UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1366

September Term, 2014

ALAN SELDIN

v.

BRENDA SELDIN

Eyler, Deborah S.,
Graeff,
Hotten,

JJ.

Opinion by Graeff, J.

Filed: November 20, 2015

On June 27, 1998, Alan Seldin, appellant, and Brenda Seldin, appellee, were married. On August 6, 2014, the Circuit Court for Montgomery County issued a Judgment of Absolute Divorce. On appeal, Mr. Seldin presents three questions for this Court's review, which we have rephrased, as follows:

1. Did the circuit court err or abuse its discretion in declining to find an unconscionable disparity between the parties that justified an award of indefinite alimony?

2. Did the circuit court abuse its discretion in declining to make a monetary award to Mr. Seldin?

3. Did the circuit court abuse its discretion in awarding Ms. Seldin possession and use of the family home?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

On January 28, 2014, Ms. Seldin filed an Amended Complaint for Absolute Divorce. That same day, Mr. Seldin filed an Answer. On February 26 and 27, 2014, May 20, 2014, and June 5, 2014, the court held a trial on the merits. At the trial, the following was adduced, relevant to this appeal.

Ms. Seldin, who was 44 years old, testified that she and Mr. Seldin, who was 54 years old, were together for five years prior to marrying. After they married, they had three children: Alexander, age 8; Elizabeth, age 7; and, William, age 3. They lived in a home located in Potomac (the "family home").

Ms. Seldin described the events precipitating the parties' separation. She and Mr. Seldin had gone to a party at a friend's house in Frederick. At the party, Mr. Seldin became visibly drunk. When they left the party, Ms. Seldin drove home, and Mr. Seldin

passed out in the car. When they arrived home approximately midnight, Ms. Seldin paid the babysitter and then observed Mr. Seldin drinking more alcohol in his office. He drank approximately two bottles of wine. Afterward, he was not able to walk a straight line, could not speak coherently, and his pupils were dilated. Mr. Seldin passed out in bed. Ms. Seldin went to sleep, but she was awakened by William screaming at approximately 3:00 a.m. She ran to William's room and found him face down on the floor in front of the crib. Mr. Seldin was standing over William with his arms outstretched, as if he had been holding William and dropped him on the floor. Ms. Seldin comforted William, determined that he was physically unharmed, and put him back to bed. She stayed up all night because she was worried that Mr. Seldin would harm the children. The following day, Ms. Seldin took the children and moved out. Ms. Seldin testified that Mr. Seldin had wandered around in the middle of the night before, stumbling around in the children's rooms, and sometimes urinating on the floor. Sometimes he would turn on all of the lights and yell at Elizabeth.

When Ms. Seldin and the children moved out of the house, Mr. Seldin checked himself into a rehabilitation center at a 28-day inpatient program at Father Martin's Ashley. It was his second time in the program. At the time Ms. Seldin moved out, Mr. Seldin was drinking every day, "almost around the clock." He was drinking two bottles of wine, or an entire bottle of vodka and a few bottles of beer. Prior to that time, he would begin drinking in the late afternoon and pass out at approximately 9:00 p.m. He hid bottles of alcoholic beverages "all over the house and on the property."

When he was drinking, Mr. Seldin would say inappropriate things to the children, such as calling them "stupid" and "idiots." He also called Ms. Seldin "stupid," "Herr

Commandant," "fat, ugly toad," "idiot," "evil," and a "bitch." He would make these comments in front of the children.

Mr. Seldin had been in five treatment programs. The first was a two-month Kolmac treatment program in 2008. Mr. Seldin was successful during the program, but he started drinking again within three weeks of leaving the program. The next program was in early 2009 at the Circle Treatment Center. Mr. Seldin was not able to stay sober during the program. In late 2009, Mr. Seldin attended a third program at Suburban Hospital for a "couple of months." Mr. Seldin admitted drinking during the program, and he was not sober following the program. The fourth program was in early 2010 at Father Martin's Ashley. Mr. Seldin resumed drinking after the program ended. Finally, in July of 2012, Mr. Seldin again went to treatment at Father Martin's Ashley. Following his second trip to Father Martin's Ashley, Mr. Seldin went to The Men's Home. As part of his participation with the home, Mr. Seldin was required to seek employment. He left the home in November 2012. Ms. Seldin did not believe Mr. Seldin was abstaining from drinking at the time of trial.

Ms. Seldin testified that Mr. Seldin did not contribute to the care and rearing of the children. Ms. Seldin and the nanny, Rosalinda Alonso, cared for the children. Sometimes Mr. Seldin would make breakfast and would go to Costco to pick up groceries, and he would walk the dog. On occasion, Mr. Seldin would put laundry into the washer, but then Ms. Alonso would do all the drying, folding, and putting away the clothes. Mr. Seldin changed "some diapers." Although Ms. Seldin had a cleaning company come to the house to do a "deep clean" once a month, in between those cleanings, she and Ms. Alonso took

care of the cleaning. Mr. Seldin would put a dish away if he used it and would occasionally empty the dishwasher, but he did not clean the house. Ms. Seldin also paid the bills and handled the finances.

Ms. Seldin was employed with Cisco Systems when the parties married. At that time, she was earning approximately $175,000 per year. She still worked for Cisco at the time of trial. In 2012, however, she was required to secure another position within the company, or she would be terminated. She did find another position within the company, although she had to accept a cut in pay. In 2013, she earned $304,248.13.

Ms. Seldin explained that in July of 2013, she had to scale back on Ms. Alonso's hours because she could not afford to pay her full time. In a typical day following Ms. Alonso's reduction in hours, Ms. Seldin would get up at approximately 5:00 a.m., take care of the dog, and work until approximately 7:00 a.m. She would then get the children's lunches and backpacks ready for the day, and prepare breakfast. At 7:30 a.m., she would wake up the two older children and help get them dressed. At 8:30 a.m., she would wake up William. After the older children brushed their teeth and hair, she would take them to the school bus. She would then take William to preschool. At that time, she would work on her laptop at the business center at the preschool. Sometimes she would drive to her office or go back home and work. Unless she made arrangements for William to stay later at preschool, she picked him up at 4:00 p.m. She took the older children to their after school activities and then fed them dinner. She would then help the children with homework, baths and showers, reading, and teeth brushing. At 8:00 p.m., William went to bed; the other children at 9:00 p.m. Ms. Seldin would then do "cleanup," walk the dog,

and then work until approximately 11:00 p.m. On the weekends, Ms. Seldin did not work, so she and the children would spend time together, and she would take them to birthday parties and other events.

Ms. Seldin stated that, prior to the parties' separation, she did all of the foregoing, although she did not have to do as much because she had Ms. Alonso to help her full time. Ms. Seldin attended school events and activities, was a room parent and chair of a preschool event, and was on the PTA. Mr. Seldin attended some school activities.

Ms. Seldin described Mr. Seldin's daily routine as follows. At 6:00 a.m., he would get up, put coffee on, and feed the dog. He sometimes would fix breakfast for the children. After Ms. Seldin took the children to the bus stop, Mr. Seldin often went back to sleep for several hours. When he woke up, he would have lunch. Mr. Seldin spent a lot of time in his office on the computer. In the afternoon, he would run errands for himself. By late afternoon, Mr. Seldin would return home, walk the dog, and interact with the children. In the evening, he would spend more time sitting in his office on the computer. Sometimes he participated with dinner and cooked dinner for the children. At that time of day, Ms. Seldin would begin to notice his behavior changing, a sign that he had been drinking. By 9:00 p.m., Mr. Seldin would be passed out. Mr. Seldin's daily routine had been the same since before Alexander was born.

Ms. Seldin stated that Mr. Seldin had always been self-employed selling health and life insurance, but she was not aware that he had actually sold any in the 8 to 9 years prior to the divorce trial. The last active employment that Ms. Seldin could recall was more than 9 years prior to trial. Mr. Seldin had never held any managerial positions, and he never

earned more than $30,000 per year. Although he had a Bachelor's Degree from American University, in the 8 or 9 years prior to trial, Mr. Seldin's maximum earnings were no more than $5,000 per year.

Ms. Seldin was the sole borrower on the mortgage on the family home. The family home was valued at $1,179,552. She also was the borrower on a home equity line of credit. Mr. Seldin did not contribute any funds to pay the mortgage or the home equity line of credit. The children had resided in the family home since they were born and had never lived anywhere else. The children had friends in the neighborhood and were "very involved and entrenched with" their elementary school, which was in the neighborhood. Ms. Seldin thought that the children needed the stability of remaining in the family home because, in addition to the parties' separation, Ms. Seldin's mother and Mr. Seldin's father, both of whom the children were close to, recently had passed away. Ms. Seldin did not think that she could afford to buy Mr. Seldin out of the family home, and she did not think she would be able to afford another home with a higher mortgage.

In 2012, Ms. Seldin received $10,000 from her mother's estate, and in 2013, she received approximately $200,000. She used $10,000 of it for living expenses. She also received a $40,000 loan from her sister, which she had used for legal fees, some of which she had repaid. In addition to other expenses, Ms. Seldin paid $175 per hour to a parent coordinator and a $750 retainer. She also paid $78 to $150 per session for therapy for Alexander, who had begun displaying signs of stress. Ms. Seldin's financial statement indicated that, each month, she paid $1,220 for extracurricular activities, $350 for a babysitter, $968 for preschool, $500 for a part-time nanny, $340 for Tae Kwon Do, $120

for art classes, soccer, and basketball, and $308 for camp. She purchased the children's clothing. Additionally, she paid for automobile insurance, including, until a few months prior to trial, Mr. Seldin's automobile insurance. She had approximately $153,000 in attorney's fees, of which she still owed $96,000. Ms. Seldin stated that she could not afford to pay alimony. Her financial statement indicated that she was $689.38 in the red at the end of each month, which was money she would take from her inheritance.

In addition to the family home, the parties owned a condominium in Ocean City. Ms. Seldin valued the property at $350,000. She was the sole borrower on the mortgage. Mr. Seldin never contributed any funds to pay the mortgage. Ms. Seldin also had a JP Morgan 401k retirement plan valued at $463,593.35. She planned to use her retirement savings to help fund the children's college educations.

Ms. Seldin testified that Mr. Seldin did not contribute monetarily to the well-being of the family. He never paid any mortgage bills, school tuitions, and "the list goes on and on." In fact, she stated, he "didn't bring anything in to the marriage except debt." She explained that, when the parties married, Mr. Seldin had an IRS debt for nonpayment of taxes, which bill Ms. Seldin paid. Although Mr. Seldin had received gifts of large sums of money from his parents, he "squandered it on himself."

Ms. Seldin always was the primary caretaker of the children. When she could not take care of the children, she had to hire others to do so. When the house needed care, she had to contract for services. Ms. Seldin stated that Mr. Seldin "was not supportive of [her] and [her] career during [the] marriage." For example, if she had to attend a work event in the evening or she was required to travel for work, she had to hire babysitters.

Mr. Seldin testified that, approximately a year after the parties got married, they moved to California so Ms. Seldin could "avail herself of better job opportunities, more income, a promotion." Mr. Seldin had to "give up" his business and his Maryland insurance license. He stated that Ms. Seldin told him at that time that, if she was making "half a million dollars a year, a million dollars a year, three hundred thousand a year," that he would "never . . . have to worry about working." She told him that he could "take care of the house," and after they started a family, he could "take care of the kids" because she would be making enough money to support the family. Prior to the parties' children being born, Mr. Seldin did all the cooking, banking, house hunting, laundry, household chores, and errands. When the parties later moved back to Maryland, Mr. Seldin and Ms. Seldin had an understanding that Mr. Seldin would be the "house husband."

Mr. Seldin described his role during the parties' marriage as "house husband." In that role, he did "everything that pertained to running the house." He did not drink alcohol around his children. Outside of his role as "house husband," Mr. Seldin was self-employed at Seldin Financial Services in insurance sales.

According to Mr. Seldin, after the children were born, he would do "everything for the kids." He would get up at 6:00 a.m., make coffee, and let the dog out into the yard. He would then start getting breakfast ready for the children, and he would get them dressed and ready for school. He also packed the children's lunches and made sure that they had their backpacks ready for school. Mr. Seldin denied that Ms. Alonso or Ms. Seldin ever prepared the children's breakfasts or lunches. After Mr. Seldin took the children to the bus stop, he would return to the house, clean up, empty the dishwasher, do laundry, make sure

the house was clean, and make sure that he had his agenda prepared for the day. Mr. Seldin would go to the grocery store, get gas, pick up dry cleaning, take the children to doctor's appointments, and purchase the children's clothing. Mr. Seldin was "the only one who did anything." When the children came home from school, Mr. Seldin would meet them at the bus stop and take them outside to play. He would then have the children start their homework while he made dinner. After dinner, he would help them with their homework and with baths or showers. He then read the children a book and prepared them for bed. Mr. Seldin denied that he was drunk or sleeping during the day.

Mr. Seldin stated that he was trying to "resuscitate" his career in the insurance industry, but it was difficult because of his age. In April or May of 2013, he was issued an insurance license in Maryland. He described his computer skills as "modest at best," and he stated that his sales skills were "not as good as [he] would like to believe."

Mr. Seldin did not believe that it was in the best interest of the children to award Ms. Seldin possession and use of the family home because he thought it would be easier for them to move at a young age, so they could go through the same school system from elementary school through high school. Mr. Seldin thought that the house should be sold, and Ms. Seldin should find a smaller home that would give the children more than three years of continuity.

Mr. Seldin testified that he had been sober since June 5, 2012. Beginning in January 2014, he had been employed at Rosenthal Acura, although he resigned from that position on March 20, 2014. After he left Rosenthal, he spent two weekends and additional weekdays at the parties' Ocean City condominium. When he was employed, he earned

only $1,200 per month, because he was still training, and he was working on advances toward future commissions. He left when the advances ended. Prior to Rosenthal, he had worked at Macy's, from December 2013 until the first week of 2014, when he was terminated due to layoffs. In his part-time sales position at Macy's, he made $7.50 per hour. After Rosenthal, he worked for his sponsor, Irwin Gross, at his jewelry business. He worked approximately 25 to 30 hours per week and made $10 per hour. Mr. Seldin stated that he was looking for other employment.

Mr. Seldin's resume indicated that, since 1992, he was the owner of Seldin Financial Services, and he directed all aspects of the business, which had an annual income of $150,000. His resume indicated that he was consistently ranked among the company's top producers, and he was an award winning and visionary sales manager.

During discovery, Mr. Seldin was asked to produce documentation of his employment search. The documentation he produced included emails to several insurance companies, in which Mr. Seldin explained to prospective employers that he was interested in management roles, and he was not "going to start back at a beginning agent level, nor [did he] want to start off as a captive agent again."

Mr. Seldin's financial statement listed his rent at $2,700 per month. He also leased an SUV for $500 per month. In addition to other miscellaneous monthly expenses, Mr. Seldin listed $800 for health insurance, $625 for household necessities, $350 for dining out, $240 for cable tv and internet, $2,650 for credit card payments, and $208 for clothing. He agreed that he had paid $150,000 in attorney's fees, using funds from his parents.

Ms. Alonso worked for the Seldins for seven years as a nanny. She worked Monday through Friday from 8:30 a.m. to 5:30 or 5:45 p.m. until the summer of 2013, when Ms. Seldin no longer was able to pay her full-time wages. After that time, Ms. Alonso started working only on Fridays, as well as "[w]hen [Ms. Seldin was] struggling."

Ms. Alonso testified that, during her time working for the Seldins, she almost never saw Mr. Seldin "because he was always drunk or sleeping." The children were cared for by Ms. Seldin and Ms. Alonso, and Mr. Seldin "[n]ever" took part in their care. When the children were in preschool, either Ms. Seldin or Ms. Alonso would take them to and from school. Ms. Seldin attended all of the children's preschool activities; Mr. Seldin showed up "[s]ometimes." Ms. Alonso described Ms. Seldin as "very affectionate," stating that she played with the children "[a] lot." Mr. Seldin "sometimes" played with the children.

After preschool, either Ms. Seldin or Ms. Alonso would take the children to the bus stop in the mornings; Mr. Seldin never did. Mr. Seldin would "[s]ometimes . . . bring groceries, he would go to Costco," but he did nothing else around the home. "[S]ometimes," Mr. Seldin would cook breakfast for the children. Ms. Alonso observed Mr. Seldin yelling at the children in the mornings, telling Elizabeth that if she did not eat her breakfast, she would have to clean the bathrooms. After school, Ms. Alonso would pick up the children from the bus stop and take them either to her house or to the park because she did not want them to see Mr. Seldin "drinking all the time."

Mr. Seldin "never worked." Ms. Seldin worked at home the entire day, although sometimes she would go to the office. Once per month, Ms. Seldin had a cleaning service

come in to clean the house. Mr. Seldin did not do any repairs or other handyman chores around the house.

On August 6, 2014, the circuit court issued a Judgment of Absolute Divorce. It awarded Mr. Seldin alimony in the amount of $2,500 per month for one year, and it ordered, inter alia, that (1) neither party pay the other child support; (2) Ms. Seldin have exclusive possession and use of the family home for three years, after which that it be sold and the proceeds be divided equally and the contents be transferred to Ms. Seldin;[1] (3) the Ocean City condominium be sold and the proceeds divided equally; and (4) the TD Ameritrade account, a retirement account, be divided equally.

STANDARD OF REVIEW

In reviewing an action that has been tried without a jury, "the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). "'If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.'" *Friedman v. Hannan*, 412 Md. 328, 335-36 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). The clearly erroneous standard does not apply to legal conclusions. *Karsenty v. Schoukroun*, 406 Md. 469, 502 (2008). "Where a case involves 'the application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are "legally correct" under a

[1] The house was worth $1,179,552, with a mortgage and home equity line of credit, in Ms. Seldin's name, totaling $684,451, resulting in equity of $495,101.

de novo standard of review.'" *Clancy v. King*, 405 Md. 541, 554 (2008) (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)).

DISCUSSION

I.

Alimony

Mr. Seldin first argues that the court abused its discretion in failing to award him: (1) indefinite alimony; and (2) alimony in an amount commensurate with his needs, the lifestyle of the parties, and Ms. Seldin's ability to pay. He asserts that the "only competent evidence" in the case supports an award of "permanent alimony," which the court should have awarded in "an amount which would have recognized and 'cured' the unconscionable disparity" between the parties. Mr. Seldin suggests that, if the gender of the parties were in the reverse, i.e., Mr. Seldin was a woman seeking alimony, the result would have been different.

Ms. Seldin disagrees. She argues that, after considering each of the requisite factors for assessing alimony, the court's alimony award in the amount of $2,500 per month for one year was not based on clearly erroneous finding of fact or an abuse of discretion.[2]

[2] With respect to Mr. Seldin's contention that the court "blamed" Mr. Seldin for his disease and had a "'disdainful' attitude towards [his] disease," Ms. Seldin notes that Mr. Seldin "never identifies even one comment of the [court] which actually exhibits this alleged disdainful attitude . . . concerning [Mr. Seldin's] drinking problem," nor did Mr. Seldin offer any competent medical testimony of any diagnosis, including that of alcoholism. We agree that the record does not reflect a disdainful attitude by the circuit court regarding Mr. Seldin's alcohol abuse. Indeed, the court stated: "He's to be congratulated for . . . it's a terrific accomplishment when a person that had that kind of drinking history can get a grip on it. He should be complimented for that. It's a tremendous achievement. And I believe his wife . . . would acknowledge that."

Maryland Code (2012 Repl. Vol.) § 11-106(b) of the Family Law Article ("FL") addresses the considerations that must be made by the court in determining a fair and equitable alimony award, as well as the amount and duration:

> (b) *Required considerations.* — In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:
>
> (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 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;
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> (4) the duration of the marriage;
>
> (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
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> (6) the circumstances that contributed to the estrangement of the parties;
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> (7) the age of each party;
>
> (8) the physical and mental condition of each party;
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> (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;
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> (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;
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> (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.

"[T]he 'statutory scheme [governing alimony] generally favors fixed-term or so-called rehabilitative alimony,' rather than indefinite alimony." *Simonds v. Simonds*, 165 Md. App. 591, 605 (2005) (quoting *Tracey v. Tracey*, 328 Md. 380, 391 (1992)). The preference for rehabilitative alimony stems from "the conviction that 'the purpose of

alimony is not to provide a lifetime pension, but where practicable to ease the transition for the parties from the joint married state to their new status as single people living apart and independently.'" *Id.* at 605 (quoting *Tracey*, 328 Md. at 391).

Notwithstanding the general rule favoring fixed-term alimony, the statute recognizes two "exceptional circumstances" in which a court may award indefinite alimony. *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 142 (1999), *cert. denied*, 358 Md. 164 (2000). Those exceptional circumstances, pursuant to FL § 11-106(c), allow the court discretion to award alimony for an indefinite period if the court finds that: "(1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting"; or (2) "even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably expected, the respective standards of living of the parties will be unconscionably disparate."

In this case, Mr. Seldin relies only on the second exception, that of "unconscionable disparity." He concedes that infirmity or disability of one of the parties "is inapplicable here."

The issue of unconscionable disparity must be determined by projecting into the future, to a time of maximum productivity of the party seeking the award, and not by looking solely to the past. *Whittington v. Whittington*, 172 Md. App. 317, 339-40 (2007). The burden of proof regarding unconscionable disparity is upon the economically dependent spouse who seeks alimony for an indefinite period. *Thomasian v. Thomasian*, 79 Md. App. 188, 195 (1989). *Accord Lee v. Andochick*, 182 Md. App. 268, 288 (reversal

required where party seeking indefinite alimony did not meet burden of producing evidence to support a finding that post-divorce the living standards would be unconscionably disparate, and failed to explain on appeal how standard of living would be unconscionably disparate), *cert. denied*, 406 Md. 745 (2008); *Francz v. Francz*, 157 Md. App. 676, 701 (2004) (to be eligible to receive indefinite alimony, the appellant must show that, projecting into the future, even after he or she will have made as much progress toward self-sufficiency as reasonably can be expected, there will be an unconscionable disparity between her standard of living and the appellees); *Roginsky*, 129 Md. App. at 146 ("[S]ubsection (2) requires a projection into the future, *based on the evidence*, beyond the point in time when a party may be expected to become self-supporting.") (emphasis added).

Whether the respective standards of living of the parties post-divorce will be unconscionably disparate is a question of fact. *Whittington*, 172 Md. App. at 337. Therefore, we review it under the clearly erroneous standard of review. *See* Md. Rule 8-131(c). As the Court has explained:

> It is a second-level fact, however, that necessarily rests upon the court's first-level factual findings on the factors, listed in FL section 11-106(b), that (so long as they are applicable) are relevant to all alimony determinations, and "all the factors," including those not listed, "necessary for a fair and equitable award"; and upon how much weight the court chooses to give to its various first-level factual findings.

Whittington, 172 Md. App. at 337-38.

In *Ware v. Ware*, 131 Md. App. 207, 232 (2000), we explained that a finding of mathematical disparity will not automatically trigger an award of indefinite alimony, and the trial judge must carefully consider all of the twelve factors spelled out by

FL § 11-106(b) that are pertinent to a particular case. The interplay of those factors frequently may have a strong bearing on whether a disparity fairly can be found to be an unconscionable disparity. *Id.* at 232-33. Indeed, there is no "hard and fast rule regarding any disparity" in income for purposes of awarding indefinite alimony, *Tracey*, 328 Md. at 393, but to be unconscionable, the disparity in the post-divorce standards of living must work a "gross inequity." *Brewer v. Brewer*, 156 Md. App. 77, 100-01, *cert. denied*, 381 Md. 677 (2004).

Here, with respect to alimony, the court considered each applicable FL § 11-106(b) factor. With respect to the ability of Mr. Seldin to be wholly or partially self-supporting, the court found that, although he was not employed when the parties separated, two years had passed since he had become sober. Mr. Seldin has a Bachelor's Degree in Political Science, and in the past, he had been self-employed as an independent insurance broker dealer. Mr. Seldin passed an exam for an insurance license and was issued a license on May 7, 2013, and he stated that his condition as a recovering alcoholic did not affect his ability to be gainfully employed. Mr. Seldin presented no evidence that he needed additional education or training for him to find suitable employment.

The court found that Mr. Seldin was "clearly employable, given his age, health, work experience, skills, and the absence of minor children living [in] his home." Moreover, as his child support payments were suspended, Mr. Seldin would be able to "use more of his potential salary for support." Thus, the court concluded that Mr. Seldin had been "'perfectly employable'" since August 2012. It stated that Mr. Seldin's decision to limit his job search to "'management' positions" and quit other jobs "were certainly his

prerogative," but his actions should not be "at the expense" of Ms. Seldin and the parties' children.

With respect to the monetary and non-monetary contributions of each party to the well-being of the family, the court noted that Mr. Seldin conceded that he had made little monetary contribution to the well-being of the family, and it found that Mr. Seldin had exaggerated his non-monetary contributions. The court rejected Mr. Seldin's testimony that his alcohol abuse did not interfere with his involvement with the children, stating that "[t]he facts tell another story."

The court found that, prior to the parties' separation, Ms. Seldin was the children's primary caregiver, with help from Ms. Alonso. Mr. Seldin cared for the children "on an ad-hoc basis at best." Ms. Seldin took care of routine housecleaning, paid the bills, and handled the finances. She was both the "bread winner" and primary caretaker of the children. Ms. Seldin participated in the children's school activities, regularly attended school events, and was active in the preschool as either a chair or room parent, while each child attended. Mr. Seldin attended most school events, except for the year before separation. Ms. Seldin took the children by herself to events and activities on weekends, as Mr. Seldin was either too sick or hung-over to attend.

On a typical day, Ms. Seldin began working before waking the children. She would then get the children up, dressed, fed, and would walk them to the bus stop before taking William to preschool. Ms. Seldin would then work from home or from the preschool's business center. In the evening, she would make the children's dinner, clean up, and help the children with baths, homework, pajamas, brushing teeth, and story time. After the

children went to bed, Ms. Seldin would continue to work. On weekends, she would take the children for an outing, they would walk the dog together, and have dinner.

In contrast to Ms. Seldin, Mr. Seldin did not wake, dress, or prepare the children for school. He would wake up around 6:00 a.m., but then return to bed at approximately 9:00 a.m. and sleep for several hours. When he got up, he would sit in his office in his bathrobe, surfing the internet and spending time in chat rooms, for hours. In the afternoon, Mr. Seldin would shower and run errands, mostly for himself. The court found that Mr. Seldin's contributions to the family well-being were "[deminimus] at best."[3]

With respect to Mr. Seldin's alcohol use, the court found that he had been in five different treatment programs. He attended the first program in 2008, due to pressure from Ms. Seldin; he did not think he needed to go. He resumed drinking three weeks later. In 2009, Mr. Seldin attended another program, but he again resumed drinking three weeks later. In 2010, he attended an inpatient program, Father Martin's Ashley, but he resumed drinking three weeks after his release. After the parties separated, Mr. Seldin attended Father Martin's Ashley a second time, and then entered The Men's Home. The court state that Mr. Seldin claimed to have been sober since June 2012, but Ms. Seldin suspected otherwise.

The court did find that Mr. Seldin had made some non-monetary contributions to the family during the marriage, including helping some with the children, occasionally making breakfast, and sometimes grocery shopping. The court noted, however, that

[3] The court's order says "demonisms," which appears to be a typographical error.

Mr. Seldin's perception of his contributions was not supported by the evidence. Moreover, his contributions "did not relieve [Ms. Seldin] of the responsibility of monitoring his care of the children," as he would "occasionally stumble around in the children's rooms in a drunken stupor." The court stated that Mr. Seldin "unfortunately was an alcoholic and that was the reason for his dysfunction."

With respect to the physical and mental condition of each party, the court found that they were both in good physical and mental condition, and that Mr. Seldin testified that he had been sober since June 2012. The court noted that Mr. Seldin's supplemental answers to interrogatories confirmed that, although he was a recovering alcoholic, he "no longer believe[d] that [his] condition affect[ed] [his] ability to be gainfully employed."

With respect to Ms. Seldin's ability to meet her needs while meeting Mr. Seldin's needs, the court found that Ms. Seldin "has carried the full burden of the family financially, thus she cannot afford alimony." After the parties' separation, Ms. Seldin's position with her employer was eliminated, and she had to obtain a new position at a reduced income. Ms. Seldin's expenses included extraordinary medical expenses for therapy for Alexander, as well as before and after school programs to provide daycare coverage so that she could work.

With respect to the financial needs and resources of each party, the court found that they were "radically different." Ms. Seldin was the sole obligor on the mortgage and home equity line of credit for the family home. She also was the sole obligor on the parties' Ocean City condominium. Although Ms. Seldin was solely responsible for those obligations, Mr. Seldin would "reap half of the profits" after possession and use of the

family home ended and after the sale of the condominium. Ms. Seldin had the children with her most of the time and "bears the lion's share of their daily living expenses," including health insurance and co-pays for the medical care and work-related daycare. Mr. Seldin, noted the court, "has borne none of these costs, and is not expected to do so any time soon."

Additionally, the court found that Ms. Seldin had incurred approximately $153,000 in attorney's fees, plus an additional $3,000 in costs. Although she had paid some of those fees and costs, she had a remaining balance of $96,400. Mr. Seldin by contrast, had paid the entirety of his $150,000 in attorney's fees. The court also considered funds that Ms. Seldin had obtained from her mother's estate, and that she had spent non-marital funds for family needs.

Mr. Seldin's monthly expenses were $8,500, not including his credit card bills. He also had to pay approximately $800 per month for medical insurance.

The court also considered the duration of the marriage, the age of the parties, the circumstances that contributed to the estrangement of the marriage, and that there was no agreement between the parties.

After considering all of the foregoing, the court addressed whether Mr. Seldin was entitled to indefinite alimony, noting that Mr. Seldin did not claim that "due to age, illness, infirmity, or disability, he cannot reasonably be expected to make substantial progress toward becoming self-supporting, and there is no evidence before the [c]ourt to suggest otherwise." With respect to whether there was an unconscionable disparity, the court noted that it was necessary to project forward in time and that

> [Mr. Seldin] introduced no evidence projecting forward in time to the point when he will have maximum financial progress and comparing the parties' relative standards of living at that future time. Thus, in the case *sub judice*, just as in *Roginsky*, "there is insufficient evidence to support a finding that the parties' standard of living will be significantly disparate when [Mr. Seldin] makes as much progress as can reasonably be expected. There is no evidence from which one could project to that point in time, based on reasonable foreseeability."

The court continued, quoting *Roginsky*, 129 Md. App. at 147-48, regarding the standard of living, as follows:

> In the majority of unconscionable disparity cases in which awards of indefinite alimony have been affirmed or denials of awards of indefinite alimony have been reversed for abuse of discretion, the standard of living that the parties experienced during the marriage was not one that either had experienced before it, and it was established over time during the marriage, with joint contributions, often with one spouse working and the other attending or raising the children and, therefore, out of the workforce. The standard of living of each party prior to the marriage is a relevant consideration. Because a court is required to consider each and every relevant factor, a gross disparity with respect to standards of living after divorce might not be justified when the joint enterprise of marriage produced the high standard of living enjoyed by the parties during their marriage, but it might be justified when the disparity in the standard of living pre-existed the marriage. We make it clear, however, that all factors relevant to whether unconscionable disparity exi[s]ts must be considered.

Applying the law to the facts of this case, the court stated that the evidence was "clear and unambiguous: the joint enterprise of marriage did not produce the standard of living enjoyed by the parties during their marriage." Rather, the court stated that it was Ms. Seldin's "extraordinary efforts" that produced the standard of living, and those efforts "stand in sharp contrast to those of [Mr. Seldin], who was neither breadwinner nor 'house-husband.'" Moreover, the court stated that Mr. Seldin's Earnings Record and Ms. Seldin's Earnings Record showed that "any disparity in standard of living pre-existed the marriage,"

noting that Ms. Seldin testified that Mr. Seldin "brought nothing into the marriage except a debt to the IRS, which [she] paid off." The court recognized that the parties' incomes were "widely disparate" at that point and "might remain so," but it observed that a mathematical comparison of the incomes of the parties, was only a starting point for an unconscionable disparity analysis, not a conclusive factor. Instead, the court must apply all of the factors on a case-by-case basis. After applying all of the factors, the court concluded that "the respective standards of living of the parties will not be unconscionably disparate," and it denied indefinite alimony.

The court then explained that it would grant temporary alimony "for the period of one year in the amount of $2,500 per month, totaling $30,000."[4] The court explained its reasons as follows:

> The issue of unconscionable disparity has been discussed at length above. Notwithstanding the fact that there is no credible evidence for the [c]ourt to consider about [Mr. Seldin's] current efforts to gain employment and therefore *when* he might become self-supporting, the evidence does show that [he] has the ability to become so.
>
> The [c]ourt finds that although [Mr. Seldin] is not yet fully self-supporting, he is equipped with the experience and education to find suitable employment with time. . . . [He] holds a Bachelor's Degree, has had no issue finding employment when he seeks it, and has stated that he no longer believes his alcoholism affects his ability to find gainful employment. Moreover, once marital property is divided . . . [he] will have sufficient financial resources to meet his own needs for the foreseeable future. Earnings from employment will provide him with additional resources.
>
> Therefore, while indefinite alimony is inappropriate . . . as [Mr. Seldin] has not shown he can never become self-supporting, temporary alimony is appropriate, as [he] will need some time to become so.

[4] Presumably, the court awarded Mr. Seldin $2,500 per month for one year, or $30,000, based on its finding of his highest annual salary.

> [Mr. Seldin] has alleged to be sober since June 5, 2012. While he is two years into his sobriety, [he] has had difficulties staying sober and has additionally dealt with this divorce. . . . [He] has costly monthly expenses without any meaningful income. [Mr. Seldin] cannot be reasonably expected to meet the monthly expenses expressed in [his financial statement] without attaining gainful employment. This [c]ourt finds that [he] can reasonably be expected to find employment within the period of one year and he will be awarded alimony in the amount of $2,500.00 per month for that period.

Counsel for Mr. Seldin stated in oral argument that there was no dispute regarding the court's factual findings. We agree that they are supported by the record. Given this record, we agree with the circuit court's conclusions. The circuit court did not abuse its discretion in its ruling regarding the alimony award to Mr. Seldin.

II.

Monetary Award

Mr. Seldin next contends that the court abused its discretion when it failed to make a monetary award to him. Specifically, he challenges the court's decision not to divide Ms. Seldin's 401k account, which held $463,593.35, asserting that this "leaves the rich getting richer for many years to come and the poor getting even poorer." He argues that the court "simply ignored the present and future earning potential of [Ms. Seldin] and her ability to replenish" the 401k, in contrast to his lack of income "pursuant to which he can continue making any contributions to a retirement fund."

Ms. Seldin contends that the "court did not abuse its discretion by declining to make a monetary award or to order a transfer of retirement assets." She states that Mr. Seldin ignores the "undeniable fact" that his alleged "pauper's share" of the marital assets "amounts to over a half million dollars in assets and no debt."

The "function [of the monetary award] is to provide a means for the adjustment of inequities that may result from distribution of certain property in accordance with the dictates of title." *Alston v. Alston*, 331 Md. 496, 506 (1993) (citation and quotations omitted). The decision whether to grant a monetary award generally is within the sound discretion of the trial court. *See* FL § 8-205(a)(1) ("the court *may* . . . grant a monetary award") (emphasis added).

In making a monetary award, the court must engage in a three-step process. *Brown v. Brown*, 195 Md. App. 72, 109 (2010). First, if there is a dispute as to whether certain property is marital property, the court must determine which property is marital property. *Id.*; FL § 8-203(a). After a determination has been made as to which property is marital property, the court must determine the value of all marital property. *Id.*; FL § 8-204. After the court has determined what property is marital property, and the value of the marital property, it may make a monetary award "to rectify any inequity" after considering each of the required factors. *Id.*; FL § 8-205. The required factors include:

> (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
> (2) the value of all property interests of each party;
> (3) the economic circumstances of each party at the time the award is to be made;
> (4) the circumstances that contributed to the estrangement of the parties;
> (5) the duration of the marriage;
> (6) the age of each party;
> (7) the physical and mental condition of each party;
> (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;

> (9) the contribution by either party of property described in 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
>
> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
>
> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

FL § 8-205(b).

As indicated, "our statute requires 'equitable' division of marital property, not 'equal' division." *Alston*, 331 Md. at 508. *Accord Deering v. Deering*, 292 Md. 115, 130 (1981) (statute "does not require an equal division of marital property"). The court is not required to weigh each factor equally. *Alston*, 331 Md. at 507.

Here, the court noted that it had already considered several of the monetary award factors with respect to Mr. Seldin's claim for alimony. It then considered the applicable FL § 8-205(b) factors that previously had not been considered. First, it considered the parties' statements of marital and non-marital property. Second, it considered the economic circumstance of each party at the time the award was to be made. In that regard, the court stated:

> Despite [Mr. Seldin's] tepid job search efforts and modest earnings, [he] recently renewed the lease for six months on his luxury apartment . . . for $2,700.00 per month, including utilities. Further, he recently leased a brand new Lexus RX 350-4-wheel drive SUV for $499.97 per month. [Mr. Seldin] also testified about high-priced groceries he uses to cook gourmet meals for 4, 7 and 8 year old children. [Mr. Seldin's] extravagant lifestyle bespeaks a sense of entitlement that does not comport with his own contributions to the well-being of the family, his own resources, or his or the children's actual needs.

> [Mr. Seldin] testified that he has access to his parents' funds and continues to serve as his mother's power of attorney. [He] uses access to his parents' funds to defray a substantial portion of the $150,000.00 that he has paid in full for attorney's fees through mid-February 2014. However, the propriety of [his] use of these funds for his own purposes . . . is questionable at best.

Third, the court considered how and when marital property was acquired, finding that Mr. Seldin's efforts toward the "accumulation or increase in value of the parties' assets . . . . were considerably inferior to those of" Ms. Seldin and therefore, the "accumulation, or increase in value, of the parties' assets was virtually independent of [Mr. Seldin's] efforts." The court noted that the "property interests in this category include but are not limited to retirement accounts and family use personal property."

Fourth, the court considered the alimony award and the possession and use award, and omitted from consideration a jointly titled Mercedes CLK 320, which was damaged during the course of trial while Mr. Seldin was driving it.

After considering the requisite factors, the court determined that no monetary award would be granted to either party. The court recognized that Ms. Seldin would receive approximately 68% of the value of the parties' assets and Mr. Seldin would receive approximately 32% of the assets, but it noted that "almost half of [Ms. Seldin's] share consists of pre-tax retirement funds (lines 12 and 13), so the apportionment of assets in 'real' or after-tax dollars is actually much closer." The court stated:

> Considering all of the facts and circumstances of this case, the [c]ourt finds this is a fair and equitable result. Once marital property is divided as provided herein, [Mr. Seldin] will have an equitable share of the marital assets of the parties and sufficient financial resources to meet his own needs for the foreseeable future. Earnings from employment will provide him with additional resources.

In addition to ordering the sale of the marital home after the expiration of possession and use, the court also ordered that the Ocean City condominium be sold and the proceeds divided equally. Further, it ordered that the TD Ameritrade Account, worth $317,320, be divided within 30 days "equally 'in kind' by the parties, so that each will receive one half of each of the holdings in this account." The 401k account, which was titled to Ms. Seldin and held $463,593 in pre-tax funds, was not divided by the court.

As noted above, Mr. Seldin's only complaint is that the court did not equally divide Ms. Seldin's 401k account, which Ms. Seldin testified that she planned to use to pay for the college education of her three children. We perceive no abuse of discretion by the court in that regard. As indicated, the court found that Mr. Seldin's "extravagant lifestyle bespeaks a sense of entitlement that does not comport with his own contributions to the well-being of the family, his own resources, or his or the children's actual needs." And Mr. Seldin's efforts to increase the value of the parties' assets were considerably inferior to Ms. Seldin's efforts. Despite this, Mr. Seldin would receive approximately $150,000 for the division of the TD Ameritrade account, half of the proceeds of the Ocean City condominium, which Ms. Seldin valued at $350,000, and half of the proceeds of the family home (with equity at the time of approximately $500,000) when it was sold in three years. Under these circumstances, it was a proper exercise of the court's discretion to decline to make a monetary award to Mr. Seldin.

III.

Possession & Use

Mr. Seldin next contends that the court abused its discretion when it awarded Ms. Seldin possession and use of the family home for three years. He asserts that there was no evidence presented to support the court's reasoning that Ms. Seldin could not afford a higher mortgage payment, which she would incur if she bought Mr. Seldin out of the home, and "the cost of this enormous 5 bedroom home could be greatly 'alleviated' by its sale." Moreover, he argues, the court's "solution" did not resolve the issue of the increased disruption that would happen to the children at the end of the three years when the house would be sold. Indeed, he asserts that the "delay in the sale and thus the division of the net proceeds of this property hinder and actually prevent [Mr. Seldin] from setting up a home" for the children.

Ms. Seldin responds that there was evidence to support the court's reasoning, particularly regarding whether it was in the children's best interests to remain in the family home, which was "correctly the basis" of the court's decision. Moreover, she argues that there was evidence to support the court's finding that she could not find suitable housing or that the cost of a substitute mortgage was not affordable. Accordingly, Ms. Seldin opines that Mr. Seldin's "disagreement" with the court's findings of fact does not equate to error.

FL § 8-208 provides, in part, as follows:

> (a) *Award of possession and use*. — (1) When the court grants an . . . absolute divorce, regardless of how the family home or family use personal property is titled, owned, or leased, the court may:
>
> (i) decide that 1 of the parties shall have the sole possession and use of that property; or

(ii) divide the possession and use of the property between the parties.

***

(b) *Required considerations.* — In awarding the possession and use of the family home and family use personal property, the court shall consider each of the following factors:

(1) the best interests of any child;

(2) the interest of each party in continuing:

(i) to use the family use personal property or any part of it, or to occupy or use the family home or any part of it as a dwelling place; or

(ii) to use the family use personal property or any part of it, or to occupy or use the family home or any part of it for the production of income; and

(3) any hardship imposed on the party whose interest in the family home or family use personal property is infringed on by an order issued under [sections not applicable here].

The language of the statue is discretionary. *See, e.g.*, *Wells v. Wells*, 168 Md. App. 382, 394 (2006) (reviewing court's possession and use ruling for abuse of discretion).

> "The sole purpose, not merely the primary purpose, of the use and occupancy provision is to permit the child or children of the family to live in the community and environment which is familiar to them. . . . A parent's or spouse's needs are of no consideration except as those needs contribute to, or reflect upon, the obligation she or he owes to the child or children."

Maness v. Sawyer, 180 Md. App. 295, 310 (2008) (emphasis omitted) (quoting *Barr v. Barr*, 58 Md. App. 569, 585 (1984)).

Here, the court reviewed the FL § 8-208(b) factors and determined that moving the children from the home was not in their best interests. In that regard, the court stated:

> The children have lived at [the home] all of their lives. It's the only home they've known. . . .
>
> [Ms. Seldin] seeks use and possession of [the home] for a[s] long as possible. This request will be granted for the following reasons: (1) This is the environment that is familiar to the children. They need the stability of staying [in the home]. The children have many friends in the neighborhood

> and children in the neighborhood are in their classes at Potomac Elementary School. They are part of the neighborhood and have developed friendships through schools and activities, which they maintain and cultivate. Uprooting them from [the home] would not be in their best interest. It is in their best interest to stay in [the home] for as long as the law permits. (2) [Ms. Seldin] cannot afford a higher mortgage payment, which is what she would end up with if she tried to buy out [Mr. Seldin] now in order to stay in the house.
>
> [Ms. Seldin's] reasoning aligns more closely with the best interests of the children and other required considerations in [FL § 8-208(b)], and outweighs any hardship on [Mr. Seldin].

Accordingly, the court awarded Ms. Seldin possession and use of the family home for three years from the date of the judgment of divorce. The court ordered that, after the three-year period, the property would be sold and the proceeds of sale divided equally between the parties.

There is no dispute that the circuit court here considered the FL § 8-208(b) factors. And the court's findings were supported by Ms. Seldin's testimony that the children had experienced a great deal of change recently, and "the routine of the home gives them that continuity that they need right now." Under these circumstances, and given Ms. Seldin's testimony that she could not afford to buy out Mr. Seldin's interest in the home, the court did not abuse its discretion in determining that it would be in the children's best interests to remain at home and in awarding Ms. Seldin possession and use of the family home for three years.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.