Circuit Court for Prince George's County
Case No. CAD19-30975

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1279

September Term, 2021

ROBERT WILLIAMS

v.

ERYKA WILLIAMS

Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: May 24, 2022

This appeal arises from a divorce action in the Circuit Court for Prince George's County. After a three-day trial, the circuit court granted the parties an absolute divorce, awarded the wife primary physical custody of the parties' two children, established the husband's child support obligation, granted the wife use and possession of the family home, distributed certain marital property, granted the wife a monetary award, and ordered the husband to pay a portion of the attorneys' fees incurred by the wife.

The husband did not appeal to this Court within 30 days after the entry of judgment. Instead, 29 days after the entry of judgment, the husband filed a motion under Maryland Rule 2-535(a), asking the court to reconsider various rulings. The circuit court denied his motion to revise the judgment. Thereafter, the husband noted this appeal.

For the reasons set forth in this opinion, we affirm the order denying the husband's motion to revise the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Marriage and Its Demise

Robert Williams ("Husband") and Eryka Williams ("Wife") married each other in November 2014. Their first child was born in September 2016 and their second child was born in May 2019. Husband also has one minor child from a prior relationship, who lived primarily with the parties from the beginning of their marriage until June 2019.

Throughout the marriage, Husband worked as a technician for Verizon and Wife worked as a human resources partner for Prince George's County Public Schools. In 2015, the parties purchased a family home in Upper Marlboro.

On August 28, 2019, Wife filed a petition for protection from domestic violence. She alleged that, on that date, Husband assaulted her by using his head to push her backwards and pin her against a wall. The district court issued a temporary protective order against Husband. After the incident, Wife continued to reside at the marital home but the two spouses began sleeping in separate rooms.

On September 20, 2019, Wife filed a complaint for divorce in the Circuit Court for Prince George's County. Wife alleged that, throughout the marriage, Husband verbally abused her, drank alcohol excessively, and squandered marital assets. She alleged that, after the assault on August 28, 2019, there was no reasonable expectation of reconciliation between the parties. Wife asked the court to grant an absolute divorce (or, in the alternative, limited divorce) on grounds of constructive desertion, excessively vicious conduct, or cruelty of treatment.

In her complaint, Wife requested primary physical custody of the two children, joint legal custody, and tie-breaking authority. Wife asked the court to order Husband to pay child support, both pendente lite and permanently. Wife requested exclusive use and possession of the family home, the equitable distribution of marital property, a monetary award, and an order requiring Husband to pay attorneys' fees and expenses that she incurred in pursuing her claims.

On October 13, 2019, another altercation occurred between the parties at their home. According to Wife, Husband entered her bathroom as she was getting the children ready for bed. She claims that he began yelling at her, accusing her of abusing one the

children. Within two days after that incident, Wife moved out of the marital home, taking the two children with her.

On November 6, 2019, Husband filed an answer and counterclaim for divorce. Husband sought an absolute divorce (or, in the alternative, a limited divorce) on the grounds of desertion, constructive desertion, cruelty of treatment, or a 12-month separation. Husband requested sole physical custody of the children, either sole legal custody of the children or joint legal custody with tie-breaking authority, child support, alimony, use and possession of the family home, an equitable distribution of marital property, a monetary award, and attorneys' fees.

B. Circumstances During the Period of Separation

After the separation, Husband continued to reside at the marital home. Wife lived with her parents for several months before finding her own apartment. The children lived primarily with Wife, and Husband had access to the children every other weekend.

During the final months of 2019, the parties paid household expenses from a joint checking account in which both parties deposited their paychecks. By the end of 2019, they closed their joint checking account. Wife continued to make monthly mortgage payments. Husband continued to pay for daycare and health insurance for the children.

On February 26, 2020, the parties appeared in circuit court for a pendente lite hearing. During the hearing, the parties reached an agreement on certain issues pending the resolution of their case. They agreed that Wife would have primary physical custody of the two children and that Husband would have access on alternating weekends and on

one afternoon every other week. The parties agreed that Husband would continue to pay for daycare for the two children and that he would give Wife $500 per month "to be paid toward the mortgage" or "expenses of the marital home." The parties agreed to defer all other issues, including "child support, alimony, attorneys' fees, and use and possession of the marital home," until trial.[1]

After the pendente lite hearing, Husband made one $500 payment to Wife for March 2020, but those payments did not continue. Husband continued to pay for daycare until the end of March 2020, when the daycare provider stopped operating during the pandemic. The parties obtained forbearance on mortgage payments from March 2020 through August 2020 and then Wife resumed making the mortgage payments. In August 2020, Wife enrolled the older child in a private school. Husband paid $200 for the application fee. Wife began paying the monthly tuition from her separate funds. From August 2020 through October 2020, Husband made four other payments to Wife in the total amount of $1,800. He labeled those payments as "child support."

C. Circuit Court's Rulings on All Claims

On November 16, 17, and 18, 2020, the circuit court held an evidentiary hearing on all claims in the case. The parties and witnesses participated through Zoom. The

[1] During the hearing, both parties expressed assent on the record to the terms of the pendente lite agreement. Afterwards, counsel for Wife drafted a proposed order, but Husband refused to sign it, asserting that the document included additional terms that were not part of their agreement. Wife requested that the court enter her proposed order as a pendente lite order, while Husband requested that the court issue an order incorporating the transcript from the hearing. The court declined both parties' requests.

court heard testimony from the parties, various family members and friends, and a real estate appraiser retained by Husband.

After closing arguments, the court took all matters under advisement. The court directed each party to submit proposed findings of fact and conclusions of law, along with the child support obligation worksheets required by Md. Rule 9-206(b). The court directed the parties to file those submissions on or before December 11, 2020, about three weeks after the final day of the hearing.

On December 11, 2020, counsel for Wife filed proposed findings of fact and conclusions of law, along with proposed child support obligations worksheets. Counsel for Husband did not submit written proposals, either before or after the deadline set by the court. On January 13, 2020, the court signed a memorandum opinion and judgment of absolute divorce, which largely adopted the proposals made by Wife.

In its findings of fact, the court attributed the demise of the marriage to Husband's conduct. The court stated that Husband "demeaned, . . . criticized[,] and belittled" Wife during the last two years of the marriage and "became physically abusive" toward her in August 2019. The court found that "[t]he parties separated on October 13, 2019, due to [Husband's] commission of domestic abuse toward [Wife] that same day[.]"

The court declined to award alimony, stating that "[n]either party sought at trial an award of alimony." The court ordered that each party should retain all retirement and investment accounts in the party's own name and that Wife should retain custodial accounts held for the benefit of the children. The court awarded two items of personal

property, a personal computer and a lawn mower, to Husband. The court awarded two vehicles, a Honda Cross Tour EXL and a Volkswagen SUV, to Wife.

The opinion included discussion of the considerations set forth in section 8-205 of the Family Law Article of the Maryland Code to determine the amount and method of payment of a monetary award. The court granted a monetary award to Wife in the amount of $46,447.53. The amount represented the sum of: the amount that Wife had paid from pre-marital funds toward the down payment for the marital home, one-half of the outstanding balance resulting from the mortgage forbearance during 2020, one-half of the mortgage payments made since the separation, and one-half of the homeowners association fees incurred since the separation. The court said that this award was "to be paid from [Husband's] share of the equity of the marital home[.]"

The court granted Wife exclusive use and possession of the family home and ordered Husband to vacate the home by January 15, 2021, two days after the court issued its order. The court awarded the marital home to Wife as her separate property. The court ordered Husband to execute a quitclaim deed transferring all of his interest in the marital home to Wife within 10 days of the judgment. The court directed Wife to refinance the mortgage solely in her own name within 120 days of the judgment.

The court determined the fair market value of the marital home to be $526,033, with a mortgage balance of $455,271.71, resulting in a net value of $70,761.29. The court ordered that the "equity of the [m]arital [h]ome shall be equally divided by the parties[.]" The court stated that Husband's "share shall be applied toward" the monetary

award owed to Wife. The court stated that "[a]ny express funds which [Husband] may be entitled to shall be credited towards the payment of attorney's fees awarded" to Wife.

The court granted the parties joint legal custody of the two children and gave Wife tie-breaking authority. The court also granted Wife primary physical custody of the two children. The court granted Husband access on alternating weekends, certain holidays, and for two non-consecutive weeks during the summer.

The court concluded that, because the parties had paid expenses from joint accounts until the end of 2019, Husband should pay child support retroactive to January 2020. For the purpose of determining child support, the court found Husband's income to be $6,674 per month ($80,099 per year), consistent with the annual income shown on his 2019 W-2 form. Wife had testified that she received a salary increase in July 2020. The court found Wife's income to be $9,343 per month ($112,116 per year) from January 2020 through the end of July 2020. The court found her income to be $9,833 per month ($117,996 per year) from the beginning of August 2020 and thereafter.

Extrapolating from the child support guidelines, the court determined Husband's child support obligation over four different time periods: $268 per month from January 2020 to the end of March 2020, the period in which he was paying the daycare expenses for the two children; $1,154 per month from April 2020 to the end of July 2020, the period in which the children were not in daycare; $1,499 per month from August 2020, when Wife began paying for private school for the older child, until the end of September 2020; and $1,038 per month beginning in October 2020 and for all subsequent months.

The final calculation used the same income and expense figures from the previous months, but used the shared physical custody formula set forth in revised child support guidelines that took effect on October 1, 2020. *See* 2020 Md. Laws ch. 143.

Using those figures, the court found that Husband owed child support arrearages in the total amount of $11,432. The court declined to give him credit against his child support obligations for $2,500 of total payments that he made to Wife since March 2020. The court reasoned that, under the pendente lite agreement, Husband was obligated to pay $500 per month for "mortgage and household bills," resulting in a total obligation of $4,500 since March 2020. The court concluded: "Without any overpayments, no payments remain to be attributed to [Husband's] child support arrearage."

In addition, the court ordered Husband to pay $15,000 to Wife within 180 days as contribution toward the attorneys' fees that she incurred in the litigation.

D. Post-Judgment Matters

The circuit court entered its judgment on January 19, 2021. Within 10 days after the entry of judgment, Husband filed a notice for in banc review under Md. Rule 2-551, seeking appellate review before a panel of three circuit court judges.[2]

[2] Generally, parties have two options for obtaining appellate review of a circuit court's judgment. A party may file a notice of appeal to the Court of Special Appeals within 30 days after the entry of judgment. *See* Md. Rule 8-202(a). Alternatively, a party may file a notice for in banc review within 10 days after the entry of judgment. *See* Md. Rule 2-551(b). In a proceeding for in banc review, the judgment is subject to appellate review by a panel of three circuit court judges. *See, e.g.*, *Hartford Fire Ins. Co. v. Estate of Sanders*, 232 Md. App. 24, 37 (2017). The party who seeks and obtains in banc review has no further right of appeal to the Court of Special Appeals. *See* Md. Rule 2-551(h). The decision of the in banc panel "'is conclusive, final, and non-appealable by the party

In addition, 29 days after the entry of judgment, on February 17, 2021, Husband filed a motion for reconsideration under Md. Rule 2-535(a). Husband did not file a notice of appeal to the Court of Special Appeals within 30 days after the entry of judgment.

In his motion for reconsideration, Husband raised nine, separately-numbered issues. He argued the court erred: (1) by relying on a tax assessment to determine the value of the marital home; (2) by failing to find that Wife's pension and "Thrift Savings Account 403B" were marital property; (3) by granting an absolute divorce without stating the grounds for divorce and without sufficient corroboration for the grounds alleged by Wife; (4) by giving Wife credit for mortgage payments that she made from marital assets; (5) by ordering him to pay Wife's attorneys' fees without explaining the grounds for its decision; (6) by failing to consider the requisite factors for evaluating the claim for monetary award; (7) by failing to explain the grounds for awarding use and possession of the family home to Wife; (8) by awarding Wife the Volkswagen Passat SUV that he acquired during the separation; and (9) by failing to include bonuses received by Wife as part of her income and by failing to include expenses related to Husband's other minor child when determining his child support obligation.

Wife opposed the motion for reconsideration, arguing that Husband's various

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who sought the in banc review, and as to that party a reservation of points or questions for consideration by a court in banc is a substitute for an appeal to the Court of Special Appeals.'" *Remson v. Krausen*, 206 Md. App. 53, 60 (2012) (quoting *Montgomery County v. McNeece*, 311 Md. 194, 198 (1987)).

challenges lacked merit. Nevertheless, Wife stated that she did not object to the court revising the judgment to include an express statement that the court was granting divorce "on the grounds of Constructive Desertion, Abuse and/or Cruelty." Wife further stated that she did not object to the court revising its opinion to clarify the basis for the award of attorneys' fees. In addition, Wife stated that she "consent[ed] to [Husband] retaining the Volkswagen Passat SUV in his possession."

Meanwhile, the administrative judge of the circuit court designated a three-judge panel of circuit court judges and scheduled a hearing for in banc review. Under Md. Rule 2-551(c), Husband was required to "file a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument" within 30 days after filing the notice for in banc review. He failed to do so. Several months after Husband had applied for in banc review, Wife moved to dismiss the in banc proceedings based on his failure to file the required memorandum. The administrative judge granted Wife's motion to dismiss the in banc proceedings.

Several months later, on October 14, 2021, the trial judge signed and entered an order denying Husband's motion to revise the judgment. One week later, Husband filed a notice of appeal to this Court.[3]

[3] This appeal from the denial of Husband's motion to revise the judgment is properly before this Court notwithstanding the earlier dismissal of the in banc proceedings that he initiated. Generally, once a party seeks and obtains in banc review, that party has no further right to appellate review in this Court. *Bethesda Title & Escrow, LLC v. Gochnour*, 197 Md. App. 450, 460-61 (2011). Nevertheless, the decision of the in banc panel is conclusive on the party who sought in banc review only if an in banc panel actually makes a decision on a point reserved for its review. *Remson v. Krausen*, 206

DISCUSSION

In this appeal, Husband asks this Court to set aside the judgment and to remand this case to the circuit court for further proceedings. Husband makes various challenges to the circuit court's rulings on the claims for divorce, alimony, division of marital property, the monetary award, child support, and attorneys' fees. In his appellate brief, Husband presents the following questions, which we quote verbatim:

> [1.] Did the circuit court failed to make sufficient findings of facts or conclusions of Law, in The Memorandum Opinion and Judgment of Absolute Divorce, signed on January 13, 2021?
>
> [2.] Did the circuit court award of child support and marital property inconsistent [] With a range of awards that are normally given?
>
> [3.] Did the circuit court violate Petitionary Rights, when it made the decision based only on legal conclusions without . . . careful analysis of the law and evidence?

In her appellate brief, Wife argues that there is no basis to disturb any of the circuit court's rulings. Moreover, Wife argues that, in purporting to make a direct challenge to the judgment, Husband overlooks the nature of the present appeal. As Wife points out, Husband did not appeal from the final judgment. He filed his only notice of appeal from the order denying his motion to revise the judgment under Md. Rule 2-535(a). According to Wife, therefore, this Court's only task is to determine whether the circuit court abused its discretion when it denied Husband's motion to revise.

Md. App. 53, 69 (2012) (citing *Merritts v. Merritts*, 299 Md. 521, 526 (1984)). If a party merely initiates in banc proceedings but later abandons those proceedings before any hearing or decision by the in banc panel, the party is not barred from further appellate review. *See State Roads Comm'n of Maryland v. Smith*, 224 Md. 537, 540-41 (1961).

The record shows that Wife has correctly described the nature of this appeal. The circuit court entered a final judgment resolving all claims in the case on January 19, 2021. Husband did not file a notice of appeal to this Court within 30 days after the entry of judgment. Instead, 29 days after the entry of judgment, on February 17, 2021, Husband filed a motion to revise the judgment under Md. Rule 2-535(a). The circuit court eventually denied his motion in an order entered on October 14, 2021. Within 30 days after the entry of that order, on October 21, 2021, Husband filed his only notice of appeal to this Court.

Generally, a party may appeal from a final judgment entered in a civil case by the circuit court. Md. Code (1974, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article. In cases tried by the court without a jury, this Court "will review the case on both the law and the evidence[,]" and it "will not set aside the judgment of the trial court on the evidence unless clearly erroneous." Md. Rule 8-131(c). Subject to only a few exceptions, a notice of appeal must be filed within 30 days after entry of judgment. Md. Rule 8-202(a). Certain timely post-judgment motions, including a motion to alter or amend a judgment filed within 10 days of the entry of judgment under Md. Rule 2-534, will extend the deadline for appealing from the judgment until 30 days after the entry of an order disposing of the post-judgment motion. *See* Md. Rule 8-202(c).

By contrast, when a party files a motion to revise a judgment more than 10 days (and fewer than 30 days) after the entry of judgment, the motion does not extend the period for filing a notice of appeal. *See, e.g.*, *Blake v. Blake*, 341 Md. 326, 331 (1996);

Johnson v. Francis, 239 Md. App. 530, 541 (2018) (citing *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997)). When a party files a motion to revise under Md. Rule 2-535(a) more than 10 days after the entry of judgment and fails to note an appeal from the underlying judgment, the revisory motion "acts as a substitute for an appeal[.]" *Pickett v. Noba, Inc.*, 122 Md. App. 566, 571 (1998).

An appeal from an order denying a motion to revise a judgment under Rule 2-535(a) "does not serve as an appeal from the underlying judgment[.]" *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999). In such an appeal, "the propriety of the underlying judgment" is no longer before the appellate court. *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723 (2002). The appeal from the denial of the motion to revise "addresses only the issues generated by the revisory motion." *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010). The scope of appellate review is limited to the issue of "whether the trial court abused its discretion in declining to revise the judgment.'" *Bennett v. State Dep't of Assessments & Taxation*, 171 Md. App. 197, 203 (2006) (quoting *Green v. Brooks*, 125 Md. App. 349, 362 (1999)). "'Except to the extent that they are subsumed in [the question whether the trial court abused its discretion in denying the motion for reconsideration], the merits of the judgment itself are not open to direct attack.'" *Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) (quoting *Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 241 (1998)).

This Court will not reverse a trial court's decision to decline to exercise its revisory power "unless there is a grave reason for doing so." *Hossainkhail v.*

Gebrehiwot, 143 Md. App. at 724. In this context, the issue before the appellate court is not whether the trial court "was right or wrong" in denying the motion to revise, but whether the decision to deny the motion to revise "was *so far wrong* . . . as to constitute a clear abuse of discretion." *Stuples v. Baltimore City Police Dep't*, 119 Md. App. at 232 (emphasis in original). "The fact that an error may have been or was committed and not corrected by a trial court on a motion to revise is not necessarily an abuse of discretion." *Wormwood v. Batching Sys., Inc.*, 124 Md. App. at 700. The "nature of the error, the diligence of the parties, and all surrounding facts and circumstances are relevant" to the court's decision on whether to exercise its revisory powers. *Id.* This standard of review "makes generous allowances for the trial court's reasoning." *Das v. Das*, 133 Md. App. 1, 15 (2000). "It is hard to imagine a more deferential standard than this one." *Estate of Vess*, 234 Md. App. 173, 205 (2017).

In his appellate brief, Husband makes many arguments that were not included in the motion to revise the judgment.[4] Because Husband has appealed only from the order denying his motion to revise the judgment, the only issues properly before this Court are

[4] In his brief, Husband complains: that Wife did not obtain permission from "Church Elders" before seeking divorce; that the court failed to determine that Wife's Master of Business Administration degree and "Ameritrade Account IRA" are marital property; that the court did not determine the value of all marital property; that the court credited Wife for pre-marital funds that she paid toward the down payment on the marital home where no pre-nuptial agreement existed; that the court failed to consider the effects of forbearance rules and stay-at-home restrictions during the pandemic; that the court failed to give Husband credit for his payment of daycare expenses and household expenses when calculating his child support arrearages; and that the court denied alimony without analyzing the relevant factors.

the issues that Husband raised both in his motion to revise the judgment and in this appeal. *See Sydnor v. Hathaway*, 228 Md. App. at 708. The circuit court "could not have abused its discretion" by refusing to credit "arguments that were not made to it" in the motion for reconsideration. *Id.* at 709.

In one sentence of the "Statement of Case" section of his brief, Husband appears to allude to one of the arguments made in his motion to revise the judgment concerning the monetary award.[5] This mere assertion is insufficient to raise any issue for appellate review. An appellate brief must contain "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(6). Arguments that are "not presented with particularity will not be considered on appeal." *Ochoa v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 315, 328 (2013) (quotation marks omitted). Because Husband's appellate brief provides only a "bald and undeveloped allegation" of error without any supporting argument on the issue, this issue is not properly presented for our review. *HNS Dev., LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459 (2012).

At oral argument, counsel for Husband attempted to argue that the court erred in relying on a tax assessment to determine the value of the home. Husband previously made this argument in the motion for reconsideration. Nevertheless, because this argument was not included in Husband's appellate brief but was raised to this Court for the first time at oral argument, the argument is not properly presented for our review. *See*

[5] The sentence reads as follows: "The court has allowed [Wife] to double-dip under 'Credits for Home' and has prevented the allow an equitable distribution of marital assets, under the terms and conditions of the Pendant [sic] Lite Agreement."

Uninsured Employers' Fund v. Danner, 388 Md. 649, 664 n.15 (2005).

Under a generous reading of Husband's brief, we can identify only four issues that were adequately raised in his appellate brief and that were previously raised in his motion to revise the judgment. Husband argues that the circuit court erred or abused its discretion by: (1) awarding his Volkswagen Passat SUV to Wife; (2) granting an absolute divorce without stating the grounds for the divorce and without sufficient corroborating evidence; (3) failing to include bonuses received by Wife as part of her income for the purpose of determining child support; and (4) ordering Husband to pay $15,000 of attorneys' fees incurred by Wife without explaining the grounds for its decision. With respect to each of these issues, we see no clear abuse of discretion in the trial court's decision to decline to revise its judgment.[6]

A. Award of Vehicle

In addressing the division of marital property, the court stated that Wife "shall be awarded the Honda Cross Tour EXL," which was titled in her name, and that Wife "shall be awarded the Volkswag[e]n SUV," which was titled in Husband's name.

In his motion to revise the judgment, Husband asserted that he "leased the

[6] In her brief, Wife asserts that counsel for Husband did not confer with opposing counsel regarding the contents of the record extract, as required by Md. Rule 8-501(d). In an appendix to her brief, Wife produced copies of the memorandum opinion and judgment of absolute divorce, the motion to revise the judgment, and the response in opposition to the motion to revise the judgment. These documents were not included in the record extract compiled by Husband. We agree with Wife that these materials are "reasonably necessary for the determination of the questions presented by the appeal[.]" Md. Rule 8-501(c). Accordingly, we shall assess the cost of producing these omitted materials to Husband. *See McAllister v. McAllister*, 218 Md. App. 386, 399 (2014).

Volkswagen Passat SUV in May of 2020," several months after the parties had separated. Citing *Alston v. Alston*, 331 Md. 496 (1993), he argued that it was "inequitable" and impermissible for the court to make an award of property that he acquired after the separation without any contribution from Wife. In opposition to his motion, Wife stated: "[Wife] consents to [Husband] retaining the Volkswagen Passat SUV in his possession."

In his appellate brief, Husband reiterates his argument that the court should not have awarded the Volkswagen Passat SUV to Wife. In her brief, Wife argues that, because she already "consent[ed] to [Husband] retaining the vehicle[,] [t]his issue has now been resolved."

Under the circumstances, we see no reason why the circuit court was required to revise its judgment with respect to the disposition of the Volkswagen Passat SUV. Revising that aspect of the judgment would have little practical consequence for either party. The requested revision would merely provide additional confirmation of Wife's express agreement that Husband should retain the vehicle. The trial court did not act outside the bounds of its wide discretion when it declined to revise this aspect of the judgment.

B. Grounds for Absolute Divorce

"In Maryland, the permissible grounds for divorce are governed by statute." *Flanagan v. Flanagan*, 181 Md. App. 492, 509 (2008). The circuit court is authorized to grant an absolute divorce on any of the grounds set forth in Maryland Code (1984, 2019 Repl. Vol., 2021 Supp.), § 7-103(a) of the Family Law Article ("FL").

In her complaint, Wife requested an absolute divorce on the grounds of constructive desertion (FL § 7-103(a)(2)), excessively vicious conduct (FL § 7-103(a)(7)), or cruelty of treatment (FL § 7-103(a)(6)) by Husband. In his pleadings, Husband requested an absolute divorce on the grounds of desertion or constructive desertion (FL § 7-103(a)(2)) by Wife; cruelty of treatment (FL § 7-103(a)(6)) by Wife; or a continuous 12-month separation (FL § 7-103(a)(4)).[7] Both parties admitted that there was no reasonable expectation of reconciliation.

In its memorandum opinion, the circuit court adopted Wife's allegations that Husband's conduct was to blame for the demise of the marriage. As Husband has observed, however, the court did not expressly state the grounds for the absolute divorce.

The opinion stated that, during the marriage, Husband was "cold and distant" toward Wife. Husband, the court wrote, "had an explosive temperament" that "worsened when he consumed alcohol." During the final two years of the marriage, the court said, Husband "increasingly began staying out late into the middle of the night and was not available to [Wife] or the children emotionally, physically or otherwise." The court credited Wife's testimony that Husband "did not treat her with love or respect much of

[7] FL § 7-103(a)(4) authorizes the court to grant an absolute divorce based on a "12-month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce[.]" The separation began on or around October 15, 2019. Husband applied for divorce just three weeks later, on November 6, 2019. Because the hearing occurred more than 12 months after the start of the separation, the parties could have made an oral amendment to their pleadings during the hearing to add the 12-month separation as a ground for the divorce. *See* FL § 7-103(g). The record does not indicate that either party made such an amendment.

the time[] or appreciate the fact that she was the mother of his children." According to the court, Husband "demeaned" her, "criticized" her, and "belittled her, even in the presence of the children[.]" In addition, the court said that Husband's "alcohol use escalated to the point where he started hiding bottles of alcohol" in odd places and making "nearly daily liquor store runs[.]"

The court found that Husband "became physically abusive toward [Wife]" in August 2019. The court stated that, during that incident, Husband "pressed his head against [Wife] so hard she stumbled back." The court also stated that "a second physical altercation ensued" on October 13, 2019. The court credited Wife's testimony that, after that incident, she was "afraid for her safety as well as the wellbeing of the children" and felt that she "had no choice but to flee the marital home" with the children. The court concluded that "[t]he parties separated on October 13, 2019, due to [Husband's] commission of domestic abuse toward [Wife] that same day[.]"

Elsewhere in its opinion, the court noted that Husband "constructively compelled [Wife] to leave with the children due to his domestic abuse." In discussing the monetary award, the court stated that Wife "was compelled to leave the marital home amidst [Husband's] aggression and two incidents of physical abuse." "Moreover," the court wrote, Husband "was staying out into the early hours of the morning, was rude and disrespectful to [Wife] and did not appreciate her for the last two years of their marriage."

On appeal, Wife acknowledges that the opinion and judgment include no express statement of the grounds for the divorce. Wife nevertheless contends that the court's

findings of fact were, at a minimum, sufficient to sustain the grant an absolute divorce on the ground of cruelty of treatment. Under FL § 7-103(a)(6), the court may grant an absolute divorce based on "cruelty of treatment toward the complaining party . . . , if there is no reasonable expectation of reconciliation" between the parties.

We agree that the court's written findings were sufficient to sustain a grant of divorce on the ground of cruelty of treatment. Cruelty of treatment as a ground for divorce "'includes any conduct on the part of the husband or wife which is calculated to seriously impair the health or permanently destroy the happiness of the other.'" *Frazelle-Foster v. Foster,* 250 Md. App. 52, 78 (2021) (quoting *Scheinin v. Scheinin,* 200 Md. 282, 289 (1952)). Evidence of "ongoing verbal and psychological abuse" inflicted by the other spouse—such as testimony that the other spouse "belittled and humiliated" the complaining spouse, "made [the complaining spouse] feel worthless," and "intimidated and frightened" the complaining spouse—may amount to cruelty of treatment. *Frazelle-Foster v. Foster,* 250 Md. App. at 83. Contrary to Husband's suggestions, FL § 7-103(a)(6) includes no requirement that the complaining spouse demonstrate a pattern of violence throughout the marriage, or wait 12 months before applying for divorce, or prove that the other spouse has been sentenced to incarceration for a criminal conviction.

Husband contends that Wife's allegations of mistreatment were not sufficiently corroborated by third-party witnesses. Wife disagrees, asserting that various family members testified about Husband's alcohol consumption, his temperament, and Wife's distressed emotional state when she moved out of the family home in October 2019. As

Wife points out, Maryland courts have held that the statutory requirement of corroboration does not require testimony from witnesses who observed the alleged conduct first-hand, but only requires evidence that tends to support the allegations of the complaining spouse. *See Das v. Das*, 133 Md. App. 1, 39 (2000). Moreover, where the circumstances indicate that there is little likelihood of collusion between the parties, "only slight corroboration is required." *Id.*

We agree with Wife that the evidence in this case was sufficient to satisfy the statutory requirement of corroboration for the grounds of divorce. More to the point, the statutory requirement of corroboration no longer exists. Formerly, Maryland's divorce statute provided: "A court may not enter a decree of divorce on the uncorroborated testimony of the party who is seeking the divorce." Md. Code (1984, 2012 Repl. Vol.), § 7-101(b) of the Family Law Article. Effective October 1, 2016, the General Assembly eliminated this requirement. 2016 Md. Laws ch. 379; *see also Frazelle-Foster v. Foster*, 250 Md. App. at 77 n.19. Thus, at the time of this divorce action, the court was authorized to grant an absolute divorce even if Wife lacked corroboration for her testimony of cruel treatment.

Although the court did not expressly state the grounds for divorce, any error in failing to do so is harmless under the circumstances. In *Flanagan v. Flanagan*, 181 Md. App. 492 (2008), this Court held that a trial court had erred in granting an absolute divorce based on an erroneous finding of a voluntary separation. *Id.* at 515. This Court nonetheless concluded that this error was harmless because both parties had requested an

absolute divorce, the evidence was sufficient to support an alternative ground for divorce alleged by one party, and the trial court made factual findings consistent with the alternative ground alleged by that party. *Id.* at 515-18. Because those same conditions are present here, we conclude that Husband sustained no substantial prejudice from the court's failure to specify the grounds for divorce.

Here, the memorandum opinion made it entirely clear that the court had accepted Wife's allegations and rejected Husband's allegations. The court's findings supported the grant of absolute divorce on the ground of cruelty of treatment, and those findings were not clearly erroneous. Accordingly, the court was not required to revise its judgment to include an express statement of the grounds for divorce.

C. Child Support

In her complaint, Wife requested that the court establish Husband's child support obligation both pendente lite (i.e., for the period between the filing of the complaint and the entry of judgment) and permanently. The parties later reached a pendente lite agreement on certain issues, but they did not reach an agreement on the issue of child support.

At the merits hearing in November 2020, Wife said that her "current salary" was $118,000 per year. She explained that she had recently received a raise and that her annual salary was $112,000 before July 2020. In addition, Wife mentioned that she received a "one-time bonus" of $5,000, as compensation for finishing part of her professional education.

Wife introduced into evidence copies of her bi-weekly paystubs from 2020. Those paystubs show that she received gross pay of $4,312.23 every two weeks (about $112,117.98 per year) until June 19, 2020; and gross pay of $4,563.38 every two weeks (about $118,647.88 per year) thereafter. Her paystubs also show that she received a $5,000 bonus for "Natl Certification" (presumably meaning "National Certification") during her first pay period in June 2020.

The circuit court awarded no child support before January 2020. For the purpose of determining child support, the court found Wife's income to be $9,343 per month ($112,116 per year) from January 2020 through the end of July 2020. The court found her income to be $9,833 per month ($117,996 per year) from the beginning of August 2020 and in all subsequent months.

In his motion to revise the judgment, Husband asserted that the court had failed to include Wife's bonuses as part of her income. Husband asserted that Wife testified that she had received $5,000 bonuses in both June 2019 and June 2020. He argued that Wife's actual income was $10,250 per month (or $123,000 per year) throughout 2020.

Opposing the motion to revise, Wife asserted that her "salary did not increase to $118,000 until July of 2020." She also asserted that she had "received a bonus of $2,000 in 2019, not $5,000."[8]

[8] The 2019 W-2 form that Wife offered into evidence reflects gross pay of $114,640.97 in 2019. This number is consistent with her claim that she received a $2,000 bonus, with base salary of around $112,000 in 2019.

The circuit court declined to revise its child support determination. On appeal, Husband again argues that the court erred by not counting Wife's $5,000 bonus in its child support calculations.

We agree that the circuit court should have included the $5,000 bonus that Wife received in June 2020 as part of her income, at least when determining the amount of child support that Husband owed during 2020. As used in the child support statute, "'[i]ncome' means . . . actual income of a parent, if the parent is employed to full capacity[.]" FL § 12-201(i)(1). "'Actual income' includes" not only "salaries" (FL § 12-201(b)(3)(i)) but also "bonuses" (FL § 12-201(b)(3)(iv)) received by a parent. Accordingly, bonuses actually received by a parent should be counted as part of a parent's actual income for child support purposes. *See Johnson v. Johnson*, 152 Md. App. 609, 619-20 (2003).[9]

Yet as mentioned previously, "it is not necessarily an abuse of discretion to fail to correct an error" when deciding a motion to revise a judgment. *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 701 (1999). The court may consider "[t]he nature of the error, the diligence of the parties, and all surrounding facts and circumstances" in deciding whether the error should be corrected. *Id.* at 700.

In his motion to the revise the judgment and in this appeal, Husband has overstated the magnitude of the error. Contrary to his assertions, Wife did not earn

[9] When a parent's income is significantly higher in part of the year than it is in others, the income ordinarily should be "annualized" or "averaged out" over those periods. *See Lorincz v. Lorincz*, 183 Md. App. 312, 329 (2008).

$118,000 in 2020, plus a $5,000 bonus, for total income of $123,000. For the first half of 2020, her rate of pay was the equivalent of $112,117.98 per year. Her rate of pay did not increase to the equivalent of $118,647.88 per year until June 20, 2020. She was on pace to earn roughly $120,000 during the 2020 calendar year (not $123,000, as Husband has asserted).

Moreover, it is incorrect to suggest that Wife's 2020 bonus must be included in her income after 2020. Wife testified that she received the $5,000 bonus as a one-time reward for completing part of her professional education. Although the court should have counted the bonus when determining how much child support Husband owed for 2020, the court did not need to include that bonus when determining his future obligations. The amount that the court used for Wife's income ($9,833 per month, or $117,996 per year) is an accurate reflection of her income as of January 2021.[10]

In deciding whether to revise its child support determination, the circuit court was entitled to consider the diligence of the parties on that issue. At the hearing, Wife had produced updated documentation on her income throughout 2020, while Husband relied on documentation of his income from 2019. After the hearing, counsel for Wife heeded the court's instructions to submit proposed findings of fact along with child support

[10] For all relevant time periods, the parties' combined monthly income exceeded the highest amount ($15,000) set forth in schedule of basic child support obligations. *See* FL § 12-204(e). Consequently, the amount of child support was entrusted to the discretion of the court. FL § 12-204(d). Although the court made its determinations using an extrapolation from the schedule in the guidelines, the court was not strictly required to use that method. *See Malin v. Mininberg*, 153 Md. App. 358, 410 (2003).

obligations worksheets. Although the court directed Husband to do the same, and although he was required to file a worksheet under Md. Rule 9-206(b), he neglected to do so. Even in his motion for reconsideration, Husband merely asserted that the court's determination of Wife's income was incorrect, without explaining how the error affected the ultimate result or providing any alternative calculation of child support.[11]

Overall, we perceive no abuse of discretion in the decision to decline to revise the judgment on the issue of child support. At worst, the court miscalculated Wife's 2020 income by a small percentage, causing Husband's monthly child support obligations to be slightly greater than they should have been during 2020 (but not going forward in 2021). Under the circumstances, the court could reasonably conclude that this minor error was not significant enough to merit an after-the-fact revision.

D. Attorneys' Fees

In her complaint for divorce and other relief, Wife requested an order requiring Husband to pay reasonable attorneys' fees and other expenses that she incurred in the proceedings. At the merits hearing, Wife introduced into evidence a series of invoices showing that she had incurred more than $40,000 in attorneys' fees and related expenses

[11] In fact, the child support calculations that Wife submitted (and that the court adopted) are somewhat more favorable to Husband than they were required to be. Those calculations allowed Husband to take advantage of the revised shared physical custody formula set forth in the updated child support guidelines that first took effect in October 2020. *See* FL § 12-204(m). The enacting legislation states that this revised formula "shall apply only to cases filed on or after" the Act's effective date of October 1, 2020. 2020 Md. Laws ch. 142, § 2. By using this revised formula, the court decreased Husband's child support obligation from $1,499 in August and September 2020 to $1,038 beginning in October 2020.

as of July 2020.

Ultimately, Wife prevailed on her claims for absolute divorce, equitable division of marital property, monetary award, custody, and child support. In addition, the court ordered Husband to pay $15,000 to Wife as a contribution toward her attorneys' fees. In this regard, the opinion stated: "[Wife] incurred attorneys' fees having to defend this matter while also shouldering the financial obligations for the parties. [Wife] is entitled to an award of fees."

Moving to revise the judgment, Husband asserted that the award of attorneys' fees was "inequitable" and complained that the court did not explain the factors that it considered for the award of attorneys' fees. Opposing the motion to revise, Wife argued that the opinion "seemingly sets forth the basis for an award of attorneys' fees." Nevertheless, she stated that she "d[id] not object" to the court revising the judgment "to clarify the basis for the award of attorneys' fees."

On appeal, Husband reiterates his challenge to the award of $15,000 in attorneys' fees. In proceedings for divorce or for the disposition of marital property upon divorce, 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" after considering "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding." FL § 7-107(b)-(c); FL § 8-214(b)-(c). Similarly, in proceedings for child custody or child support, the court "may award costs and counsel fees" after considering "(1) the financial status of each

party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b).

Generally, "[d]ecisions concerning the award of counsel fees . . . will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Petrini v. Petrini*, 336 Md. 453, 468 (1994). Nevertheless, the "[c]onsideration of the statutory criteria is mandatory . . . and failure to do so constitutes legal error." *Id.* To determine whether the trial court properly exercised its discretion, appellate courts "evaluat[e] the judge's application of the statutory criteria . . . as well as the consideration of the facts of the particular case." *Id.*

In her appellate brief, Wife acknowledges that the memorandum opinion does not include any express discussion of the applicable statutory factors. According to Wife, the trial court "had already performed an attorneys' fees consideration as part of its other findings." She points out that, when awarding attorneys' fees, the trial court "does not have to recite any 'magical' words so long as its opinion, however phrased, does that which the statute requires." *Beck v. Beck*, 112 Md. App. 197, 212 (1996). She also cites *Heger v. Heger*, 184 Md. App. 83, 105 (2009), in which this Court upheld the denial of attorneys' fees where the trial court incorporated its previous discussion of the parties' financial circumstances into its analysis of the claim for attorneys' fees.

We agree that other parts of the memorandum opinion include an analysis of the parties' financial circumstances and convey the conclusion that Wife had ample justification for pursuing her claims. Nevertheless, the explanation given here for the

award of attorneys' fees is even more conclusory than the explanations provided in any of the cases cited by Wife. If this appeal were a direct appeal from the judgment, we might be inclined to vacate the award of attorneys' fees and direct the trial court to state the basis for its determination. *See Gillespie v. Gillespie*, 206 Md. App. 146, 178-79 (2012); *Flanagan v. Flanagan*, 181 Md. App. 492, 546 (2008); *Ledvinka v. Ledvinka*, 154 Md. App. 420, 432-33 (2003); *Collins v. Collins*, 144 Md. App. 395, 449 (2002).

As explained previously, however, this appeal is not an appeal from the judgment but an appeal from the denial of a motion to revise the judgment. The only question here is whether the circuit court abused its discretion in deciding not to revise its judgment by supplementing the statement of reasons for its decision. The "nature of the error" is an important factor in this exercise of discretion. *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999). The "real question" for the court was "whether justice ha[d] not been done[.]" *Id.* In this case, the court's explanation for the award of $15,000 attorneys' fees was lacking, but the award itself was not plainly unreasonable or unjust. Because this error was more technical than substantive, we are unable say that the decision not to revise this aspect of the judgment was a clear abuse of discretion. *See Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 233-34 (1998).

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS, INCLUDING THE COSTS OF PRODUCING THE APPENDIX TO THE APPELLEE'S BRIEF, TO BE PAID BY APPELLANT.