactive to the date the complaint for limited divorce was filed. *Id.* at 5. Mr. Guarino took an immediate appeal, arguing that his wife’s

“lack of actual expenses should inure to his benefit.” *Id.* at 18. In rejecting that argument, this Court stated that Ms. Guarino’s “lack of financial resources prevented her from maintaining any semblance of her previous lifestyle. Her ‘mitigation’ was in response to the lack of resources, the decision being forced upon her.” *Id.* at 19.

Wife cites that quoted language to support her argument that the court abused its discretion by not making her alimony award retroactive. As Husband points out, however, *Guarino* is distinguishable in one key respect: Mr. Guarino refused to pay any of his wife’s living expenses, save for two small sums that did not come close to covering what she needed, whereas here, as the record shows, even though Husband did not pay for all of Wife’s expenses, he made significant contributions to her living expenses after the separation. Indeed, Wife does not disagree that Husband continued making mortgage payments while she resided in the marital home after the separation, and she did not leave the marital home until November 15, 2017, months after she filed for a limited divorce in February of 2017.

The record shows that the trial court fully considered the question whether to award alimony retroactively, and found that doing so would result in a windfall to Wife. The court asked Wife’s counsel: “Wouldn’t back dating that and using the [c]ourt’s alimony figure of \$3000 a month be a windfall to your client? I mean, it’s like double dipping.” Indeed, in its supplemental opinion, the court stated that it had “considered all the factors set forth in Ann. Code Family Law Art. (“FL”) § 11-106, which, *inter alia*, included the substantial

contributions made by [Husband] pursuant to the Temporary Consent Order, [a] Second Consent Order, and Interim Consent Order.”

Based on the record, and the statements of the court, we cannot say that the decision not to award alimony retroactively was clearly erroneous or an abuse of discretion.

III.

Husband’s Question 7: Attorneys’ Fees

Husband contends the trial court’s award of attorneys’ fees should be vacated because its finding that he can afford to pay Wife’s attorneys’ fees was clearly erroneous. He asserts that he does not have any liquid funds with which to pay Wife’s attorneys’ fees, and Wife’s attorneys’ fees were increased by Wife’s non-compliance during the discovery process.

Wife responds that the court did not abuse its discretion in awarding her attorneys’ fees. She asserts that “the record is clear, and the trial court properly found, that Wife alleged, and introduced sufficient supporting evidence, that she incurred attorney fees unnecessarily.” Moreover, Wife argues that the court found that Husband, through his equivocation on the terms relating to the sale of the marital home and engagement with four separate attorneys during the discovery process, caused her to incur additional attorney’s fees. Additionally, “[b]ased on the trial court’s conclusions that Husband’s allegations of theft were without any substantial justification, the court was required to award fees.”

We review the court’s award of attorneys’ fees for abuse of discretion, and “will not disturb an award unless the exercise of discretion was arbitrary or the judgment was clearly wrong.” *Malin v. Mininberg*, 153 Md. App. 358, 435-36 (2003). “Failure of the court to consider the statutory criteria constitutes legal error.” *Id.* at 435.

FL section 11-110 governs the court’s award of attorneys’ fees in proceedings where alimony is sought. The statute provides:

(a) *Definitions.*—(1) In this section the following words have the meanings indicated.

(2) “Proceeding” includes a proceeding for:

- (i) alimony;
- (ii) alimony pendente lite;
- (iii) modification of an award of alimony; and
- (iv) enforcement of an award of alimony.

(3) “Reasonable and necessary expense” includes:

- (i) suit money;
- (ii) counsel fees; and
- (iii) costs.

(b) *Authority of court.*—At any point in a proceeding under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *Required considerations.*—Before ordering the payment, the court shall consider:

- (1) the financial resources and financial needs of both parties; and
- (2) whether there was substantial justification for prosecuting or defending the proceeding.

(d) *Required findings*.—Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) *Expenses paid previously*.—The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees*.—As to any amount awarded for counsel fees, the court may:

- (1) order that the amount awarded be paid directly to the lawyer; and
- (2) enter judgment in favor of the lawyer.

Before a court may award attorneys' fees, FL section 11-110(c) requires the court to consider "the financial resources and financial needs of both parties." Moreover, when making its award, "the court should consider and articulate the parties' resources and needs." *Ridgeway v. Ridgeway*, 171 Md. App. 373, 386 (2006).

Here, the trial court ordered Husband to pay \$20,000 toward Wife's attorneys' fees, which totaled approximately \$50,000. In its memorandum opinion, the court stated that it had "considered the necessary factors" for awarding fees and discussed the parties' justifications in bringing and defending the action. In particular, the court pointed out that there was no justification for Husband's allegations that Wife had stolen money during the course of the marriage, but Husband had pursued that theory nevertheless, causing Wife to incur additional attorneys' fees to defend herself against it. The court was justified in awarding attorneys' fees to Wife.

And, as the court's assessment of the parties' property makes clear, Husband has at his disposal money in his 401(k) and his portion of the equity value of the marital home,

which he now owns. Under the circumstances, the court did not err in concluding that Husband would be able to pay \$20,000 of Wife's attorneys' fees.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED SOLELY AS TO THE DIVISION OF HUSBAND'S 401(k) ACCOUNT AND REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY THE APPELLEE.