

Circuit Court for Washington County
Case No. C-21-FM-18-000933

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1311

September Term, 2019

GREGORY MARTIN JIMENEZ

v.

MICHELLE LEE LONG-JIMENEZ

Arthur,
Reed,
Friedman,

JJ.

Opinion by Reed, J.

Filed: May 18, 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.

On August 30, 2019, the Circuit Court of Washington County entered a Judgment of Absolute Divorce between Gregory Martin Jimenez (“Appellant”) and Michelle Lee Long-Jimenez (“Appellee”). Under the Circuit Court’s decree, Appellant must make rehabilitative alimony payments to Appellee for five years in the following manner: \$950 per month for the first three years; and \$650 per month in the final two years. In calculating the alimony award, the Circuit Court imputed income of \$55,000 per year to Appellant despite finding that Appellant had not voluntarily impoverished himself, and after finding that Appellant was making just over \$48,000 per year at the time of the proceeding. The Circuit Court found the imputation of income to be appropriate considering: Appellant’s prior annual earnings (substantially more than \$55,000); Appellant’s education and skills; and the likelihood of Appellant receiving a pay increase from his current position as a “management trainee” at Enterprise Rent-A-Car. Moreover, the Circuit Court included repayment of a Lowe’s credit card debt – incurred by both parties for the benefit of their family – in its alimony award calculation. Appellant timely appealed, challenging the Circuit Court’s calculation of the alimony award. In bringing his appeal, Appellant presents two questions for appellate review which we have rephrased for clarity:¹

- I. In calculating the alimony award, did the trial court err as a matter of law by imputing income to Appellant despite finding that Appellant had not voluntarily impoverished himself?

¹ Appellant’s brief presents the following questions:

1. Did the trial court err in imputing income after a finding of fact that appellant did not voluntarily impoverish himself?
2. Did the trial court err in computing alimony by including repayment of marital debt as part of the alimony payment?

II. Did the trial court err in including repayment of marital debt in its alimony calculation?

Finding no abuse of discretion or clearly erroneous factual predicates, we affirm the trial court’s calculation of the alimony award.

FACTUAL & PROCEDURAL BACKGROUND

Appellant and Appellee were married for approximately 22 years. Appellant and Appellee conceived three children during their marriage. Multiple factors contributed to the parties’ ultimate divorce. The trial court found that the parties’ “lived an upper middle class ‘party’ lifestyle,” which included bouts of infidelity and habitual substance abuse. According to the trial court,

both parties’ extreme substance abuse, and the toll that it took on their finances, their relationship and the extremes of behavior that it caused in each party was the most significant circumstance that broke down this marriage.

The record shows that Appellant and Appellee sought marriage counseling several times over the course of their marriage, but to no avail. Moreover, the trial court found that the conduct of both parties contributed to the breakdown of their marriage. The trial court found both parties to be intelligent and capable.

Following the breakdown of their marriage, Appellant began living with a female friend with whom Appellant shares living expenses. Appellee continued living in their marital home with their children. Subsequently, the parties’ sought absolute divorce, which the trial court granted on August 30, 2019.

After dividing the parties’ marital property in the divorce proceeding, the trial court determined the monthly expenses of each party for alimony purposes. After reducing

certain expenses claimed by Appellant, the trial court found Appellant's reasonable expenses to be \$2,007 per month. Next, the trial court analyzed Appellee's reasonable expenses:

[Appellee's] most basic reasonable living expenses are \$3,471.00. However, the Court finds that there are other expenses that she testified to including debt repayment, for the Lowe's bill in her mother's name that was all family expenditures for the Jimenez family, and the Kohl's bill and the Best Buy, again used for the Jimenez family. The minimum payments as Ms. Jimenez testified total an additional \$717.00 per month making Ms. Jimenez's reasonable monthly needs \$4,188. Mr. Jimenez has not been making any direct effort to pay those expenses directly.

Having determined the monthly expenses for each party, the trial court proceeded to determine the income of each party for alimony purposes. The trial court provided a detailed analysis of Appellant's income capacity:

As to income, [Appellant] has had highs and lows. There was not sufficient evidence presented by [Appellee] that [Appellant] was voluntarily impoverishing himself. The testimony showed that [Appellant's] highest income was for 2006-2007, a total annual gross income of \$250,000. His base salary that year was \$128,000 and the remainder of his income was an unusually large performance bonus. With [Appellant's] education and skills and work background and his income in past years, it is clear that although he had some high years, his highest income of \$250,000 a year is not realistic in the future. However, his income which was over \$100,000 a year certainly could be and should be feasible, however, the Court did not receive enough evidence on this point to impute this level of income to [Appellant].

...

At the time of the trial, [Appellant] was a management trainee with Enterprise and therefore the picture of his income was not entirely clear. Before this past year, he did earn a gross annual \$104,000 at First Data, but his job was eliminated. At Younger Toyota he made less than \$50,000 annually.

The testimony about [Appellant's] education and skills and work background make clear that while he has had some very successful years, the Court is reluctant to speculate that a wildly high income is possible. It is very possible that because he had several years where he earned well over

\$100,000. per year that a much higher income may be within [Appellant's] grasp. However, this Court finds that it is **too speculative** to impute an income that high. (Emphasis added)

...

[Appellant's] more recent incomes at CITI before his job was eliminated, \$55,000.00 seems more in line with what he can expect to earn. While [Appellant's] job at CITI was eliminated, [Appellant] presented no information that anything would prevent a re-hire there, or at another service type of data processing business in this area. If he is not earning at least \$55,000 at Enterprise, he should be able to readily get employment in middle management and earn at least \$55,000 if not substantially more. He still has the work history and skills that supported a much higher income before.

The Court therefore imputes income to [Appellant] of \$55,000.00 per year, with estimated mandatory deductions of about \$15,400, leaving a net income of \$39,600 or \$3,300 per month. The Court finds that imputing this amount is very conservative based upon some of [Appellant's] prior annual earnings.

(Emphasis added). Thus, the trial court found the Appellant's expected income to be \$55,000 per year. The trial court proceeded to analyze Appellee's income for alimony purposes:

[Appellee] earns \$4,008 per month gross for \$48,096 annually, after mandatory deductions, her net income per month is \$2,978. [Appellee] has created an excellent income base despite some of the challenges she faces.

The trial court also noted in its analysis that Appellant earned substantially more than Appellee during most of their marriage.

After establishing the expected expenses and income of both parties, the trial court calculated the financial deficiencies of each party:

[Appellant's] net income of \$3,300 per month minus his reasonable monthly expenses of \$2,007, leaves an excess net income over expenses of \$1,293 per month. Luckily, [Appellant] is able to maintain a reasonable lifestyle while sharing living expenses with another employed adult... The alimony award in this case, takes into account that with his excess income,

[Appellant] should be contributing to payments that [Appellee] has taken on that was incurred directly to benefit their family and their children.

[Appellee's] net monthly income of \$2,978 per month minus her most basic reasonable expenses of \$3,471 per month, leaves her with a deficit of \$493 per month for simply her bare bones expense list. However, with the minimum debt repayment which was incurred by both parties for the benefit of the family, her deficit includes the minimum debt repayment amount of \$717 per month for a total deficit of \$1,210 per month.

Based on these deficit calculations, the trial court ordered Appellant to pay rehabilitative alimony to Appellee for five years beginning on September 1, 2019. Under the terms of the rehabilitative alimony, Appellant must pay Appellee \$950 per month for the first three years following their divorce, and \$650 per month in the final two years.

Following entry of absolute divorce, Appellant timely filed a notice of appeal challenging the trial court's calculation of the alimony award. This appeal followed.

STANDARD OF REVIEW

“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, 126 (2010) (citing *Solomon v. Solomon*, 383 Md. 176, 196 (2004); quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)). When reviewing a trial court's award of alimony, “appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity.” *Tracey*, 328 Md. at 385; see also *Innerbichler v. Innerbichler*, 132 Md. App. 207, 248 (2000). “We review the *amount* of the alimony itself under an abuse of discretion standard.” *Solomon*, 383 Md. at 196 (emphasis in original) (citing *Blaine v. Blaine*, 336 Md. 49, 74 (1994)). Additionally, we review the trial court's factual findings under a clearly erroneous standard. In sum, “absent

a clear abuse of discretion, a [trial court’s] decision that is grounded in law and based upon facts that are not clearly erroneous will not be disturbed.” *Crabill v. Crabill*, 119 Md. App. 249, 260 (1998) (internal quotations omitted).

DISCUSSION

I. *Imputation of Income in Alimony Award Calculation*

A. Parties’ Contentions

Appellant contends that the trial court erred as a matter of law in its alimony calculation when the court imputed income to Appellant after a finding of fact that Appellant had not voluntarily impoverished himself. Appellant notes that § 11-106 of the Maryland Family Law Article does not expressly require a trial court to consider a spouse’s voluntary impoverishment or potential income for alimony purposes. Nonetheless, Appellant concedes that trial courts have imputed income for alimony purposes in past cases. However, Appellant argues that trial courts have imputed income in past cases only to fill gaps in financial information. Appellant contends that the information provided through his financial statements and testimony at trial didn’t leave any gaps to fill. Accordingly, Appellant asserts that the trial court’s imputation of income was improper as a matter of law.

In response, Appellee notes that a finding of voluntary impoverishment is not required for a trial court to impute income for alimony purposes. Appellee argues that while potential income is not an expressly designated factor under § 11-106, the statutory factors governing an award of alimony are non-exclusive. (*citing Simonds v. Simonds*, 165 Md. App. 591 (2005)). Moreover, Appellee contends that potential income is a relevant factor

for alimony purposes because potential income impacts “the ability of the party from whom alimony is sought to meet that party’s needs, while also meeting the needs of the party requesting alimony.” (*quoting* MD Code, Family Law, § 11-106(b)(9)). Thus, Appellee argues that the trial court acted within its discretion in considering potential income notwithstanding the absence of voluntary impoverishment on the part of Appellant.

B. Analysis

We have stated that “[a] trial court has broad discretion in awarding alimony, which may include both rehabilitative and indefinite components.” *Innerbichler*, 132 Md. App. at 246 (*citing Coviello v. Coviello*, 91 Md. App. 638, 652 (1992)). Trial courts are vested with significant discretion in alimony determinations because “[t]he knowledge, experience, and judgment of the circuit court judges are the best determinants for making awards that are fair and equitable” under the alimony statute. *Boemio v. Boemio*, 414 Md. 118, 137 (2010). Under FL § 11-106(b), trial courts must consider “all the factors necessary for a fair and equitable award” when making an alimony determination. Further, § 11-106(b) provides a non-exhaustive list of factors a trial judge must consider in making an alimony determination:

- (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;
- (11) the financial needs and financial resources of each party, including:
 - (i) all income and assets, including property that does not produce income;
 - (ii) any award made under §§ 8-205 and 8-208 of this article;
 - (iii) the nature and amount of the financial obligations of each party; and
 - (iv) the right of each party to receive retirement benefits; and
- (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

MD Code, Family Law, § 11-106(b)(1)-(12). These factors are non-exclusive because “Maryland’s Alimony Act is designed so that the court may take into account the differences from marriage to marriage that are not apparent from numbers alone.” *Whittington v. Whittington*, 172 Md. App. 317 (2007). Accordingly, “[t]here is no bright line for determining the propriety of an alimony award; rather, each case depends upon its own circumstances to ensure that equity be accomplished.” *Turner v. Turner*, 147 Md. App. 350 (2002).

A trial judge need not make a finding of voluntary impoverishment to impute income for alimony purposes. *See e.g. Turner*, 147 Md. App. 350 (Imputing income to wife in alimony determination without any mention of voluntary impoverishment); *and see Crabill v. Crabill*, 119 Md. App. 249, 262 (1998) (Imputing income to a husband without a finding or discussion of voluntary impoverishment). Thus, Appellant’s contention that the trial court erred as a matter of law by imputing income absent a finding of voluntary impoverishment conflicts with Maryland caselaw. Appellant’s contention seems to derive

from the distinct law applicable to child support awards. See *Durkee v. Durkee*, 144 Md. App. 161, 181 (2002) (“a trial court must find voluntary impoverishment in order to impute income to that parent *for purposes of calculating child support.*”) (Emphasis added). While we have stated that the factors for voluntary impoverishment are also relevant to alimony determinations, we explained that those factors are relevant to alimony insofar as they relate to express factors to be considered under FL § 11-106(b)(1)-(2). See *Reynolds v. Reynolds*, 216 Md. App. 205, 220 (2014) (“Most, if not all, of the voluntary impoverishment factors will be relevant to alimony under FL § 11–106(b)(1) and (b)(2), and so a finding of voluntary impoverishment would ordinarily entail a finding, for purposes of alimony, that the impoverished party *could* support him or herself, but *chooses* not to.”). Whereas, imputation of income for child support purposes requires an initial finding of voluntary impoverishment, imputation of income for alimony purposes has no such requirement. Thus, the trial court’s decision to impute income to Appellant after finding Appellant had not voluntarily impoverished himself was not clearly wrong as a matter of law.

Appellant’s first issue raised on appeal asks specifically whether the trial court erred as a matter of law in imputing income absent a finding of voluntary impoverishment.² Having found the trial court was not clearly wrong as a matter of law, our analysis could

² Appellant framed the first issue on appeal as follows: “The first question that Appellant presents for this Court to consider is whether or not the trial court erred as a matter of law in the imputation of income for purposes of calculating alimony after a finding of fact the Appellant did not voluntarily impoverish himself.”

end here. However, we proceed to address Appellant’s subsidiary contention on this issue: that the trial court erred in imputing Appellant’s income notwithstanding the fact that Appellant provided evidence of his actual income.

“In awarding alimony, the court may impute income to a party if that party is capable of earning more income than he or she is earning at the time of the divorce.” *Brewer v. Brewer*, 156 Md. App. 77, 121 (2004) (citing *Turner*, 147 Md. App. at 385 (2002); *Crabill*, 119 Md. App. at 262; *Colburn v. Colburn*, 15 Md. App. 503, 515–16 (1972)). Appellant concedes that Maryland courts have imputed income for alimony purposes but argues that courts have done so only to fill gaps in information.³ Notably, Appellant did not cite any caselaw to exemplify this assertion. Instead, Appellant insists that the trial court should have relied on Appellant’s actual income as laid out in his financial statement. However, in the present case, Appellant’s financial statement shows only a snapshot of his presumptive annual earnings for the period covered by the alimony award.

Potential income is a relevant consideration for alimony purposes because it touches on “the ability of appellant to meet his own needs as well as those of his former spouse.” MD Code, Family Law, § 11-106(b)(9); see *Digges v. Digges*, 126 Md. App. 361, 388 (Stating that under § 11-106(b)(9) “the court is entitled to consider not only what [a spouse] earns but what he could earn if he fully applied himself.”); *Durkee*, 144 Md. App. at 181 (Citing *Digges* for the proposition that “potential income is relevant to a consideration under F.L. § 11–106(b)(9)). To be sure, trial courts have used potential earning capacity

³ “While the court has imputed income in the past it does so to fill a gap in a lack of information.”

to impute income in cases where a spouse provided an incomplete picture of their yearly income. In *Crabill*, this court upheld a trial court’s decision to impute income to a husband for alimony purposes. 119 Md. App. 249. In that case, the husband had worked as a house painter part time during his employment with the fire department. *Id.* At the time of the divorce proceeding, the husband had recently retired from the fire department but continued to work as a house painter part time. *Id.* The trial court imputed income based on his prior annual earnings as a house painter and added additional income after accounting for the fact that he would have more time to work as a painter after retirement. Additionally, in *Crabill* we sought to determine whether the wife should have income imputed above her actual income. *Id.* The wife had previously held higher paying jobs and the trial court determined that she had the potential to obtain higher paying employment. *Id.* This court considered the wife’s earning potential to be relevant but declined to impute a higher income in calculating alimony in light of countervailing considerations. Namely, the wife in *Crabill* was the primary caretaker for her child – who required a high level of adult supervision – and her employment at the time of the proceeding allowed her the flexibility she needed to care for her child. 119 Md. App. at 265. Thus, we concluded that imputing income to the wife would not be in the best interest of her children.⁴ No such countervailing considerations have been shown in the case *sub*

⁴ In *Crabill*, we explained our decision to not impute income to the wife (“Mrs. Crabill”):

We conclude that the trial court did not abuse its discretion by failing to require Mrs. Crabill to obtain higher paying employment. Imputing income to Mrs. Crabill, in

judice.

Our review of the caselaw indicates, not that potential income is *always* a relevant consideration, but that potential income *may* be a relevant consideration. Each alimony determination turns on the particular facts of a case. This is consistent with the long-held understanding that a spouse’s overall financial ability to support, and not merely their current income, is one of controlling factors in determining an award of alimony. *Colburn*, 15 Md. App. at 515 (Citing *Willoughby v. Willoughby*, 256 Md. 590 (1970); *Pet v. Pet*, 238 Md. 492 (1965); *Gosnell v. Gosnell*, 208 Md. 179 (1955); *Lopez v. Lopez*, 206 Md. 509 (1955)).

In the present case, the trial court found Appellant had previously earned upwards of \$100,000 – one year earning as much as \$250,000. In recent years, Appellant earned anywhere from \$104,000 to just under \$50,000. Moreover, Appellant was making \$55,000 a year at the job he lost just three months prior to the divorce proceeding. However, at the time of the proceeding, Appellant was making just over \$48,000 per year. Notably, at the time of the proceeding Appellant was employed as a “management trainee” with Enterprise. Thus, it was reasonable to expect that his yearly income would increase upon completion of the trainee program. Alternatively, if Appellant’s wage did not increase, the trial court had sufficient grounds to assume that Appellant could obtain a better paying job based on Appellant’s prior employment. Appellant ended his prior employment just three

this case, would have been contrary to the best interests of the Crabills’ children, and thus the trial court did not err in failing to impute income to Mrs. Crabill.

119 Md. App. at 265.

months prior to the divorce proceeding, and subsequently entered an employment program designed to place him at a higher wage. We believe this was the most relevant consideration supporting the trial court’s decision to impute income to Appellant.⁵ Even under the training program Appellant was already making just over \$48,000. Moreover, the trial court opined that based on Appellant’s work history, it was entirely feasible that Appellant could secure income at or above \$100,000 per year. Ultimately, the trial court imputed what it considered to be a “very conservative” amount (\$55,000) based on Appellant’s prior earnings.

In reaching its decision to impute income to Appellant, the trial court considered Appellee’s necessary living expenses against Appellant’s ability to provide support. The trial court reasoned that Appellant’s prior earning history, the upward trajectory of Appellant’s current employment, and Appellant’s valuable skill set would allow Appellant to make \$55,000 per year at minimum. Moreover, this conservative amount was necessary to provide appropriate support to Appellee while Appellant was able to save on expenses by living with another working adult. Based on these facts we cannot say that the trial court’s decision to impute income of \$55,000 was an abuse of discretion or based on clearly erroneous facts. The trial court based its decision on the particular facts and circumstances of the case and acted within its discretion in imputing income to Appellant despite finding that Appellant had not voluntarily impoverished himself. Thus, we confirm the trial court’s

⁵ The trial court in its analysis stated: “At the time of the trial, [Appellant] was a management trainee with Enterprise and *therefore the picture of his income was not entirely clear.*” (J. of Absolute Divorce at 5) (Emphasis added).

decision to impute income to Appellant for alimony purposes.

II. *Inclusion of Marital Debt Repayment in Alimony Award Calculation*

A. Parties' Contentions

Appellant further contends that the trial court abused its discretion by improperly including marital debt in its alimony calculation. Specifically, Appellant argues that the trial court should not have included “debt repayment for the Lowe’s bill” in its alimony calculation because the Lowe’s bill constituted marital debt. Appellant does not cite any legal authority for his contention that marital debt should not be considered in alimony award determinations. Moreover, Appellant concedes that § 11-106(b) permits trial courts to consider “the financial needs and financial resources of each party” when calculating an alimony award. However, Appellant argues that the marital debt should not be included in the calculation of alimony because it is more properly treated by balancing the inequity as a separate payment. Appellant seems to be arguing that the trial court should have handled the debt as a separate monetary award.⁶ Appellant argues that the nature of the debt is important because alimony is non-dischargeable in bankruptcy, whereas marital debt (Lowe’s credit card bill) is dischargeable.

In response, Appellee contends that Appellant’s argument is flawed because it adopts concepts relevant to the issue of division of marital property and misapplies those concepts to the distinct issue of alimony calculation. Specifically, Appellee argues that the

⁶ Appellant provided very little explanation as to how the debt should be treated aside from stating that “marital debt is best handled by balancing the inequity as a separate payment.” Moreover, Appellant did not provide any legal authority or otherwise to support this proposition.

concept of marital debt is relevant to the division of marital property and a related monetary award. Conversely, whether debt is considered marital debt or otherwise is not relevant to a trial court’s alimony award determination. In fact, Appellee notes that FL §11-106(b)(11)(iii) of the Maryland Family Law Article specifically directs trial courts to consider “all financial obligations owed by each party,” which necessarily includes marital debt. Additionally, Appellee adds that she has been solely responsible for making periodic payments towards the Lowe’s debt since Appellant’s departure from their marital home. Conversely, Appellant has not made any effort to make payments on the debt since leaving the marital home. Accordingly, Appellee contends that the trial court acted within its discretion in including the outstanding Lowe’s debt in its alimony calculation.

B. Analysis

We note as an initial matter that the distinction between marital property and nonmarital property is primarily relevant to division of property and related monetary awards. That is to say: the distinction of property as marital is made for the purpose of determining the disposition of property to be divided upon divorce.⁷ Conversely, the designation of an item as marital property has only a subsidiary impact during alimony calculations. Namely, a court must consider the “nature and amount of the financial obligations of each party” in making its alimony award determination. FL § 11-106(b)(11)(iii). Thus, it is true to say that marital property is of a different *nature* than

⁷ See FL § 8-205(a)(1) (“after the court determines which property is marital property, and the value of the marital property, the court may transfer ownership of an interest in property...grant a monetary award, or both, as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded.”).

nonmarital property – a difference which the trial court may deem relevant in its alimony award analysis. In the present case, the trial court considered the “nature and amount of the financial obligations of each party,” providing the following analysis:

[Appellant’s] net income of \$3,300 per month minus his reasonable monthly expenses of \$2,007, leaves an excess net income over expenses of \$1,293 per month. Luckily, [Appellant] is able to maintain a reasonable lifestyle while sharing living expenses with another employed adult... The alimony award in this case, takes into account that with his excess income, [Appellant] should be contributing to payments that [Appellee] *has taken on that was incurred directly to benefit their family and their children.*

(Emphasis added). The trial court’s reasoning demonstrates that the court considered the nature and amount of the debt in reaching its alimony determination. The trial court noted that Appellee had “taken on” the debt from the Lowe’s credit card – i.e. Appellee was paying off the debt, whereas Appellant made no effort to contribute to payments on the debt after leaving the marital home. Further, the trial court assessed the nature and amount of the debt in concert with Appellant’s ability to pay the debt under his financial circumstances.

Appellant’s averment that marital debt is not specifically mentioned in the alimony statute is irrelevant. The “factors to consider in awarding alimony [do] not preclude a trial court from considering other factors in addition to the twelve mentioned.” *Boemio v. Boemio*, 414 Md. 118 (2010). Moreover, “some factors are clearly equitable in nature and reflect flexibility of courts to award alimony without following specific formula.” *Id.* In at least one prior case, the Court of Appeals has upheld an alimony calculation which included debt repayment obligations. *See e.g. Tracey*, 328 Md. at 596 (Upholding trial courts inclusion of wife’s debt service obligations in its alimony calculation under FL §

11-106(b)(11)). Thus, we conclude that it was not an abuse of discretion for the trial court to consider marital debt in its alimony calculation.

Appellant further contends that repayment of the debt should not be included because alimony, as opposed to unsecured debt, is non-dischargeable in bankruptcy. Appellant failed to provide any legal authority to support his contention that the classification of the debt as marital precludes such debt from consideration under FL § 11-106(b). Instead, Appellant’s argument seems to be grounded in equity and fairness considerations. We emphasize that “appellate courts will accord great deference to the findings and judgments of trial judges, *sitting in their equitable capacity.*” *Tracey*, 328 Md. at 385 (emphasis added). Accordingly, we proceed with our analysis giving due regard to the trial court’s discretion in weighing such equitable considerations.

Notably, the “dischargeability of any debt [is] a matter of Federal bankruptcy law.” *Klass v. Klass*, 377 Md. 13, 27 (2003) (citing *Goldberg v. Miller*, 371 Md. 591, 609-10 (2002)). Moreover, under Federal bankruptcy law, it is unclear whether debt on a credit card – jointly used by spouses during their marriage – would in fact be dischargeable regardless of the classification of the debt under the divorce decree. See *In re Brand*, 108 B.R. 319 (Bankr. N.D. Ala. 1989) (holding that debtor-husband’s obligation to repay credit card debt constituted nondischargeable support, notwithstanding language in separation agreement that wife would make no claim against debtor-husband for alimony); *In re Armento*, 127 B.R. 486, 490 (Bankr. S.D. Fla. 1991) (concluding that debtor-husband’s obligation to repay credit card debt was nondischargeable, notwithstanding wife’s waiver of alimony, where debtor-husband’s support obligations under divorce agreement would

be inadequate absent debtor-husband's repayment of credit card debt); *In re Burns*, 186 B.R. 637, 642 (Bankr. D.S.C. 1992) (finding debtor-husband's obligation to repay credit cards nondischargeable where debt was incurred to pay for living expenses, and wife and child's standard of living would be materially impaired absent payment by debtor-husband); *In re Eikenberg*, 107 B.R. 139, 142 (Bankr. N.D. Ohio 1989) (holding that husband's assumption of credit card obligations was nondischargeable where wife could not have maintained household for herself and two dependent children without husband's debt assumption). In each of these bankruptcy cases, a husband-debtor's obligation to pay credit card bills, though not classified as alimony, was nonetheless considered nondischargeable for bankruptcy purposes. *But see In re Smith*, 207 B.R. 289 (Bankr. M.D. Fla. 1997) (finding joint credit card debt dischargeable in bankruptcy proceeding where the card was maintained under both spouse's names, but none of the purchases were made by, or for the benefit of, the spouse seeking to discharge the debt).

Thus, it is not entirely clear whether Appellant's marital debt would be dischargeable at a subsequent bankruptcy proceeding even if the debt were not specifically included in the alimony award calculation. The preceding cases demonstrate that when Federal bankruptcy courts assess the dischargeability of a debt in a bankruptcy proceeding, they consider the same factors addressed by the trial court in the present case. Namely, they assess the effect that discharging a spouse from repayment of marital debt would have on the other spouse's ability to afford living expenses and maintain an adequate standard of living. This analysis is consistent with the trial court's analysis in the case at bar. While we are mindful that a subsequent bankruptcy by one of the parties may allow modification

of the alimony award, the need for such modification is not now before us.

Here, the trial court acted within its discretion by considering the debt repayment obligation in its alimony calculation. Appellant had not made any effort to pay the debt since living outside of the marital home, and Appellee was consistently making payments in his absence. The debt was a part of Appellee's expenses each month, and we cannot say it was an abuse of discretion for the trial court to factor such an obligation into the alimony award. Moreover, Appellant provided no legal citation or basis for his contention that the debt should not be included in the alimony calculation because it would render the debt nondishargeable in a subsequent bankruptcy proceeding. Nor is it apparent that Appellant's assumption of the debt as a separate obligation would render the debt dischargeable in a subsequent bankruptcy proceeding. Thus, we hold that the trial court did not abuse its discretion or rely on clearly erroneous facts in including the debt repayment in its alimony calculation.

CONCLUSION

We confirm the trial court's decision to impute Appellant's income and include repayment of marital debt in its alimony calculation. First, the trial court did not abuse its discretion or rely on clearly erroneous facts in imputing income to Appellant for alimony purposes. Appellant had earned significantly higher wages in recent months and years, and Appellant was working in a position that was highly likely to lead to increased earnings. Second, the trial court did not abuse its discretion or rely on clearly erroneous facts in including repayment of marital debt in its alimony calculation. Appellee had taken on sole responsibility for payment of the debt, notwithstanding the fact that the debt was incurred

jointly for the benefit of both parties. Accordingly, we hold that the trial court did not abuse its discretion or rely on clearly erroneous facts in calculating the alimony award.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**