Circuit Court for Montgomery County
Case No. C-15-FM-22-003334

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1381

September Term, 2024

NURIA DE LA PEÑA

v.

HEYWOOD WILLIAMS FLEISIG

Nazarian,
Kehoe, S.,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 5, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from a Judgment of Absolute Divorce entered on August 13, 2024, granting Appellee, Heywood Williams Fleisig ("Mr. Fleisig"), an absolute divorce from Appellant, Nuria de la Peña ("Ms. de la Peña"), and an order entered on August 30, 2023, invalidating the parties' "Partnership and Prenuptial Agreement" dated December 28, 1993 ("1993 Prenuptial Agreement") by the Circuit Court for Montgomery County.

I. QUESTIONS PRESENTED

Ms. de la Peña appealed to this Court and presents the following questions for our review, which we have condensed and rephrased for clarity:[1]

1) Did the trial court err in invalidating the 1993 Prenuptial Agreement?

2) Did the trial court err in limiting Ms. de la Peña's relief to that of a limited divorce?

[1] Ms. de la Peña presents the following questions for our review:

1) Did the trial court err in invalidating the 1993 domestic Partnership and Prenuptial Agreement?
2) Did the trial court err in failing to sever valid provisions?
3) Did the trial court err by not confirming Wife's surviving spouse annuity?
4) Did the trial court err in failing to award support during the marriage for the premiums of FEGLI, or reimburse this expense under undue enrichment?
5) Did the trial court err in denying support for home expenses in 2022?

Alternatively,

6) Did the trial court err in failing to trace Wife's separate property in their home?
7) Did the trial court err in holding the IRA the separate property of Husband?
8) Did the trial court err in limiting relief to limited divorce?

3) Did the trial court err in its distribution of marital property and denial of a monetary award?

For the reasons stated herein, we conclude that the trial court did not err and thus we affirm the judgments of the Circuit Court for Montgomery County.

II. FACTUAL & PROCEDURAL BACKGROUND

Ms. de la Peña and Mr. Fleisig began dating in 1992 when Ms. de la Peña was 26 years of age and Mr. Fleisig was 52 years of age. Ms. de la Peña was an attorney, admitted to practice law in Argentina, Spain, New York, and Washington, D.C. Mr. Fleisig was an economist at the World Bank, but retired in 1995.

On December 28, 1993, the parties entered into the 1993 Prenuptial Agreement, which was drafted by Ms. de la Peña, as she was an attorney.[2] Per the 1993 Prenuptial Agreement, the parties "plan[ned] on getting legally married and having a child." The agreement, in pertinent part, read:

> [. . .] The parties have fully disclosed and reviewed all their assets and debts, and each consulted with their respective accountants and lawyers.
>
> [. . .] The parties further agree to separate, and community or joint property. Assets designated as one person's separate property including assets traceable to separate property belongs exclusively to that person with the right to manage or dispose of it. Separate property is not subject to division. Any assets designated as community or joint property belongs to both of us equally with equal rights to manage it.
>
> The parties agree to maintain the following assets as separate property whether acquired before or after this agreement during their partnership or marriage:
> [. . .]

[2] As noted, Ms. de la Peña was admitted to practice law in Argentina, Spain, New York, and Washington, D.C.

Nuria de la Peña: [. . .] The ownership rights in, and disposition of, the death benefit of life insurance policies of [Mr. Fleisig] established for, or that at any time have designated, [Ms. de la Peña] as beneficiary shall be deemed [Ms. de la Peña's] separate property.
Spousal rights to pension benefits.
[. . .]
[Ms. de la Peña] further agrees to buy the property 5353 29th [Street NW, Washington, D.C.,] from [Mr. Fleisig] and to lend 10% of the purchase price ($42,500) to [Mr. Fleisig] at the annual interest rate of 8% due in thirty years from the purchase date.
[. . .]
Community or joint property: The parties agree that all other personal or real property or assets owned jointly or separately, whenever acquired, including property acquired before this date, will be held as community, joint, joint tenants, or marital assets in the event of legal marriage, regardless on whose title it is held. These include and is [sic] not limited to retirement accounts, bank accounts, income, benefits, or service before or after this agreement. It also includes retirement benefits in pension, annuities and other employee benefits or tax deferred plans contributed or earned before or after this agreement.

In anticipation of having a child and in how the interruption of [Ms. de la Peña's] career will affect her earnings to raise a child, in the event of dissolution of partnership or marriage, legal separation or divorce, [Mr. Fleisig] agrees that [Ms. de la Peña] shall have the property where they live free of debt, and half of the community or joint assets. Alimony rights to maintain the standard of living to which she was accustomed and spousal rights to benefits are not waived. [Mr. Fleisig] shall have the equity proceeds from the sale of [Ms. de la Peña's] property at 5353 29th [Street NW, Washington, D.C.,] and the other half of community or joint assets. Each party shall have their separate property listed above, which shall be confirmed to each absolutely.
[. . .]
Interpretation and severability: This agreement is drafted and entered in the District of Columbia. It shall be interpreted and enforced according to the laws of the District of Columbia. [. . .] If any part is determined invalid, the validity and enforceability of the remaining parts shall not be affected. If any dispute arises between us concerning this agreement, we will first try to resolve the dispute in mediation.

Each of us has read this agreement carefully and sign it freely after ample time for obtaining all advice each considers appropriate.

The parties were married on January 1, 2000 in California, and one child was born of the marriage on June 16, 2000.[3] On or about December 5, 2021, the parties separated. On June 7, 2022, Ms. de la Peña filed a Complaint for Limited Divorce from Mr. Fleisig. Mr. Fleisig filed a Counter-Complaint for Absolute Divorce on December 6, 2022. On December 23, 2022, Ms. de la Peña filed an answer to Mr. Fleisig's counterclaim. Mr. Fleisig filed an Amended Counter-Complaint for Absolute Divorce and a motion to "bifurcate the issues related to the validity of certain [prenuptial] agreements" on February 7, 2023.

In her Complaint, Ms. de la Peña sought a limited divorce, permanent alimony, a monetary award, 50% of Mr. Fleisig's pension income "as agreed upon in the [parties'] prenuptial agreement[,]" use and possession of the family home, and attorney's fees. Ms. de la Peña asked the court to determine marital and non-marital property as well as each party's interest in the marital property and to distribute the marital property as such. In addition, Ms. de la Peña requested the court to order "that [she] be maintained as the surviving spouse beneficiary of [Mr. Fleisig's] pension with the United States Office of Personnel Management[,]" and "that [she] be maintained as the surviving spouse beneficiary for [Mr. Fleisig's] life insurance policies and [Individual Retirement Arrangement ("IRA")] and/or reinstated as the surviving spouse beneficiary if necessary."

[3] At the time of trial, the parties' daughter was 23 years of age.

Lastly, Ms. de la Peña sought "such other and further relief in favor of [Ms. de la Peña] as this [c]ourt deems just and proper."

In Mr. Fleisig's Amended Complaint, he alleged that "[p]rior to the marriage, the parties entered into a Prenuptial Agreement, executed on June 25, 1999" ("1999 Prenuptial Agreement"), which provided for "the division of assets and pension rights as stated therein and further provide[d] for the waiver of alimony and counsel fees incident to a divorce." Mr. Fleisig sought an absolute divorce, based on the parties' separation in excess of 12 months, and a declaratory judgment to set aside the 1993 Prenuptial Agreement and to have that agreement declared invalid and unenforceable. Additionally, Mr. Fleisig requested that the court enforce the 1999 Prenuptial Agreement, that the family home and all jointly owned property be sold and proceeds be divided pursuant to the 1999 Prenuptial Agreement,[4] that all pensions earned by him prior to and after the marriage be determined as his sole and separate property,[5] that neither party be awarded alimony or counsel fees, that the court determine which property is marital and its value, that the court grant him a

[4] The 1999 Prenuptial Agreement, in pertinent part, read: "In the event of separation or divorce, marital property acquired after the marriage shall nevertheless remain subject to division, in proportion to the sums of separate property contributed by each party towards its acquisition and improvement, unless otherwise agreed in writing."

[5] Regarding separate property, the 1999 Prenuptial Agreement indicated that "[t]he income each of [the parties] earn[] – as well as any items of investments [the parties] purchase[] with [their] income, belong[] absolutely to the person who earns the money unless there is a written joint ownership agreement[,]" and that "[the parties] shall each maintain [their] own separate bank, credit card, investment and retirement accounts."

monetary award, and that the court order "such other and further relief as may be equitable."

A. The Partnership and Prenuptial Agreement of 1993

In support of his request for a declaratory judgment, Mr. Fleisig claimed that, at the time of the 1993 Prenuptial Agreement's execution, he and Ms. de la Peña were in a confidential relationship, Ms. de la Peña was providing him with legal and business advice, Ms. de la Peña was a licensed attorney in Washington, D.C., New York, Spain, and Argentina, Ms. de la Peña prepared the agreement without giving him the opportunity to negotiate or modify it, Ms. de la Peña was aware that he relied on and trusted her legal advice and thus he did not have legal counsel with respect to the agreement, Ms. de la Peña did not provide any financial disclosure of assets, worth, or income prior to the agreement's execution, that the terms and method of execution of the agreement are overreaching and unconscionable, and that Ms. de la Peña exerted undue influence over him causing him to enter into the agreement.

Pursuant to Mr. Fleisig's motion to bifurcate, a hearing was held on June 16, 2023 and following written arguments submitted by the parties, the court issued a memorandum opinion and order invalidating both the 1993 and 1999 Prenuptial Agreements.[6] As for the 1993 Prenuptial Agreement, the court found that Ms. de la Peña, an attorney, drafted the agreement and that there was no evidence that the terms of the agreement were

[6] Mr. Fleisig did not appeal the court's decision as it relates to the validity of the 1999 Prenuptial Agreement. Therefore, that agreement is not subject to this appeal, and we will not address it further.

negotiated by Mr. Fleisig. The court believed Mr. Fleisig's testimony that "he did not think he needed to get an attorney because [Ms. de la Peña] is an attorney, she had financial acumen, and he loved her."

The court further agreed with Mr. Fleisig that the terms of the 1993 Prenuptial Agreement were contradictory.[7] The agreement refers to "[s]pousal rights to pension benefits" in the "separate property" section of the agreement, however, the court found that "there is no corresponding language to indicate what the references mean because the preceding and succeeding paragraphs address different and unrelated subject matters." The court also found that, from the section on "[c]ommunity and joint property," Ms. de la Peña "intended that she would share in [Mr. Fleisig's] pension, which, given his age,

[7] First, the 1993 Prenuptial Agreement indicates that, "[a]ssets designated as one person's separate property including assets traceable to separate property belongs exclusively to that person [. . . .] Separate property is not subject to division." Then the agreement indicates that "[t]he parties agree that all other personal or real property or assets owned jointly or separately, whenever acquired, including property acquired before this date, will be held as community, joint, joint tenants, or marital assets in the event of legal marriage, regardless on whose title it is held." While "[s]pousal rights to pension benefits" appear to be designated as "separate property" in the agreement, the agreement also designates as "[c]ommunity or joint property[,]" the parties' "retirement accounts, bank accounts, income, benefits, or service before or after this agreement" and "retirement benefits in pension, annuities and other employee benefits or tax deferred plans contributed or earned before or after this agreement."

The agreement also indicates that Mr. Fleisig "agrees that he owes [Ms. de la Peña] $42,500, representing 10% of the purchase price of the property 5353 29th [Street NW, Washington, D.C.,] plus the interest rate of 8% per year, due in thirty years from the purchase date[,]" however, later in the agreement it states that Ms. de la Peña "further agrees to buy the property [. . .] and to lend 10% of the purchase price ($42,500)[.]" The court found these terms contradictory as it was unclear whether the loan was already made to Mr. Fleisig or if it was just planned to be made to him.

was not that far away." The court concluded that "[t]his contradiction casts doubt on whether [Mr. Fleisig] actually understood what rights he was signing away."

The court found that, while the agreement listed some of the assets of the parties, the agreement did not include all assets of the parties. Moreover, the assets that were listed did not include values. For example, Ms. de la Peña listed her assets as real estate in Argentina and a Honda Accord vehicle, while failing to include assets such as bank accounts. The court explained that such omission is not fatal to the validity of the agreement, but it is considered when determining whether the agreement is overreaching.

As for the fairness of the agreement or whether it was overreaching, the court found that "the benefit to [Mr. Fleisig] was not commensurate with that which he relinquished, and he did not understand the Agreement. Therefore, the Agreement was not fair when it was made." The court explained that Mr. Fleisig's "World Bank pension was earned and was in pay status, with the vast majority of it being earned prior to the Agreement[,]" and that Mr. Fleisig also had "accrued a pension from the Federal government for his service prior to 1980." Per the agreement, Ms. de la Peña "would be entitled to share in the pensions as if they were jointly owned, precluding the Court from considering what if any portion constituted marital property."

The court concluded that:

> Given the inconsistencies in the 1993 Agreement, the Court finds [Mr. Fleisig's] testimony credible that he did not understand the Agreement and relied on [Ms. de la Peña]. The Court, therefore, finds that the terms of the 1993 Agreement demonstrate overreaching. Accordingly, the Court concludes that the 1993 Agreement is not valid.

Thereafter, Ms. de la Peña moved for reconsideration of the validity of the 1993 Prenuptial Agreement on September 25, 2023, which was denied. On November 22, 2023, Ms. de la Peña filed an interlocutory appeal with this Court, which was dismissed.[8]

B. Divorce Proceedings: May 13–14, 2024

A trial on the merits for divorce was held on May 13 and 14, 2024. At the close of Ms. de la Peña's case, Mr. Fleisig moved for judgment "arguing that because [Ms. de la Peña] did not file for an absolute divorce and never amended her complaint, her only remedy was for a limited divorce and [alimony]." The court deferred its ruling and, at the conclusion of trial, ordered the parties to submit written arguments. In its Memorandum Opinion and Judgment of Absolute Divorce, entered on August 13, 2024, the court granted Mr. Fleisig's motion for judgment.

In granting the motion for judgment, the court found that Mr. Fleisig alerted Ms. de la Peña to the fact that "the court did not have jurisdiction to determine the marital property and monetary award issues in the context of a limited divorce pleading" in his Answer to Plaintiff's Complaint. However, after almost two years of the case's pendency, Ms. de la Peña never filed an amended pleading. Moreover, the court found that while Ms.

[8] "[A] party may appeal from a *final judgment* entered in a civil or criminal case by a circuit court." Md. Code Ann., Cts. & Jud. Proc. § 12-301 (emphasis added).

> [A]n order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action: (1) *is not a final judgment*[. . . .]

Md. Rule 2-602(a) (emphasis added).

de la Peña listed several requests in her complaint, she "never made a request for a monetary award or property transfer *that was not entirely predicated and contingent on her request for a limited divorce*." (emphasis added). As such, the court concluded that Ms. de la Peña was "not entitled to a transfer of property or a monetary award pursuant to a request for a limited divorce[,]" and that her "claims for a monetary award or any interest in [Mr. Fleisig's] assets, to the extent not required as a result of [Mr. Fleisig's] pleadings, [were] not properly before this Court and are, therefore, DENIED."

The court determined the marital property of the parties pursuant to Mr. Fleisig's request in his Amended Counter-Complaint. The parties agreed that the family home, the Acura vehicle driven by Ms. de la Peña, the Toyota driven by Mr. Fleisig, and Ms. de la Peña's Roth IRA account with a balance of $22,000, were marital property. With respect to the family home, Ms. de la Peña claimed that "the equity in the marital home was solely contributed from the equity she received from the sale of a house that she owned in Washington, D.C.," and that "this amount exceed[ed] the estimated equity after the sale of the home," and therefore, she requested that "all proceeds from the sale of the marital home be awarded to her[.]" However, the court noted that Ms. de la Peña did not produce any evidence to support this argument and found, therefore, that Ms. de la Peña did not meet her burden. As a result, the court concluded that "the entire house [was] marital property, the proceeds from the sale of which, shall be divided equally between the parties."

The parties disputed the marital status of Mr. Fleisig's two retirement pensions,[9] Mr. Fleisig's IRA,[10] and Mr. Fleisig's Federal Employees' Group Life Insurance ("FEGLI") policy. With respect to Mr. Fleisig's retirement annuity with the World Bank, the court found that it was "earned and in pay status prior to the parties' marriage" and therefore, "is fully non-marital." For Mr. Fleisig's federal retirement annuity, the court found that that "vast majority of this annuity was earned prior to the parties' marriage[,]" with "2,761 days of service prior to the parties' marriage and 959 days of service after the parties' marriage." As a result, the court found that 74.22% of Mr. Fleisig's federal retirement annuity was non-marital and 25.78% was marital. With a monthly payment of $2,656, the "marital portion of the monthly annuity payment at that time would therefore be $684.71."[11]

The court credited Mr. Fleisig's testimony that his IRA was "funded from his Cornell pension and his Federal [Thrift Savings Plan ("TSP"),] which were earned before the marriage." The court further noted that Ms. de la Peña did not present any evidence that Mr. Fleisig's IRA was marital. In regard to the FEGLI policy, Ms. de la Peña sought an order requiring Mr. Fleisig to maintain this policy and to name Ms. de la Peña as the sole beneficiary of the death benefit. The court found that Ms. de la Peña failed to present

[9] Mr. Fleisig has a retirement annuity with the World Bank and a federal retirement annuity.

[10] As of May 7, 2024, Mr. Fleisig's IRA had a balance of $113,619.46.

[11] The trial court came to this amount using the formula established in *Bangs v. Bangs*, 59 Md. App. 350 (1984).

"evidence at trial of the nature of the FEGLI policy, the benefits thereunder, the policy's value, or the marital nature of the policy, if any." Moreover, the court concluded that it did not have jurisdiction to require Mr. Fleisig to "continue to maintain his life insurance policy for the benefit of [Ms. de la Peña.]"[12]

As previously indicated, the court found that Ms. de la Peña was not entitled to a transfer of property or a monetary award. However, the court noted that, even if properly pled, it would not be inclined to grant Ms. de la Peña a monetary award because:

> 1) [Mr. Fleisig] does not have a significantly higher percentage of the marital assets title[d] solely in his name; 2) [Mr. Fleisig] receives $12,708.56 gross monthly from his pensions; 3) The Court has awarded [Ms. de la Peña] $3,500.00 monthly in alimony; 4) [Ms. de la Peña] has been awarded $25,000.00 in attorney's fees; and 5) [Mr. Fleisig] has substantial debt.

In conclusion, the court granted Mr. Fleisig an absolute divorce from Ms. de la Peña on the ground of separation in excess of 12 months, and ordered that the marital home and marital property within the home be sold and the net proceeds equally divided between the parties. Each parties' clothing, personal papers, effects, and vehicles were awarded to them respectively. Ms. de la Peña was awarded indefinite alimony in the amount of $3,500 per month, 50% of the marital portion of Mr. Fleisig's federal retirement annuity, and $25,000 for attorney's fees.[13] Mr. Fleisig was awarded his remaining

[12] *See Hopkins v. Hopkins*, 328 Md. 263, 275 (1991) (holding that a trial court could not compel a party to cooperate with their ex-spouse in obtaining a life insurance policy on their life).

[13] Neither Ms. de la Peña nor Mr. Fleisig appealed the circuit court's ruling with respect to the awards for alimony or attorney's fees, and thus we need not address these awards further.

pensions and IRA as his sole and separate property. Ms. de la Peña's request for a monetary award was denied.

Ms. de la Peña moved for a new trial on August 23, 2024 and filed an appeal with this Court on September 12, 2024. On November 7, 2024, the circuit court denied Ms. de la Peña's motion for new trial.

Additional facts will be included in the discussion as they become relevant.

III. DISCUSSION

We conclude that the trial court did not err in its decision to invalidate the 1993 Prenuptial Agreement and to not enforce it during the divorce proceedings. While we conclude that the trial court erred in finding that Ms. de la Peña was limited to the relief of a limited divorce, we also conclude that the trial court did not err overall in its Judgment of Absolute Divorce. The trial court considered Ms. de la Peña for all relief available under an absolute divorce and distributed the marital property equitably, assessed the monetary award factors, found that such monetary award was not required to adjust the equities of the parties, and ordered indefinite alimony and attorney's fees to Ms. de la Peña. We further conclude that the trial court did not err in its distribution of the marital property and did not abuse its discretion in denying Mr. de la Peña's request for a monetary award.

A. Validity of the 1993 Prenuptial Agreement

A prenuptial or premarital agreement is a legal contract "entered prior to marriage and executed in contemplation of marriage[,]" for the purpose of preserving "the property of one spouse [or both spouses], thereby preventing the other from obtaining that to which

he or she might otherwise be legally entitled." 12 M.L.E. *Husband and Wife* § 25, Westlaw (database updated November 2025). As legal contracts, prenuptial agreements are "interpreted according to the objective theory of contracts and subject to traditional contract defenses, such as fraud, duress, coercion, mistake, undue influence, incompetency, or unconscionability at the time the agreement was entered into." *McGeehan v. McGeehan*, 455 Md. 268, 294 (2017) (citing Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* §§ 14–1, 14–2(b) (6th ed. 2016) [hereinafter *Fader's Maryland Family Law*]). However, prenuptial agreements presume that "a confidential relationship exists, as a matter of law, between the parties at the formation of the [prenuptial] agreement[.]" *Cannon v. Cannon*, 384 Md. 537, 543 (2005). This presumption can be rebutted "[i]f the party seeking enforcement can prove that a negotiation took place between the parties—an actual give and take occurrence, then a court properly may treat the contested agreement as a contract between equals." *Id.* at 572.

As a consequence of the confidential relationship, the burden of proving the validity of a prenuptial agreement shifts to the party seeking to enforce the agreement. *Id.* at 555. Whereas in a generic contract dispute, when the parties are not in a confidential relationship, the party seeking to invalidate the contract bears the burden of proving the contract's invalidity. *Id.* at 554–55. Secondly, as a result of the confidential relationship, the parties to a prenuptial agreement are each required "to make a frank, full, and truthful disclosure of their respective worth in real as well as personal property." *Id.* at 555–56 (quoting *Levy v. Sherman*, 185 Md. 63, 73 (1945)). Full disclosure is required "so that he

or she who waives [their rights to such property] can know what it is he or she is waiving." *Id.* at 559 (quoting *Hartz v. Hartz*, 248 Md. 47, 56–57 (1967)). "There is no gender consideration involved, [. . .] because the parties are required to make mutual disclosures prior to entering the [prenuptial] agreement." *Cannon*, 384 Md. at 571. However, "the disclosure need not be a drastically sweeping one and the [spouse] need not know the [other spouse's] exact means so long as [they have] a general idea of [the other's] property and resources." *Harbom v. Harbom*, 134 Md. App. 430, 449 (2000).

In determining the validity of a prenuptial agreement, the "real test" is whether there was "overreaching, that is, whether in the atmosphere and environment of the confidential relationship there was unfairness or inequity in the result of the agreement or in its procurement." *Id.* at 559 (quoting *Hartz*, 248 Md. at 57). Thus, the party seeking to enforce the agreement must prove the absence of overreaching, which may be established by showing that there was full disclosure of the parties' assets. *McGeehan*, 455 Md. at 294; *see also Cannon*, 384 Md. at 573 ("One way (and perhaps the gold standard) a party seeking to enforce an agreement may meet its burden, [. . .] is if it documents a full, frank, and truthful disclosure of his or her assets and their worth before the [prenuptial] agreement is signed."). If there is an inadequate disclosure of assets, proof that the party challenging the agreement had "adequate knowledge of the existence of the assets subject to the waiver and knowledge of what those assets are worth in sum[,]" will suffice. *McGeehan*, 455 Md. at 294 (citation omitted). However, "failure to disclose or lack of precise knowledge will not necessarily be fatal to the validity of the [prenuptial]

agreement[,]" as there are alternatives to prove an agreement's validity. *Cannon*, 384 Md. at 568 (quoting *Hartz*, 248 Md. at 58).

A prenuptial agreement's validity may be proven if the lack of disclosure or knowledge was not prejudicial to the party challenging the agreement. *McGeehan*, 455 Md. at 294; *see also Harbom*, 134 Md. App. at 450 (quoting *Hartz*, 248 Md. at 58) ("For the basic issue is overreaching, not the absence of disclosure. If the intended [spouse] is not prejudiced by the lack of information, [they] may not repudiate."). The lack of prejudice may be proven by showing that the "benefit to the waiving party was commensurate with what he or she relinquished such that the agreement was fair and equitable[,]" or by proving that "the party attacking the agreement entered into the agreement freely and understandingly." *Id.* at 294–95 (quoting *Fader's Maryland Family Law, supra*, at § 14-2(b)). Our Court reiterated this "two-pronged test" in *Stewart v. Stewart*, explaining:

> [The] two-pronged test, derived from the definition of "overreaching" itself, [is] a test which requires the court to ask, first, "was the benefit to [the party attacking the agreement] commensurate with that which she [or he] relinquished so that the agreement was fair and equitable under the circumstances," and, second, "did the subsequent would-be repudiator of the contract enter into the agreement freely and understandingly." [*Hartz*, 248 Md. at 57–58; *accord Cannon*, 384 Md. at 568–69.] As the first prong of this "overreaching" test addresses the substantive fairness of the prenuptial agreement, while the second prong addresses the manner in which the repudiating party's assent to that agreement was obtained, we shall refer to the first of the two prongs as the "substantive prong" and the second as the "procedural prong."

214 Md. App. 458, 470 (2013).

In regard to the "substantive prong," the party seeking to enforce the prenuptial agreement must prove that the agreement was not unfairly disproportionate to the challenging party at the time the agreement was executed. *See Cannon*, 384 Md. at 574. "For example, [a prenuptial] agreement that provides valuable consideration (other than marriage itself) in exchange for a waiver, or where the parties agree to a mutual waiver of the marital rights, is more likely not to be found unfairly disproportionate." *Id.*

If the terms of the agreement are unfairly disproportionate to the challenging party, the party seeking to enforce the agreement must prove that "overreaching" did not occur in the execution of the agreement, which brings us to the "procedural prong." *See id.* For the procedural prong, trial courts may consider factors such as "the extent of the disclosure (if any), whether the attacking party had the opportunity to seek legal advice before signing the agreement, and whether the attacking party voluntarily and knowingly relinquished his or her rights." *Id.* The court may also consider who drafted the agreement. *See id.* at 572–73 ("[E]vidence as to who drafted the agreement is considered more properly in analysis of an argument under the overreaching standard.").

Other factors the court may consider for either prong include:

> [T]he situation of the parties, their ages, their respective holdings and income, their respective family obligations or ties, the circumstances leading to the execution of the agreement, the actions of husband and wife after the marriage as they tended to show whether the agreement was voluntarily and understandingly made, the needs of him or her who made relinquishment, including whether or not that one, after the death of the other, can live substantially as comfortably as before the marriage.

Harbom, 134 Md. App. at 443.

If it is proven that there is no overreaching, the burden shifts and the party challenging the agreement "must resort to other common law contract defenses to attack the validity of the [prenuptial] agreement[,]" such as "fraud, duress, coercion, mistake, undue influence, or incompetence on the part of a party." *Id.* at 574–75. However, these defenses will likely be considered during the overreaching analysis. *Id.* at 575. Moreover, an otherwise valid prenuptial agreement may be challenged on the basis that it is unconscionable. *Id.* at 562 (citing *Martin v. Farber*, 68 Md. App. 137, 143–45 (1986)). Unconscionability must be measured at the time the agreement was entered. *Stewart*, 214 Md. App. at 478; *see also Cannon*, 384 Md. at 575 ("[T]he doctrine of unconscionability remains a viable alternative, if the unconscionable condition can be proven to have existed at the time the agreement was entered."). An agreement is unconscionable if it is "such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other." *Martin*, 68 Md. App. at 144 (citations omitted). Proving that a prenuptial agreement is unconscionable "requires a greater showing of inappropriateness [. . .] than it does to show that it is invalid under the fair and reasonable" or overreaching test. *Stewart*, 214 Md. App. at 478 (internal quotation marks and citations omitted). Therefore, if an agreement is not overreaching, the court "may conclude, on that ground alone, that the parties' prenuptial agreement [is] not unconscionable." *Id.*

In sum, the parties entering into a prenuptial agreement are presumed to be in a confidential relationship, and as such, the party seeking to enforce the agreement has the burden of proving the agreement is valid. *See McGeehan*, 455 Md. at 294. The validity of

a prenuptial agreement rests on whether there was overreaching in the agreement itself—whether the agreement terms are fair and equitable (the substantive prong)—or in its execution—whether the agreement was entered freely and understandingly (the procedural prong). *See Stewart*, 214 Md. App. at 470. If the terms of the agreement are unfair or unequitable, the party seeking to enforce the agreement must prove that the agreement was entered freely and understandingly. *See Cannon*, 384 Md. at 573–74. The enforcing party may prove that the agreement was entered freely and understandingly by showing that there was a full disclosure of each parties' assets and their worth, or that there was adequate knowledge of the same. *See McGeehan*, 455 Md. at 294. If the enforcing party proves that no overreaching occurred, the party challenging the agreement may assert common law contract defenses—fraud, duress, coercion, mistake, undue influence, incompetence—or that the agreement is unconscionable. *See Cannon*, 384 Md. at 575.

1. Standard of Review

We review the circuit court's decision to invalidate the 1993 Prenuptial Agreement according to Maryland Rule 8-131(c), which states:

> When an action has been tried without a jury, an 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). As such, we review the circuit court's factual findings under the clearly erroneous standard. *See Stewart*, 214 Md. App. at 475; *see also Cannon*, 384 Md.

at 545. "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Moreover, we review such evidence in the light most favorable to the party that prevailed below. *Id.* One the other hand, the circuit court's legal conclusions are reviewed de novo without deference. *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020).

In reviewing a circuit court's decision on the validity of a prenuptial agreement, we have previously explained:

> This Court cannot substitute its judgment for that of the chancellor as the trier of fact. Our scope of review is limited to whether those findings are clearly erroneous in light of all the evidence. We must accept the truth of all the evidence and all favorable inferences fairly deducible therefrom to support the factual conclusion reached by the chancellor.

Blum v. Blum, 59 Md. App. 584, 597 (1984); *see also Hale v. Hale*, 74 Md. App. 555, 564 (1988) (affirming the trial court's finding that there was undue influence upon the wife in signing the agreement and that the marital separation agreement was unconscionable, thus rescinding the agreement).

2. Analysis

Ms. de la Peña asserts that the trial court erred in invalidating the 1993 Prenuptial Agreement, because: with respect to the agreement, there was an absence of an unfair, unjust, or clearly one-sided result; the trial court failed to consider performance of the agreement thereafter; the trial court incorrectly determined that she was the dominant party rather than Mr. Fleisig in executing the agreement; Mr. Fleisig had access to seek counsel to advise him on the agreement, although he failed to do so; the trial court

incorrectly found that Mr. Fleisig did not have adequate knowledge of the agreement's terms and the parties' assets; the trial court failed to apply the laws of Washington, D.C., as stipulated in the agreement; and the trial court incorrectly found that the agreement contained contradictions and inconsistencies.

Furthermore, Ms. de la Peña argues that the trial court erred in failing to sever valid provisions of the 1993 Prenuptial Agreement regarding the surviving spouse annuity of the Civil Service Retirement System ("CSRS"), the life insurance policies, the family home, and retirement accounts. As such, Ms. de la Peña requests that this Court reverse the circuit court and remand the case, order the circuit court to validate and enforce the 1993 Prenuptial Agreement, or alternatively order the circuit court to sever the provisions regarding federal and pension benefits, life insurance policies, the family home, and retirement accounts.

Mr. Fleisig counters that the trial court properly held that the 1993 Prenuptial Agreement was invalid, because: the preparation and execution of the agreement was overreaching; the terms of the agreement are contradictory and confusing; Ms. de la Peña did not present evidence of any financial disclosure prior to the agreement's execution; Ms. de la Peña's interpretation of the agreement is overreaching; and the trial court properly applied Maryland law. In addition, Mr. Fleisig argues that the trial court did not err in failing to sever certain provisions of the 1993 Prenuptial Agreement, because there is no legal basis for the court to sever the provisions of the agreement as Ms. de la Peña

has requested. Therefore, Mr. Fleisig requests that this Court affirm the circuit court's judgment.

We conclude that the trial court did not err in determining that the terms of the 1993 Prenuptial Agreement were unfair and inequitable. Nor did the trial court err in finding that the agreement was not entered freely and understandingly, and thus overreaching. Consequently, the trial court did not err in invalidating the 1993 Prenuptial Agreement and not enforcing it during the divorce proceedings. Moreover, we conclude that the trial court did not err in failing to sever the provisions of the agreement.

i. Substantive Prong: Whether the 1993 Prenuptial Agreement Terms are Fair and Equitable

In reviewing whether the 1993 Prenuptial Agreement was overreaching and therefore invalid, we first assess the substantive prong—whether the agreement terms are fair and equitable. The fairness or reasonableness of the prenuptial agreement must be determined as of the time of its execution, rather than at the time the agreement is challenged. *See Martin*, 68 Md. App. at 137 (reversing the trial court's decision to invalidate the prenuptial agreement, which was based on unfair circumstances arising after the execution of the agreement). Ms. de la Peña argues that the trial court failed to consider performance of the agreement after its execution, however, circumstances arising thereafter do not determine whether the agreement was overreaching at the start in its terms or execution. *See id.* The circuit court found that "the benefit to [Mr. Fleisig] was not commensurate with that which he relinquished," at the time the agreement was

entered, particularly as it related to Mr. Fleisig's pensions, and therefore, the agreement was "not fair when it was made."

By the time the 1993 Prenuptial Agreement was executed, the vast majority of Mr. Fleisig's pensions—World Bank pension and federal pension—were already earned. Mr. Fleisig had accrued a federal pension for his service in the Federal government prior to 1980, when he then began working at the World Bank, 13 years before the execution of the prenuptial agreement. Moreover, at the time the parties entered the 1993 Prenuptial Agreement, Ms. de la Peña was approximately 26–27 years of age and Mr. Fleisig, 53 years of age. The circuit court noted that Ms. de la Peña "intended that she would share in [Mr. Fleisig's] pension, which, given his age, was not that far away." Pursuant to the 1993 Prenuptial Agreement, pensions earned "before or after" the agreement were designated as "community or joint property." In the event of separation or divorce, each party was entitled to "half of the community or joint assets." As the circuit court indicated in its ruling, such agreement precludes "the Court from considering what if any portion constituted marital property."

Per the 1993 Prenuptial Agreement, Ms. de la Peña would be entitled to half of Mr. Fleisig's pension, of which the vast majority had been earned prior to the agreement in 1993 or their marriage in 2000. Ms. de la Peña would be entitled to a portion of Mr. Fleisig's pension that would not be considered marital property under Maryland law;[14] a

[14] "Marital property" is "property, however titled, acquired by 1 or both parties during the marriage." Md. Code Ann., Fam. Law § 8-201(e)(1).

portion that Ms. de la Peña would not typically be entitled to.[15] Although it is true that Ms. Fleisig would be entitled to half of Ms. de la Peña's pension or retirement earned before the 1993 Prenuptial Agreement or marriage, at the time of the agreement Ms. de la Peña was approximately 26–27 years of age, with likely much less retirement or pension earned. As such, the terms of the 1993 Prenuptial Agreement in relation to retirement or pension accounts were not fair and equitable.

Furthermore, the 1993 Prenuptial Agreement entitled Ms. de la Peña to "the property where they live free of debt"[16] and "[a]limony rights to maintain the standard of living to which she was accustomed and spousal rights to benefits[,]" in the event of separation or divorce, while Mr. Fleisig was entitled to "the equity proceeds from the sale of [Ms. de la Peña's] property at 5353 29th [Street NW,] Washington[, D.C.]" Counsel for Mr. Fleisig summed up the inequity of the 1993 Prenuptial Agreement in his opening statement during the hearing on the validity of the prenuptial agreements: per the agreement, Ms. de la Peña was "entitle[d] to [Mr. Fleisig's] retirement assets that were in

[15] Marital property does not include property acquired before marriage. Md. Code Ann., Fam. Law § 8-201(e)(3)(i). Upon the dissolution of a marriage, the marital property is distributed equitably between the parties. *See Alston v. Alston*, 331 Md. 496, 506–08 (1993).

[16] The 1993 Prenuptial Agreement does not specify what it means to be "free of debt." However, counsel for Mr. Fleisig during the hearing on the validity of the agreement argued that, per the agreement, Mr. Fleisig "was going to give [Ms. de la Peña] a house [and] pay the mortgage[.]" The idea that "free of debt" meant that Mr. Fleisig would pay the mortgage was neither further explained through testimony nor challenged by Ms. de la Peña during the validity hearing. Moreover, the house that the parties lived in at the time of the divorce proceedings was subject to a mortgage and a home equity line of credit ("HELOC").

pay status for a job that he no longer had at the time of the marriage and [. . .] 50 percent of the premarital retirement accounts[;] [Mr. Fleisig] was going to give [Ms. de la Peña] a house [and] pay the mortgage[.]" In exchange for giving Ms. de la Peña a house, free of debt, and possible indefinite alimony,[17] Mr. Fleisig was entitled to the equity proceeds from the sale of Ms. de la Peña's 5353 29th Street property.

Moreover, the circuit court found contradictory the terms of the agreement in relation to the 5353 29th Street property, indicating it was unclear whether the $42,500 loan was already made or only planned to be made to Mr. Fleisig in relation to Ms. de la Peña purchasing the property. First, the 1993 Prenuptial Agreement states that Mr. Fleisig "agrees that he owes [Ms. de la Peña] $42,500, representing 10% of the purchase price of the property 5353 29th [Street NW, Washington, D.C.,]" but later the agreement indicates that Ms. de la Peña "further agrees to buy the property [. . .] and to lend 10% of the purchase price ($42,500)" to Mr. Fleisig. Therefore, it is unclear whether the benefit to Mr. Fleisig—the equity proceeds from the sale of Ms. de la Peña's property at 5353 29th Street NW, Washington, D.C.—were commensurate with that which he relinquished—a house, free of debt, and possible indefinite alimony to Ms. de la Peña.

[17] "The court may award alimony for an indefinite period, if the court finds that: [. . .] even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate." Md. Code Ann., Fam. Law § 11-106(c).

In *Williams v. Williams*, 306 Md. 332 (1986), the trial court found that the terms of a marital separation agreement were unconscionable,[18] striking the agreement. *Id.* at 334. The separation agreement in question was prepared by the wife's attorney and signed by the husband without any negotiation of the terms or the advice of an attorney. *Id.* at 333, 341. The agreement required the husband to convey to the wife the marital home, the contents of the home, and a 1982 Thunderbird motor vehicle, while also requiring the husband to pay the mortgage, car loan, and all marital financial obligations. *Id.* at 334. "In sum, under the agreement the wife was to receive property valued at approximately $131,000. The husband, on the other hand, would retain property valued at about $1,100." *Id.* In its ruling, the trial court found that there was "inadequate consideration for the agreement, because, in fact, what the husband was receiving here is so little in relationship to the value of the assets. Most particularly, the ongoing obligations that he was agreeing to pay." *Id.* at 337. Our Supreme Court affirmed the trial court's decision, holding an agreement unconscionable where the "consideration was grossly inadequate and the

[18] While our trial court here did not find the terms of the 1993 Prenuptial Agreement so unfair and inequitable to reach the level of "unconscionable" as the court in *Williams* did, the *Williams* case provides an example of terms in a marital agreement that the court deems as unfair and inequitable. "[I]t requires a greater showing of inappropriateness to prove that a prenuptial agreement is unconscionable than it does to show that it is invalid under the fair and reasonable test, which it deems to be the same as Maryland's overreaching test." *Stewart*, 214 Md. App. at 478 (citation and internal quotation marks omitted). Therefore, if an agreement is deemed unconscionable, it is inherently unfair and unreasonable, however, not every agreement deemed unfair and unreasonable will be found unconscionable. *See id.* ("Having just determined that there was no overreaching by Mr. Stewart, we may conclude, on that ground alone, that the parties' prenuptial agreement was not unconscionable.").

burdens on the husband were oppressive[.]" *Id.* at 341, 343. Even though the trial court did not make any findings of incompetency, duress, fraud, or that the husband was "the dominated and dependent party[,]" the Supreme Court held that the terms of the agreement were so unfair and inequitable that such further analysis was unnecessary. *Id.* at 337, 343.

There is a similarity in the terms of the 1993 Prenuptial Agreement with respect to Mr. Fleisig and those of the marital separation agreement in *Williams*. Here, like in *Williams*, Mr. Fleisig is required to relinquish the marital home to Ms. de la Peña, either free of debt or with Mr. Fleisig paying the mortgage, upon separation or divorce per the 1993 Prenuptial Agreement. In addition, in the agreement, Ms. de la Peña does not waive alimony rights, subjecting Mr. Fleisig to the possibility of paying indefinite alimony. Moreover, Ms. de la Peña would be entitled to half of Mr. Fleisig's pension, of which the vast majority was earned prior to the agreement in 1993 or their marriage in 2000—a portion of Mr. Fleisig's pension that would not be considered marital property; a portion that Ms. de la Peña would not typically be entitled to. Although Mr. Fleisig would also be entitled to half of Ms. de la Peña's pension or retirement accounts, considering the age difference of the parties, the amounts are not likely to be commensurate. Similarly, the property free of debt, and indefinite alimony Ms. de la Peña was entitled to per the agreement, is not likely to be commensurate with the equity proceeds of the 5353 29th Street property, that Mr. Fleisig was entitled to. While we recognize that the 1993 Prenuptial Agreement is not unconscionable and not as extreme as the marital separation

agreement in *Williams*, we still conclude that the trial court here did not err in determining that the terms of the 1993 Prenuptial Agreement were unfair.

ii. Procedural Prong: Whether the 1993 Prenuptial Agreement was Entered Freely and Understandingly

We further recognize that the unfair terms of the 1993 Prenuptial Agreement alone are not sufficient to declare the agreement invalid. "[M]ere inadequacy of price will not of itself be sufficient to warrant the rescission of a contract [. . . and one] cannot be relieved of a contract merely because he may have made a bad bargain[.]" *Williams*, 306 Md. at 340 (quoting *Straus v. Madden*, 219 Md. 535, 542 (1959)). However, such unfairness in a contract "accompanied by other inequitable incidents," such as the contract being made without "professional advice or consultation[,]" or "concealments, misrepresentations, undue advantage, oppression on the part of the one who obtains the benefit, or ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like on the part of the other," may provide the basis to invalidate said contract. *Williams*, 306 Md. at 340–41 (quoting *Straus*, 219 Md. at 543–44). Therefore, we must assess the second prong of the overreaching test—the procedural prong—whether the 1993 Prenuptial Agreement was entered freely and understandingly.

The circuit court found that Ms. de la Peña, who is an attorney, drafted the agreement and provided it to Mr. Fleisig, who was unrepresented, with no evidence that the terms were negotiated. We recognize that failure to seek attorney advice itself is not fatal where "the attacking party had the opportunity to seek counsel and was not discouraged from doing so." *Stewart*, 214 Md. App. at 475 (citation and internal quotation

marks omitted). However, Mr. Fleisig did not seek the advice of an attorney with respect to the agreement because he considered Ms. de la Peña to be his attorney, as she was, in fact, an attorney and had financial acumen; he loved her and trusted her to act in his best interest.

In addition, Mr. Fleisig was experiencing financial difficulties and Ms. de la Peña was assisting him in rearranging his finances with respect to his debt at the time the agreement was entered. These factors combined indicate that Ms. de la Peña was the dominant party in this confidential relationship at the time, or at least in a superior bargaining position. *See Martin*, 68 Md. at 146 (citation omitted) (in confidential relationships "a presumption arises that confidence was placed in the dominant party [by the subservient party] and that the transaction complained of resulted from fraud or undue influence and superiority or abuse of the confidential relationship by which the dominant party profited."); *see also Blum*, 59 Md. App. at 595 (a dominant party in a confidential relationship has the burden of proving that the agreement was fair in its terms and execution.).

Furthermore, the circuit court found certain terms of the 1993 Prenuptial Agreement contradictory. *See, supra*, Section III.2.i. In particular, the circuit court found the term "[s]pousal rights to pension benefits" unclear and contradictory. The term "[s]pousal rights to pension benefits" is unclear because "there is no corresponding language to indicate what the references mean[.]" The term as mentioned in the agreement is contradictory because it appears to be designated as "separate property" in the

agreement, however, the agreement also designates it as "[c]ommunity or joint property[.]" The court indicated that this "contradiction casts doubt on whether [Mr. Fleisig] actually understood what rights he was signing away."

Moreover, the circuit court found that the agreement failed to include all of the parties' assets and the assets that were listed, did not include values. The "frank, full, and truthful disclosure" of the parties' assets and their value is required so that the parties may *know* what they are waiving by entering a prenuptial agreement. *Cannon*, 384 Md. at 555–59. However, if there is not sufficient disclosure of assets, an "adequate knowledge of the existence of the assets" and "knowledge of what those assets are worth" will suffice. *McGeehan*, 455 Md. at 294. While it is not required for the agreement to contain an entire list of the parties' assets and their values, as the trial court here found, Mr. Fleisig testified that Ms. de la Peña did not provide him with any information on her financial assets, tax returns, or income at the time of the execution of the agreement. However, failure to disclose or lack of precise knowledge of the parties' assets alone will not invalidate a prenuptial agreement, but rather it is a factor in considering whether the parties entered into the agreement "understandingly." *See Cannon*, 384 Md. at 568.

Ultimately, the circuit court found Mr. Fleisig's testimony "credible that he did not understand the Agreement and relied on [Ms. de la Peña]." We acknowledge that "[a]ssessing the credibility of witnesses is the role of the trial court, not the appellate courts." *See Hale*, 74 Md. App. at 569. *Id.* Moreover, Ms. de la Peña, as the party seeking to enforce the agreement and as the dominant party in the confidential relationship, had

the burden of showing that the agreement was fair and equitable in its terms and entered freely and understandingly; a burden which she failed to meet. *See Cannon*, 384 Md. at 555; *Blum*, 59 Md. App. at 595. We find no error in the trial court's findings here.

Similarly, in *Hale v. Hale*, 74 Md. App. 555 (1988), this Court held that the husband obtained a marital separation agreement by abusing the confidential relationship between himself and his wife, and that the wife was unduly influenced by the husband and the attorney, who drafted the agreement, into signing the inequitable marital settlement agreement that she did not understand. *Id.* at 562–63, 570–71. The trial court found that the wife trusted her husband and that the husband "was aware of her trust in him[.]" *Id.* at 565. Furthermore, the trial court found that the wife had little participation in the formation of the agreement and that she did not understand it. *Id.* at 566. The trial court found that the wife believed that the attorney, who drafted the agreement and who was representing the husband, was also acting as her attorney and the attorney knew this. *Id.* at 566, 570. Although the attorney recommended that the wife seek independent counsel and advised her that she was forfeiting certain marital property rights in the agreement, the trial court found that these warnings were "insufficient to overcome her trust in him and her belief that he would not allow her interests to be adversely affected." *Id.* at 570. We found no error in the trial court's findings and affirmed the trial court's decision to rescind the separation agreement. *Id.* at 574.

While we do not believe that Ms. de la Peña intentionally abused the confidential relationship between her and Mr. Fleisig, as we did in *Hale*, the fact remains that Mr.

Fleisig trusted Ms. de la Peña and believed that she was his attorney, acting in his best interest. Like in *Hale*, this trust and belief resulted in Mr. Fleisig signing an agreement that he had little involvement in forming, that he did not understand, and whose terms were inequitable to him. As such, we conclude that the circuit court here did not err in finding that the 1993 Prenuptial Agreement was not entered freely and understandingly.

In concluding that the trial court did not err in determining that the terms of the 1993 Prenuptial Agreement were unfair, as well as finding that the agreement was not entered freely and understandingly, and thus overreaching, we affirm the trial court's decision to invalidate the 1993 Prenuptial Agreement and not enforce it during the divorce proceedings.

iii. Foreign Law

Additionally, Ms. de la Peña argues that the trial court failed to apply the laws of Washington, D.C. in assessing the validity of the 1993 Prenuptial Agreement. Mr. Fleisig counterargues that Ms. de la Peña did not offer evidence of the foreign law, nor did she argue that Washington, D.C. laws applied, at the validity hearing.

We agree with Mr. Fleisig. Moreover, Ms. de la Peña cited to Maryland law, not the laws of Washington, D.C., in her written closing statement submitted to the trial court after the validity hearing, as she similarly does in her briefs to this Court. Ms. de la Peña fails to argue how the two laws differ to the legal question at hand or how the trial court's ruling would have been different had it applied the laws of Washington, D.C. As such, we consider this issue waived and not properly briefed. *See Scott v. State*, 247 Md. App. 114,

152 (2020) ("As this issue was not raised below and, in any event, was not sufficiently briefed in this Court to permit our deciding it, it is not appropriate for us to address it.").

iv. Severability

Lastly, Ms. de la Peña argues that the trial court erred in failing to sever valid provisions of the 1993 Prenuptial Agreement. Mr. Fleisig counters that Ms. de la Peña cites no authority to support her claim that each term of the prenuptial agreement can be severed, where the agreement in its entirety has been deemed overreaching and invalid.

Again, we agree with Mr. Fleisig. The terms that Ms. de la Peña requests severed—particularly those regarding pensions and retirement accounts—are those same terms that the trial court found to be unfair or inequitable and we agree. Moreover, the trial court found that the execution of the agreement in its entirety was not freely or understandingly entered, which we agree, and therefore the agreement in its entirety is invalid. Therefore, there are no "valid provisions" to sever. As such, the trial court did not err in failing to sever provisions of the 1993 Prenuptial Agreement.

B. The Judgment of Absolute Divorce, August 13, 2024

1. Limited vs. Absolute Divorce

An absolute divorce "terminates the marriage, severing all legal ties between the parties that are a function of marriage and entitling either of the parties or both to remarry." *Walter v. Walter*, 181 Md. App. 273, 289 (2008) (citation and internal quotation marks omitted). Whereas a limited divorce "does not end the marriage" but rather is "a legal acknowledgment that the parties, although married, are living apart." *Id.* A limited divorce

may be granted for a "limited time or for an indefinite time." Md. Code Ann., Fam. Law § 7-102(b) (repealed 2023). Moreover, a limited divorce can be revoked, unlike an absolute divorce. *Walter*, 181 Md. App. at 294. While a court may grant alimony, including indefinite alimony, under a limited divorce, the court may not distribute marital property under a limited divorce. *Id.* at 292. Distribution of marital property, and consequently grants for monetary awards, may only be made pursuant to an annulment or an absolute divorce. *See id.* at 295. However, Maryland repealed the courts' authority to grant limited divorces, effective October 1, 2023. *See* Md. Code Ann., Fam. Law § 7-102 (repealed 2023).

i Analysis

Ms. de la Peña argues that the court erred in limiting her relief to that of a limited divorce. While her pleadings did not specifically request an "absolute divorce," Ms. de la Peña did request "a monetary award in her pleading as well as any other equitable relief." Mr. Fleisig counterargues that the trial court did not err in denying Ms. de la Peña relief outside of a limited divorce. Ms. de la Peña did not amend her complaint to seek an absolute divorce, and further, she "never [made] a request for a monetary award or property transfer that [was] not entirely predicated and contingent on her request for a limited divorce." Therefore, Ms. de la Peña is not entitled to an absolute divorce or its relief, such as a monetary award or transfer of property. Moreover, Mr. Fleisig notes that "[d]espite the repeal of Md. Code, Family Law Article, §7-102, Ms. de la Peña's claim

for a limited divorce must still be adjudicated as she requested a limited divorce prior to October 1, 2023."

We conclude that the trial court erred in finding that Ms. de la Peña was only entitled to the relief of a limited divorce and that the trial court should have construed Ms. de la Peña's complaint as a complaint for absolute divorce, "to do substantial justice." *See* Md. Rule 2-303(e). At the time of trial, the trial court was no longer authorized to award a limited divorce in this case, due to the repeal of Fam. Law § 7-102. Moreover, in her complaint, Ms. de la Peña explicitly requested relief permitted under an absolute divorce, despite her failure to request an absolute divorce.

During trial, at the close of Ms. de la Peña's case, Mr. Fleisig moved for judgment, requesting the court to deny Ms. de la Peña's requests for a monetary award and transfer of property, "arguing that because [Ms. de la Peña] did not file for an absolute divorce and never amended her complaint, her only remedy was for a limited divorce and [alimony]." In the Judgment of Absolute Divorce, entered on August 13, 2024, the court granted Mr. Fleisig's motion for judgment, stating, Ms. de la Peña's "claims for a monetary award or any interest in [Mr. Fleisig's] assets, to the extent not required as a result of [Mr. Fleisig's] pleadings, are not properly before this Court and are, therefore, DENIED." The Judgment further granted an absolute divorce to Mr. Fleisig. The court reasoned that because Ms. de la Peña "never filed a complaint for absolute divorce or requested it in her response to [Mr. Fleisig's] Supplemental Counterclaim, an absolute divorce cannot be entered in her favor[.]"

Ms. de la Peña filed a Complaint for Limited Divorce and Related Relief on June 7, 2022, prior to the repeal of Fam. Law § 7-102 on limited divorce. *See* Md. Code Ann., Fam. Law § 7-102 (repealed 2023). The divorce proceedings took place on May 13 and 14 of 2024 and the court's judgment was entered on August 13, 2024. Therefore, by the time the case went to trial and judgment was issued, courts did not have the authority to grant limited divorces in Maryland. *See id.* We first address what effect, if any, the repeal Fam. Law § 7-102 has on the parties' arguments and the trial court's ruling.

a Repeal of Family Law § 7-102

There is a "special rule of statutory construction that [states,] rights which are of purely statutory origin and have no basis at common law are wiped out when the statutory provision creating them is repealed, regardless of the time of their accrual, unless the rights concerned are vested." *McComas v. Crim. Injs. Comp. Bd.*, 88 Md. App. 143, 149 (1991) (quoting *Beechwood Coal Co. v. Lucas*, 215 Md. 248, 255–56 (1958)). There is an exception to this rule, such as if the legislation contains a saving provision. "Absent a saving provision or some other clear expression by the legislature that it intends to protect claims that are pending on the date of the enactment, an amendment of a purely statutory right affects all claims not yet vested." *Id.* at 150–51.

Maryland has a general saving provision for penalties, forfeitures, and liabilities under criminal or civil actions under Maryland Code, General Provisions § 1-205, which states:

> (a) Except as otherwise expressly provided, the repeal, repeal and reenactment, or amendment of a statute does not release, extinguish, or alter

> a criminal or civil *penalty, forfeiture, or liability imposed or incurred under the statute*.
> (b) A repealed, repealed and reenacted, or amended statute shall remain in effect for the purpose of sustaining any:
> (1) criminal or civil action, suit, proceeding, or prosecution *for the enforcement of a penalty, forfeiture, or liability*;
> and
> (2) judgment, decree, or order that *imposes, inflicts, or declares the penalty, forfeiture, or liability*.

Md. Code Ann., Gen. Provisions § 1-205. (emphasis added). However, this general saving provision only "preserves any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such repealed or amended statute[.]" *Waker v. State*, 431 Md. 1, 12 (2013) (citation and internal quotation marks omitted). For example, a criminal "sentence that had been imposed prior to the statutory change at issue," would be preserved by the general saving provision, whereas the general savings provision would not apply where a defendant "had not been convicted or sentenced when the statute concerning his offense was amended." *In re M.P.*, 487 Md. 53, 87 (2024) (discussing *State v. Johnson*, 285 Md. 339, 346 (1979); *Waker*, 431 Md. at 13.).

Therefore, where the right is purely statutory, not yet vested, not preserved by the general saving provision (not a penalty, forfeiture or liability already incurred under the repealed statute), and where there is no clear indication by the legislature that claims pending on the date of the repeal are to be preserved, the statute or right prior to repeal is ineffective. Here, the right to a limited divorce is a purely statutory construct. *See Taylor v. Taylor*, 306 Md. 290, 298 (1986) ("The power to grant a divorce is not a part of the common law jurisdiction of a court of equity, and prior to 1841 was exercised solely by

the Legislature."); *see also* Md. Code Ann., Fam. Law § 7-102 (repealed 2023). The rights to a limited divorce had not yet vested for Ms. de la Peña as her trial on the merits of divorce took place in May 2024, after Fam. Law § 7-102 was repealed on October 1, 2023. Moreover, the court's judgment was entered on August 13, 2024. Similarly, the general saving provision, under Gen. Provisions § 1-205, does not apply since no penalty, forfeiture, or liability was incurred by the parties by the time Fam. Law § 7-102 was repealed on October 1, 2023. Lastly, the legislation repealing Fam. Law § 7-102 does not indicate that claims pending under Fam. Law § 7-102 at the time of repeal should be preserved. H.B. 14, 2023 Gen. Assemb., 445th Sess. (Md. 2023). To the contrary, the legislation explicitly states, "FOR the purpose of repealing the authority of a court to decree a limited divorce[.]" *Id.* Therefore, at the time of the repeal's effectiveness, October 1, 2023, courts no longer had the authority to award a limited divorce.

As such, Mr. Fleisig's argument that "Ms. de la Peña's claim for a limited divorce must still be adjudicated as she requested a limited divorce prior to October 1, 2023[,]" is incorrect, as is his argument that Ms. de la Peña's "only remedy was for a limited divorce and [alimony]."[19] If the court has no authority to award a limited divorce, it, consequently, cannot adjudicate an action under former Fam. Law § 7-102, which would include abiding by the restrictions on remedies as set forth in Fam. Law § 7-102. *See, supra*, Section III.B.1. Similarly, the circuit court was incorrect in finding that Ms. de la Peña was "not

[19] Mr. Fleisig cites no authority to support this assertion.

entitled to a transfer of property or a monetary award pursuant to a request for limited divorce."

Furthermore, pursuant to Maryland Rule 2-303(e), "[a]ll pleadings shall be so construed as to do substantial justice." Md. Rule 2-303(e). While Ms. de la Peña's complaint explicitly requested a limited divorce, rather than an absolute divorce, it also requested the following relief that would have only been permitted under an absolute divorce:[20]

> 4. DETERMINE the nature and extent of the property held by the parties and to the extent to which the property is marital and/or non-marital;
> 5. DETERMINE each party's interest in the marital property and DISTRIBUTE the same;
> 6. AWARD Plaintiff monetary award[;]
> 7. AWARD Plaintiff 50% of the Defendant's pension income [. . .]
> [. . .]
> 15. For such other and further relief in favor of Plaintiff as this Court deems just and proper.

Mr. Fleisig and the circuit court rely on *Lasko v. Lasko*, 245 Md. App. 70 (2020), to limit Ms. de la Peña's relief to that of a limited divorce. In *Lasko*, while the wife only sought a limited divorce in her counter-complaint, this Court held that wife's answer to husband's complaint sufficiently set forth a claim for monetary award, authorizing the trial court to grant wife a monetary award. *Id.* at 72. The wife's answer requested that "the

[20] "In a proceeding for an annulment or an *absolute divorce*, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital property[.]" Md. Code Ann., Fam. Law § 8-203(a) (emphasis added). A "pleading for limited divorce cannot effectively seek a monetary award or transfer of marital property under our statutory scheme as marital property only exists in the context of an absolute divorce or annulment." *Lasko v. Lasko*, 245 Md. App. 70, 76 (2020) (citation omitted).

Court determine, at the time of the entry of its Judgment, which of the property owned by the parties is marital property and the value of the same[,]" and that she "be granted all relief to which she may be entitled pursuant to the Family Law Article of the Annotated Code of Maryland." *Id.* at 79. Here, Mr. Fleisig essentially argues, and the circuit court agreed, that because Ms. de la Peña did not request the determination and distribution of marital property, as well as a monetary award, in her *answer* to Mr. Fleisig's counter-complaint, she is not entitled to such relief. However, this argument fails to acknowledge that Ms. de la Peña did explicitly request such relief in her initial complaint, in addition to "such other and further relief in favor of Plaintiff as this Court deems just and proper."

In *Attorney Grievance Commission of Maryland v. Kreamer*, 387 Md. 503 (2005), the trial court found that Ms. Kreamer "failed to allege a ground upon which an absolute divorce could be granted." *Id.* at 521.[21] However, our Supreme Court held that, "[t]he fact that the pleading did not contain the phrase 'cruelty of treatment' or 'excessively vicious conduct' does not change the import of the counterclaim. The pleading certainly alleged facts that, if proven, would have supported the grant of an absolute divorce on the grounds of cruelty of treatment." *Id.* Similarly, here, Ms. de la Peña's complaint requested absolute divorce type relief, without explicitly containing the term "absolute divorce."

Moreover, the purpose of a pleading is to: "(1) [provide] notice to the parties as to the nature of the claim or defense; (2) [state] the facts upon which the claim or defense

[21] *Kreamer* involved an attorney grievance petition. The Supreme Court held that the counterclaim for absolute divorce that Ms. Kreamer filed on behalf of her client alleged sufficient facts, that if proven, would entitle her client to relief. 387 Md. at 94.

allegedly exists; (3) [define] the boundaries of litigation; and (4) [provide] for the speedy resolution of frivolous claims and defenses." *Ledvinka v. Ledvinka*, 154 Md. App. 420, 429 (2003) (citing *Scott v. Jenkins*, 345 Md. 21, 27–28 (1997)). "The most important of the four is notice." *Id.* Here, Mr. Fleisig was certainly on notice that Ms. de la Peña was requesting the determination and distribution of marital property, and a monetary award because she explicitly requested such relief in her complaint. Moreover, Ms. de la Peña's complaint contained facts upon which a claim of absolute divorce could be granted.[22]

Because the court was no longer authorized to award a limited divorce at the time of trial, and considering Ms. de la Peña explicitly requested relief eligible under an absolute divorce—such as the determination and distribution of marital property, a monetary award, and 50% of Mr. Fleisig's pension—in her complaint, the court should have construed Ms. de la Peña's complaint as a complaint for absolute divorce, "to do substantial justice." *See* Md. Rule 2-303(e). Thus, the trial court erred in this regard.

However, Ms. de la Peña did not argue on appeal that the circuit court erred in granting Mr. Fleisig an absolute divorce, rather than granting Ms. de la Peña an absolute divorce, nor did she argue that the grant of Mr. Fleisig's motion for judgment was in error.

[22] Ms. de la Peña's complaint asserted that the parties separated in December of 2021. When she filed her complaint on June 7, 2022, it had been six months since the parties separated. Ms. de la Peña claimed separation of six months as grounds for divorce in her complaint. On October 1, 2023, the grounds for an absolute divorce were amended to include six months separation, "if the parties have lived separate and apart for [six] months without interruption before the filing of the application for divorce." Md. Code Ann., Fam. Law § 7-103(a)(1); *see also* H.B. 14, 2023 Gen. Assemb., 445th Sess. (Md. 2023).

Instead, she argued that the court erred in limiting her relief to that of a limited divorce—alimony—and to that which she is entitled as a consequence of Mr. Fleisig's requested relief—the determination and distribution of marital property. Therefore, we need not address whether the trial court erred in granting an absolute divorce in Mr. Fleisig's favor or in granting the motion for judgment. Instead, we will address the circuit court's ruling as to the distribution of the marital property and its denial in granting a monetary award.

2. Marital Property & Monetary Award

Upon the dissolution of a marriage, the marital property must be distributed fairly and equitably. *Alston v. Alston*, 331 Md. 496, 506 (1993). However, "equitable" does not mean "equal." *Id.* at 508. When the court cannot transfer ownership of marital property,[23] it must make a monetary award to ensure equity between the parties. *Id.* at 498–99. A monetary award is "intended to compensate a spouse who holds title to less than an equitable portion" of marital property. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000) (quoting *Ward v. Ward*, 52 Md. App. 336, 339–40 (1982)).

[23] Courts are prohibited from transferring ownership of an interest in property unless the property is one of the following:

> (i) a pension, retirement, profit sharing, or deferred compensation plan, from one party to either or both parties;
>
> (ii) subject to the consent of any lienholders, family use personal property, from one or both parties to either or both parties; and
>
> (iii) subject to the terms of any lien, real property jointly owned by the parties and used as the principal residence of the parties when they lived together[.]

Md. Code Ann., Fam. Law § 8-205(a)(2).

Before granting a monetary award, the court must first, determine which property is marital property; secondly, determine the value of the marital property; and lastly consider the various factors listed in Fam. Law § 8-205(b).[24] Once those steps have been followed, "the court may transfer ownership of an interest in property described in [Fam. Law § 8-205(a)(2)], grant a monetary award, or both, as an adjustment of the equities and

[24] The factors as listed in Fam. Law § 8-205(b) are as follows:

> (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.

Md. Code Ann., Fam. Law § 8-205(b).

rights of the parties concerning marital property, whether or not alimony is awarded." Md. Code Ann., Fam. Law § 8-205(a)(1).

Marital property is property acquired during the marriage by one or both parties, regardless of how the property is titled. Md. Code Ann., Fam. Law § 8-201(e)(1). Marital property excludes "any property acquired prior to the marriage, property acquired by inheritance or gift, property excluded by valid agreement, or property that is directly traceable to nonmarital sources." *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993). When nonmarital assets are used to acquire marital property, the "spouse contributing nonmartial property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital and marital investment in the property." *Pope v. Pope*, 322 Md. 277, 281–82 (1991). "If a property interest cannot be traced to a nonmarital source, it is considered marital property." *Innerbichler*, 132 Md. App. at 227.

i Standard of Review

The determination of "whether property is marital or nonmartial is a question of fact[, and therefore], our review of a trial court's decision as to that issue is governed by the clearly erroneous standard." *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003) (citing *Noffsinger*, 95 Md. App. at 285). "Factual findings that are supported by substantial evidence are not clearly erroneous." *Richards v. Richards*, 166 Md. App. 263, 272 (2005) (citing *Collins v. Collins*, 144 Md. App. 395, 409 (2002)). However, a trial court's ruling regarding a monetary award is reviewed for abuse of discretion. *Id.* (citing *Gallagher v. Gallagher*, 118 Md. App. 567, 576 (1997)). As such, "we may not substitute our judgment

for that of the fact finder, even if we might have reached a different result." *Innerbichler*, 132 Md. App. at 230.

ii Analysis

We conclude that the trial court did not err in its rulings related to the marital property in this case. Ms. de la Peña failed to provide sufficient, if any, testimony or evidence at trial to support her claims related to the marital home, Mr. Fleisig's IRA and federal pensions, the FEGLI life insurance policy, and expenses on the marital home in 2022. Moreover, we conclude that the trial court did not abuse its discretion in refusing to grant Mr. de la Peña a monetary award, after it assessed the requisite steps and factors to grant a monetary award, despite its finding that Ms. de la Peña was not entitled to such an award under her pleadings for a limited divorce.

a The Marital Home

Ms. de la Peña argues that the trial court erred in failing to trace her non-marital funds in the purchase of the marital home on Travilah Road. Mr. Fleisig counters that Ms. de la Peña did not provide any evidence to support her claim at trial. Ms. de la Peña alleges on appeal that she contributed $475,000 in nonmarital funds to purchase the marital home, and because the current equity in the marital home is less than her nonmarital contribution, she should receive the entirety of the net proceeds from the sale of the marital home. Although Ms. de la Peña testified to this effect at trial, the trial court found that she failed to produce any evidence to support her testimony. The entirety of her testimony related to the marital home was as follows:

> [PLAINTIFF'S COUNSEL:] Ms. de la Peña, before you and Mr. Fleisig purchased the current marital home, had you purchased any real properties before?
> [MS. DE LA PEÑA:] I bought the first house, Tulip Street in Washington, D.C., and we lived there before we moved to Maryland.
> [PLAINTIFF'S COUNSEL:] When did you purchase the home?
> [MS. DE LA PEÑA:] 2000, in July 2000.
> [PLAINTIFF'S COUNSEL:] July 2000? And when did you move into Travilah?
> [MS. DE LA PEÑA:] In 2006. Tulip Street, 1908 Tulip Street was the address in D.C. and I purchase it in my name.
> [PLAINTIFF'S COUNSEL:] Okay. When you say you purchased it in your name, did you use your personal funds or were they the joint funds of both parties?
> [MS. DE LA PEÑA:] All, all my funds. Heywood was still paying debt from his real estate business.
> [PLAINTIFF'S COUNSEL:] Okay. When did you -- has the Tulip Street home been sold?
> [MS. DE LA PEÑA:] Yes, we sold it in 2006 and we transferred the proceeds from that sale from Tulip Street to the present home on Travilah Road.
> [PLAINTIFF'S COUNSEL:] Okay. Did Mr. Fleisig contribute to the downpayment of the purchase of the Travilah home?
> [MS. DE LA PEÑA:] No, he didn't.

First, Ms. de la Peña states that she purchased the parties' first home, the Tulip Street property, with her personal funds in July 2000. The parties were married in January of 2000, therefore, the Tulip Street home would have been considered fully marital property, unless Ms. de la Peña could trace her interest in the property back to her nonmarital funds. *See Noffsinger*, 95 Md. App. at 283. Ms. de la Peña failed to do this at trial.

Then Ms. de la Peña states that the proceeds from the sale of the Tulip Street property were used to purchase the Travilah Road property in 2006, also during the marriage. However, it is not until the appeal that Ms. de la Peña revealed what the proceeds

from the sale of the Tulip Street property were that went into the purchase of the Travilah Road property—$475,000. Moreover, Ms. de la Peña never testified as to the original purchase price of the Travilah Road property or what percentage her contribution was to the total price.[25] No evidence was presented to this effect either. We similarly do not know if the Tulip Street was bought out right or if there was a mortgage on that property. We have no idea what Ms. de la Peña's alleged nonmarital interest in these properties was. Moreover, Ms. de la Peña testified that after 2001, all of her salary from Center for Economic Analysis of Law ("CEAL")[26] was deferred and that all of the parties' expenses were paid from Mr. Fleisig's pension income. Therefore, the mortgage payments for the Travilah Road property, and possibly the Tulip Street property, from 2001 onwards were made with Mr. Fleisig's income.

Even if Ms. de la Peña had properly traced her contribution to the properties to a nonmarital source, the Travilah Road property would have been a combination of nonmarital and marital property, due to Mr. Fleisig's mortgage payments. However, Ms.

[25] During her testimony, Ms. de la Peña's counsel alluded to a downpayment on the Travilah Road property purchase, and in her brief, Ms. de la Peña indicates that the equity proceeds from the Tulip Street property sale only "contributed" to the purchase of Travilah Road, therefore, Ms. de la Peña's alleged contribution was not the full amount of the purchase price for Travilah Road, therefore, either Mr. Fleisig paid the remainder or there was a mortgage for the Travilah Road property. We know that, at the time of trial, there was a mortgage on the Travilah Road property.

[26] CEAL was a non-profit organization that the parties established to assist and provide technical support in drafting legislation in developing countries, primarily in Spanish-speaking countries.

de la Peña failed to prove her nonmarital interest in the Travilah Road property. She did not provide sufficient testimony or evidence to trace the Tulip Street property or the Travilah Road property back to a nonmarital source. Therefore, the property is considered marital property, to be distributed equitably among the parties. *See Noffsinger*, 95 Md. App. at 283 ("The party seeking to demonstrate that particular property acquired during the marriage is nonmarital must trace the property to a nonmarital source."). The trial court found that Ms. de la Peña failed to meet her burden, declared the home was marital property, and ordered that it be sold with the net proceeds equally divided between the parties. We see no clear error in the trial court's finding here.

b Mr. Fleisig's IRA

Ms. de la Peña argues that the trial court erred in finding that Mr. Fleisig's IRA was his nonmarital property. Mr. Fleisig contends that Ms. de la Peña did not provide sufficient testimony or any evidence at trial to support her claim that the IRA was marital property.

The IRA account is titled solely in Mr. Fleisig's name. "[T]he party who asserts a marital interest in property bears the burden of producing evidence as to the identity of the property." *Innerbichler*, 132 Md. App. at 227. Therefore, Ms. de la Peña had the burden to prove the IRA was marital property. However, neither party testified at trial as to when the IRA account was opened. Ms. de la Peña testified that the parties discussed investing their income into Mr. Fleisig's IRA. Counsel for Ms. de la Peña attempted to admit into evidence an alleged email between the parties regarding the IRA, however, its

admission was denied by the court, pursuant to objection from defense counsel. Thereafter, Ms. de la Peña's testimony regarding the IRA account ended.

Only in her Motion for New Trial after the merits hearing and her Appellate brief before this Court did Ms. de la Peña argue that the IRA was opened during the marriage and funded with marital funds. Mr. Fleisig correctly points out that Ms. de la Peña's Appellate brief "references [] documents she filed in a post-judgment filing that she never introduced into evidence to support her claim" regarding the IRA account. As such, we cannot consider these documents on appeal. *See Accrocco v. Splawn*, 264 Md. 527, 532 (1972) (the Court declined to consider "documents, statements and other material not in the record[,]" noting that "this Court should not at this stage of the proceeding attempt to evaluate or comment upon these matters not of record[.]"); *Frazier v. Waterman S. S. Corp.*, 206 Md. 424, 446 (1955) (the Court refused to consider evidence "not in the record, and its contents consequently are not before [it].").

Mr. Fleisig testified at trial that, while a minority of funds in the IRA account came from his federal retirement annuity, the majority of the funds in the IRA came from his annuity from his employment at Cornell University. Mr. Fleisig testified that he was employed at Cornell University from 1964 to 1972, well before his marriage to Ms. de la Peña. Ms. de la Peña offered no testimony or evidence *at trial* to dispute Mr. Fleisig's testimony regarding the IRA account. As such, the trial court found that the IRA was Mr. Fleisig's nonmarital property, noting that Ms. de la Peña "presented no evidence that this account, or any portion thereof, was marital." Considering Ms. de la Peña had the burden

of proving what portion of the IRA account constituted marital property and failed to meet that burden *at trial*, we conclude that the trial court, with the testimony and evidence presented to it at the time, did not err in determining the IRA was Mr. Fleisig's nonmarital property.

c Pensions & Surviving Spouse Benefit

Ms. de la Peña argues that the trial court erred in failing to award her a surviving spouse annuity in Mr. Fleisig's federal pension. Mr. Fleisig contends that the trial court did not abuse its discretion in refusing to award her a surviving spouse annuity in a pension, of which the majority was earned prior to the marriage.

Mr. Fleisig has two pensions in question—a pension from the World Bank and a pension for his service in the federal government. Mr. Fleisig testified that he was employed with the World Bank from 1981 to 1995 and began collecting this pension in 1995. Ms. de la Peña did not provide any testimony or evidence to the contrary. Since this pension was earned and in pay status prior to the marriage, the trial court found that Mr. Fleisig's World Bank pension was entirely his nonmarital property and did not award Ms. de la Peña any portion of this pension. We conclude that the trial court did not err in this ruling. *See Merriken v. Merriken*, 87 Md. App. 522, 532 (1991) ("[T]he value of nonmarital property is not subject to equitable distribution.").

Regarding Mr. Fleisig's federal pension, the letter from the United States Office of Personnel Management admitted into evidence at trial, reflected his periods of federal service as follows: 08/12/1974 to 01/03/1979 – Federal Reserve Board; 01/04/1979 to

03/05/1982 – Congressional Budget Office ("CBO"); 05/15/2003 to 12/29/2005 – CBO. Only two years and seven months of Mr. Fleisig's ten years and one month of service occurred during the marriage. The trial court, in applying the formula established in *Bangs v. Bangs*, 59 Md. App. 350 (1984), found that 74.22% of Mr. Fleisig's federal pension was nonmarital and 25.78% was marital. As such, the trial court awarded Ms. de la Peña one-half of the monthly marital portion—25.78%—of Mr. Fleisig's federal pension.[27] We conclude that the trial court did not err in this finding.

Ms. de la Peña argues that the court erred in "not confirming [her] surviving spouse annuity" in Mr. Fleisig's federal pension. Again, Ms. de la Peña references in her Appellate brief arguments and documents submitted in her post-judgment filings, which we cannot consider. *See Accrocco*, 264 Md. at 532; *Frazier*, 206 Md. at 446. However, Ms. de la Peña did not present any testimony or evidence *at trial* in support of her claim for the former surviving spouse annuity benefit in Mr. Fleisig's federal pension.

Even so, while the trial court is "authorized to order an employee to effect a survivor annuity benefit, naming the employee's former spouse as beneficiary[,]" it is within the trial court's discretion to do so. *Caldwell v. Caldwell*, 103 Md. App. 452, 457 (1995). We reiterate that marital property must be distributed fairly and equitably, however, "equitable" does not mean "equal." *Alston*, 331 Md. at 506, 508. The trial court

[27] The trial court noted that "the total monthly payment to [Mr. Fleisig] under his Federal annuity is $2,656.00. The marital portion of the monthly annuity payment at that time would therefore be $684.71 ($2,[656].00 x 25.78% = $684.71)." Per the court's ruling, Ms. de la Peña is entitled to one-half of the marital portion, which would be $342.35 per month.

found that only two years and seven months—25.78%—of Mr. Fleisig's federal pension constituted marital property. Considering Ms. de la Peña's lack of testimony or evidence to support her claim, the small percentage of Mr. Fleisig's federal service occurring during the marriage, and given the court's discretion in awarding such benefit, we conclude that the trial court did not abuse its discretion in declining to award Ms. de la Peña a former surviving spouse annuity benefit.

d Life Insurance Policy

Ms. de la Peña argues that the trial court erred in "failing to award support during the marriage for the premiums of FEGLI, or reimburse this expense under undue enrichment[.]" Ms. de la Peña asserts that she covered premiums for Mr. Fleisig's FEGLI policy totaling $123,800.00 ($2,751/month) and therefore requests reimbursement for such expense. Mr. Fleisig counterargues that a claim for undue enrichment was not pled before the trial court and thus cannot be raised for the first time on appeal. Moreover, Mr. Fleisig did not benefit from the premiums paid because the FEGLI policy was a group term life insurance policy with no cash value. Without a cash value, the FEGLI policy is not an asset of the parties, and the court does not have the authority to transfer ownership of the policy.

We agree that Ms. de la Peña's argument here was not presented before the trial court. Even if Ms. de la Peña's argument was preserved, the trial court found that Ms. de la Peña "presented no evidence at trial of the nature of the FEGLI policy, the benefits thereunder, the policy's value, or the marital nature of the policy." We agree, and again,

Ms. de la Peña's Appellate brief references documents submitted post-judgment, which we cannot consider. *See Accrocco*, 264 Md. at 532; *Frazier*, 206 Md. at 446.

Instead, Ms. de la Peña requested that the trial court order Mr. Fleisig to maintain his FEGLI policy with her as the sole beneficiary. The trial court found that it had "no jurisdiction to require [Mr. Fleisig] to continue to maintain a life insurance policy for the benefit of [Ms. de la Peña] pursuant to Md. Code Ann., Fam. Law, §8-205(a)(2)."[28] The trial court cited to *Hopkins v. Hopkins*, 328 Md. 263 (1992), where our Supreme Court addressed whether "a court may order a non-consenting obligor ex-spouse to cooperate so that the obligee-ex-spouse may acquire insurance on his life." *Id.* at 265. Like Ms. de la Peña, the wife in *Hopkins* was willing to pay the premiums of the life insurance on her ex-husband, to which she would be the beneficiary. *Id.* at 267. The Court in *Hopkins* held that a court cannot order or compel a party to cooperate with their ex-spouse in obtaining life insurance on their life. *Id.* at 265. Therefore, the trial court here did not err in refusing

[28] Md. Code Ann., Fam Law §8-205(a)(2) reads:

(2) The court may transfer ownership of an interest in:

(i) a pension, retirement, profit sharing, or deferred compensation plan, from one party to either or both parties;

(ii) subject to the consent of any lienholders, family use personal property, from one or both parties to either or both parties; and

(iii) subject to the terms of any lien, real property jointly owned by the parties and used as the principal residence of the parties when they lived together[.]

Md. Code Ann., Fam. Law § 8-205(a)(2).

to order Mr. Fleisig to continue maintaining a life insurance policy for the benefit of Ms. de la Peña.

We conclude that the trial court did not err in failing to reimburse Ms. de la Peña for premiums she paid towards Mr. Fleisig's FEGLI policy, as Ms. de la Peña failed to present any evidence or testimony to support her claim at trial. Ms. de la Peña paid these premiums at her own risk. Additionally, we conclude that the trial court does not have the authority to order Mr. Fleisig to maintain a life insurance policy with Ms. de la Peña as the beneficiary, and as such, the trial court did not err in this regard.

e Home Expenses for 2022

Lastly, Ms. de la Peña argues that the trial court erred in "denying support for home expenses in 2022[.]" She claims that Mr. Fleisig only paid one third of the home expenses—the mortgage—from the time the parties separated in December of 2021 until the pendente lite order in January of 2023. Ms. de la Peña asserts that she had to borrow money to pay the expenses, in addition to paying "extraordinary repairs when a tree accident rendered the family house unlivable."[29] Mr. Fleisig counterargues that the trial court did not err in denying additional support for home expenses, as such issues were or should have been addressed in the pendente lite order. Ms. de la Peña further alleges claims of fraud against Mr. Fleisig for withdrawing funds from joint accounts and taking

[29] Ms. de la Peña testified that in 2022 a tree fell on the marital home and caused significant damage.

additional mortgage out on the house. Mr. Fleisig counters that such fraud claims were not pled before the trial court and thus not preserved for appeal.

At trial, Ms. de la Peña failed to provide sufficient testimony or evidence in to support her claim for home expenses in 2022. Although she provided a photo of the fallen tree, Ms. de la Peña does not indicate how much the "extraordinary repairs" cost from the damage to the marital home, nor does she provide receipts or other documentation for such repairs. She does not indicate specifically what other expenses she is requesting reimbursement for, nor does she provide receipts or other documentation. Again, Ms. de la Peña's Appellate brief references documents submitted post-judgment, which we cannot consider. *See Accrocco*, 264 Md. at 532; *Frazier*, 206 Md. at 446.

Moreover, the pendente lite order entered on January 23, 2023 incorporated the parties' consent Interim Agreement Resolving Pendente Lite Hearing ("pendente lite agreement"), which was agreed upon and signed by the parties on January 3, 2023. In the pendente lite agreement, Mr. Fleisig agreed to pay to Ms. de la Peña until the case is settled, unless otherwise stated: $2,750 per month in alimony commencing December 1, 2022; $5,000 total as reimbursement for attorney's fees; $1,000 per month for five months commencing on the date the agreement was signed;[30] $300 per month for medical expenses; the monthly premium payments for the FEGLI basic policy, but not the premium on the Supplemental FEGLI policy; and the monthly health insurance premium for his World Bank policy which includes coverage for Ms. de la Peña. In addition, Mr.

[30] There was no explanation in the agreement as to what these payments were for.

Fleisig agreed to pay the monthly mortgage and HELOC payments on the marital home and to transfer title of the 2013 Acura motor vehicle to Ms. de la Peña.

Considering the lack of evidence provided to support Ms. de la Peña's claim for home expenses from 2022 *at trial* and the pendente lite agreement of January 2023, which provided significant financial support to Ms. de la Peña, the trial court did not err in failing to award home expenses from 2022.

f Monetary Award

The trial court found that, pursuant to her request for a limited divorce, Ms. de la Peña's "claims for a monetary award [. . . were] not properly before [the court], and [were], therefore DENIED." However, this Court previously concluded that because the trial court was no longer authorized to award a limited divorce at the time of trial, and considering Ms. de la Peña explicitly requested absolute divorce type relief—such as a monetary award—in her complaint, the court should have construed Ms. de la Peña's complaint as a complaint for absolute divorce. *See, supra*, Section III.B.1.i. Therefore, Ms. de la Peña's claims for the distribution of marital property and a monetary award should have been addressed by the trial court. The trial court did determine and distribute the marital property, which included Mr. Fleisig's pensions, albeit pursuant to Mr. Fleisig's pleadings. We already concluded *supra* that the trial court did not err regarding the distribution of marital property. Thus, we now consider whether the trial court erred in denying Ms. de la Peña a monetary award.

Although the trial court found that Ms. de la Peña was not entitled to a monetary award pursuant to a request for a limited divorce, the court still conducted the required assessment needed to grant a monetary award. In its Memorandum Opinion, the trial court noted:

> But even if [Ms. de la Peña's] request for a monetary award were properly before the [c]ourt, the [c]ourt would not be inclined to grant [Ms. de la Peña] the award that she seeks for several reasons: 1) [Mr. Fleisig] does not have a significant higher percentage of the marital assets titled solely in his name; 2) [Mr. Fleisig] receives $12,708.56 gross monthly from his pensions; 3) The [c]ourt has awarded [Ms. de la Peña] $3,500.00 monthly in [indefinite] alimony; 4) [Ms. de la Peña] has been awarded $25,000.00 in attorney's fees; and 5) [Mr. Fleisig] has substantial debt.

Again, a monetary award is granted "as an adjustment of the equities and rights of the parties," Md. Code Ann., Fam. Law § 8-205(a)(1), typically when one spouse "holds title to less than an equitable portion" of marital property. *Innerbichler*, 132 Md. App. at 227 (citation omitted). The trial court found that Mr. Fleisig did not have "a significant higher percentage of the marital assets titled solely in his name[.]" In fact, the trial court only found the following property to be marital: 1) the house on Travilah Road; 2) the parties' two motor vehicles; 3) Ms. de la Peña's IRA; and 4) 25.78% of Mr. Fleisig's federal pension. Only marital property is considered when determining whether an "adjustment of the equities" is required. *See Merriken*, 87 Md. App. at 532 ("[T]he value of nonmarital property is not subject to equitable distribution.").

Moreover, before granting a monetary award, the court must consider the various factors listed in Fam. Law § 8-205(b). *See, supra*, n. 22. However, the court need not "go through a detailed check list of the statutory factors, specifically referring to each[.]"

Malin, 153 Md. App. at 429. While the trial court did not specifically outline each of these factors in its opinion, it did explicitly outline the factors required for awarding alimony pursuant to Fam. Law § 11-106(b),[31] which are significantly similar to those in Fam. Law

[31] Md. Code Ann., Fam. Law § 11-106(b) reads:

(b) 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 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

§ 8-205(b) for a monetary award. In fact, five of the factors are exactly the same. *See* Fam. Law § 11-106(b)(4)–(8); Fam. Law § 8-205(b)(1), (4)–(7). For the remaining monetary award factors, such as the value of all property of the parties, how and when marital property was acquired, as well as the contribution of the parties' nonmarital property in acquiring marital property, the court considered these factors when it determined and distributed the marital property. *See* Fam. Law § 8-205(b)(2), (8)–(9). The trial court certainly considered "the economic circumstances of each party at the time the award is to be made[,]" Md. Code Ann., Fam. Law § 8-205(b)(3), when it considered the alimony factors regarding finances—"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[,]" and "the financial needs and financial resources of each party, including: (i) all income and assets, including property that does not produce income; [. . .] (iii) the nature and amount of the financial obligations of each party; and (iv) the right of each party to receive retirement benefits[,]" Md. Code Ann., Fam. Law § 11-106(b)(9), (11)—and granted indefinite alimony to Ms. de la Peña.

We are satisfied that the trial court followed the required steps and assessed the requisite factors to grant a monetary award, regardless of its finding that Ms. de la Peña was not entitled to such an award pursuant to her request for a limited divorce. As such,

---

> whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

Md. Code Ann., Fam. Law § 11-106(b).

we conclude that the trial court did not abuse its discretion in declining to grant a monetary award to Ms. de la Peña. Moreover, we need not remand this case, even though we concluded that the trial court erred in finding that Ms. de la Peña was restricted to the relief of a limited divorce, because the trial court actually did consider Ms. de la Peña's requests for all relief available under an absolute divorce. The trial court determined and distributed the marital property equitably, assessed the monetary award factors and found that such award was not required to adjust the equities of the parties, and ordered indefinite alimony and attorney's fees to Ms. de la Peña.

IV. CONCLUSION

For the foregoing reasons, we conclude that the trial court did not err in its decision to invalidate the 1993 Prenuptial Agreement and not enforce it during the divorce proceedings. Moreover, we conclude that the trial court did not err in its Judgment of Absolute Divorce, despite our conclusion that the trial court erred in finding that Ms. de la Peña was limited to the relief of a limited divorce. The trial court, however, did consider Ms. de la Peña's requests for all relief available under an absolute divorce and distributed the marital property equitably, assessed the monetary award factors, found that such monetary award was not required to adjust the equities of the parties, and ordered indefinite alimony and attorney's fees to Ms. de la Peña. We further conclude that the trial court did not err in its distribution of the marital property and did not abuse its discretion in refusing to grant Mr. de la Peña a monetary award.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.