Circuit Court for Montgomery County
Case No. 115752-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1413

September Term, 2015

PADMARAO JEVAJI

v.

INDIRA NAGAVALLI,
f/k/a INDIRA JEVAJI

Woodward,*
Leahy,
Reed,

JJ.

Opinion by Woodward, J.

Filed: February 8, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Padmarao Jevaji, appellant, and Indira Nagavalli, appellee, were wed in India on December 2, 1984. On November 19, 2013, after nearly twenty-nine years of marriage and two emancipated children, appellant filed a complaint for limited divorce in the Circuit Court for Montgomery County, and in response, appellee filed a counter-complaint for absolute divorce. At the end of the four-day trial, the circuit court granted the parties an absolute divorce, and reserved on the issues of property. On July 14, 2015, the circuit court announced its ruling disposing of the parties' property, and on August 20, 2015, the court entered an order in accordance with its ruling. This timely appeal followed.

Appellant presents nine questions for our review:

1. Was the entire handling of the trial of this case such that a remand for a new trial is needed?

2. Did the trial judge commit reversible error by failing to consider the statutory factors and then in substance making more than one single monetary award in this case?

3. Was the trial court clearly erroneous in finding that appellant had dissipated $161,000.00 in marital funds?

4. Did the trial judge abuse his discretion or commit clear error by transferring property from one party to the other, including awarding title to the majority of the parties' jointly titled real property in India to appellee?

5. Did the trial judge abuse his discretion or commit clear error in not giving appellant appropriately proportionate credit for $243,397.00 from a disability insurance award to him which appellee had largely misappropriated?

6. Did the trial court abuse its discretion or commit clear error in failing to reserve alimony to appellant?

7. Did the trial judge abuse his discretion or commit clear error in ordering appellant to solely pay the home equity loan on the parties' former marital home in Gaithersburg, Maryland ("marital home")?

8. Was it clear error or an abuse of discretion for the trial judge to award appellee maximum survivor benefit payments under appellant's pension?

9. Were the award of attorney's fees and expert witness fees against appellant and denying him an alimony award clearly erroneous?

For the reasons discussed below, we shall vacate the parts of the court's order requiring appellant to pay one-half of the dissipated marital funds to appellee and to pay off the home equity line of credit, affirm the court's judgment in all other respects, and remand the case to the circuit court for further proceedings.

BACKGROUND

The parties were wed to each other by an arranged marriage in Hyderabad, India on December 2, 1984. Two children were born of the marriage and were emancipated at the time of the trial. When the parties' children were young, the parties and their children moved to the United States. In the United States, both parties worked as physicians. During the marriage, the parties were able to accumulate a large amount of property because of their hardworking nature and frugal lifestyle. The property that the parties accumulated during the marriage included five real properties, four cars, and a number of bank accounts. Times became turbulent, and appellee obtained a temporary protective order against appellant on November 12, 2013. The parties permanently separated on the same day.

On November 19, 2013, appellee obtained a final protective order against appellant, and on the same day, appellant filed a complaint for limited divorce. Appellee answered appellant's complaint on January 27, 2014. On January 29, 2014, appellee filed a counter-complaint for absolute divorce. On December 31, 2014, appellant filed a Supplemental Complaint for Absolute Divorce. On February 27, 2015, appellee filed an amended counter-complaint for absolute divorce, spousal support, and other relief.

On March 16-19, 2015, a trial was held on appellant's Supplemental Complaint for Absolute Divorce and appellee's Amended Counter-Complaint for Absolute Divorce, Spousal Support and Other Relief. During trial, appellant orally amended his supplemental complaint, which was later memorialized in Plaintiff's Amended Supplemental Complaint for Absolute Divorce. On March 19, 2015, the trial court granted an absolute divorce on the ground of a twelve-month separation, but took all property issues under advisement. On July 14, 2015, the trial court rendered an oral ruling on the property issues and entered an order in accordance therewith on August 20, 2015. Appellant filed a timely appeal on September 9, 2015.

Relevant additional facts will be included as necessary.

DISCUSSION

I. Handling of Trial

A. Double-Teaming

Throughout the trial and at the trial court's oral ruling, appellant was represented by one attorney, whereas appellee was represented by two attorneys. During trial, appellee's two attorneys divided up the examination and cross-examination of the witnesses. On one

occasion, prior to the redirect examination of appellee's expert witness, Jordan Egert,[1] Certified Public Accountant ("CPA"), one of appellee's counsel asked the court, "Can we share the redirect, Your Honor?" To which the court responded, "Sure." Appellant's trial counsel did not object.

Before this Court, appellant contends that appellee's two lawyers were "double teaming" during the trial, which is a practice that "trial judges routinely prevent." Appellee responds that appellant's argument is meritless because appellant's trial counsel never raised the issue of "double teaming" and did not claim any prejudicial effect of such conduct.

From our own review of the record, we fail to see any occasion during the trial where appellant objected to appellee's use of "double teaming." Maryland Rule 8-131(a) states in part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Md. Rule 8-131(a). Because appellant did not object to the supposed "double teaming," the issue is not preserved for our review.

B. Unsworn Evidence

In his brief, appellant argues:

> Moreover, when the trial judge rendered his oral opinion on July 14, 2015, there was significant consideration of unsworn evidence that was not introduced at trial and considerable argument and

[1] In transcript of proceedings in the trial court, Egert's name is spelled Edgar.

> statements by the parties and their lawyers which interrupted and influenced the trial judge while he rendered that opinion. All three trial lawyers and both parties gave unsworn statements of facts which the trial judge considered thereat. See 706-82.
>
> In the circumstances, remanding this matter to the lower court for a new, properly conducted, trial would seem to be the only reasonable course of action at this point.

Appellant fails to identify the "unsworn evidence" or the "unsworn statements of facts" that the trial court allegedly considered. Instead, appellant simply cites to seventy-six pages of the record extract.

Maryland Rule 8-504(a)(4) states that a brief must include "[a] clear concise statement of the facts material to a determination of the questions presented . . . . Reference shall be made to the pages of the record extract supporting the assertions." *See also ACandS, Inc. v. Asner*, 344 Md. 155, 192 (1996) (noting the provision of a record extract does not excuse a party from failing "to furnish in the brief references to factual material in support of a party's argument as required" nor does it "alter the fundamental rule of appellate practice under which the appellate court has no duty independently to search through the record for error"); *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 760-61 (2007) (declining to comb through the eight-volume, 3,876-page record extract by stating that it is the party's obligation to provide "a clear reference to a page or pages of the record extract"), *aff'd*, 403 Md. 367 (2008); *Schaefer v. Cusack*, 124 Md. App. 288, 299 (1998) ("[A] party may lose the right to appeal on an issue by failing to indicate in that party's brief the location in the record where the alleged error occurred.").

Because we are unable to determine what "unsworn evidence" and "unsworn statements of facts" appellant is referring to or how either affected the trial court's ruling,

we decline to review this issue. *See Harper v. State*, 162 Md. App. 55, 87-88 (2005) ("[A]ppellant provides us with no citation to the record [regarding the raised issue, thus,]. . . [u]nder the circumstances, the matter was not raised in or addressed by the trial court and therefore is not properly before this Court for review."). Even if we were to accept appellant's statement that there was "unsworn evidence" and "unsworn statements of facts" admitted at the trial court's oral ruling that the court impermissibly considered, we cannot find in the record any instance where appellant objected to such evidence. Because appellant failed to object to the court's consideration of "unsworn evidence" and "unsworn statements of facts," such issue is not preserved for our review. *See* Md. Rule 8-131(a).

II. Monetary Award

The trial court heard testimony from the parties and from appellee's expert witness on the topic of appellant's dissipation of marital funds. In its oral ruling, the court made a finding that appellant had dissipated $161,000 in marital funds, and ordered appellant to reimburse appellee one-half of that amount, $80,500. During its oral ruling, the court stated to counsel:

> So I am not sure legally if it is actually called a monetary award because I am not making a monetary award to balance out the equities of the property. It is simply reimbursing her for the dissipation of the money that was, he took to use for his own half. He is reimbursing her for half of it so it is not a monetary award in the sense that I've come down to the bottom and determined that there needs to be a monetary award to balance out the equities of the property. He is simply being ordered to reimburse half of the dissipated amount.

In its written order, the court ordered "that [appellant] shall pay [appellee] the sum [ ] $80,500 [ ], as and for [appellant's] share of marital funds dissipated by [appellant], within

sixty (60) days of this Order." In addition to the ordered reimbursement, the court found that appellant owed $84,290 for the money that he removed from the Home Equity Line of Credit (HELOC), which was a lien on the parties' marital home.

Appellant argues that the trial court made two monetary awards when it ordered appellant to reimburse appellee one-half of the dissipated sum and to repay the HELOC funds that he removed. Appellee responds that the court properly employed the three-step process required to identify and value marital assets and to determine whether to grant a monetary award. Appellee asserts that the court did not make more than one monetary award because the court ordered appellant to repay the HELOC, a non-marital debt, and ordered appellant to reimburse one-half of the dissipated amount to appellee.

In divorce proceedings, a trial court must follow a three-step process in determining whether a monetary award is appropriate:

> First, for each disputed item of property, the court must determine whether it is marital or non-marital. Second, the court must determine the value of all marital property. Third, the court must determine if the division of marital property according to title will be unfair; if so, the court may make an award to rectify the inequity.

McCleary v. McCleary, 150 Md. App. 448, 457 (2002) (quoting *Collins v. Collins*, 144 Md. App. 395, 409 (2002)), *cert. denied*, 374 Md. 583 (2003). "The court shall determine the amount and the method of payment of a monetary award, or the terms of the transfer of the interest in property described in subsection (a)(2) of this section, or both, after considering each of the following factors" listed in Md. Code (1984, 2012 Repl. Vol.), § 8-205(b) of the Family Law Article ("FL"). "While consideration of the factors is mandatory, the trial court need not go through a detailed check list of the statutory factors,

specifically referring to each, however beneficial such a procedure might be . . . for purposes of appellate review." *Collins*, 144 Md. App. at 410-11 (internal citations and quotation marks omitted). The method of payment of a monetary award is committed to the sound discretion of the trial court, and we do not disturb its ruling unless it is clearly erroneous. *See Innerbichler v. Innerbichler*, 132 Md. App. 207, 242, *cert. denied*, 361 Md. 232 (2000).

From our review of the trial court's oral ruling and order, it is clear the court did not make a monetary award to either party. Because appellant is not complaining that the court erred by failing to grant him a monetary award, whether the court engaged in the three-step process is irrelevant.

Appellant also complains that the trial court did not have the authority to order appellant to pay appellee one-half of the dissipated funds or to reimburse the funds that appellant removed from the HELOC. Under Issue III, we will review whether the court's ordering of appellant to pay appellee one-half of the dissipated sum was within its authority. Under Issue VII, we will address whether the court had the authority to order appellant to repay the HELOC.

III. Dissipation of Marital Assets

The day appellee obtained a temporary protective order against appellant, November 12, 2013, appellant began withdrawing funds from the parties' joint bank accounts. Appellant withdrew $15,500 from various joint accounts with PNC Bank on November 12, 2013, and over that day and the next few days, appellant transferred $76,000

by telephone transfer from a joint PNC bank account to a custodial account in appellant's and his daughter's name ending in 1672 ("1672 account").[2]

At trial, appellant agreed on cross-examination that he had withdrawn *at least* $89,500 from joint accounts on November 12, 2013, right after the protective order was granted. Evidence showed that during this time, appellant withdrew large sums of money in cash from the 1672 account and joint accounts, as well as moved additional marital funds into the 1672 account, which he later moved to an account titled in his sole name at Bank of America, which account ended in 6349 ("6349 account"). Appellant withdrew the funds from the 6349 account in cash or cashier's checks and the money vanished.

Appellant additionally testified that at the time appellee was seeking a protective order, his "intention was to divorce" appellee. When asked if he took money from the joint accounts, appellant testified, "Correct," and that he transferred funds out of the joint accounts "[s]o that [appellee] won't take away my money[.]" Appellant testified that he spent the money at casinos and nightclubs and "was depressed and [ ] was spending the money to, not to kill [himself] or kill somebody else."

After reviewing the parties' bank records, financial records, and the parties' joint statement of marital and non-marital property ("Rule 9-207 form"), Egert testified that, based on an application of generally accepted methodology in the forensic and fraud fields to the tracing of ingress and egress transactions between accounts, his "overall finding was

[2] Appellant's daughter was not aware that she had control of the 1672 account and neither was appellee.

that $161,000, at a minimum, was dissipated throughout the course of 2013 and 2014."

Notably, Egert testified:

> [EGERT]: **And subsequent to [November 12, 2013], that money** that had rotated after [appellee] had left the marital home, **started becoming withdrawn from all the accounts and in specific, the [6349 account].**
>
> * * *
>
> [APPELLEE'S COUNSEL]: What was the nature of the money coming out of the joint accounts?
>
> [EGERT]: All right. The money coming out of the joint accounts primarily was intra-bank transfers. There were additional transactions with the joint accounts, however, which were cash – there were some cash withdrawals, but there were also primarily cashier's checks that would have come out of the joint accounts. But if we go into the 6349 account, that would be a reasonable assumption that [appellant] was only titled to that account and [appellant] was therefore taking the cash withdrawals out or the cashier's checks.
>
> [APPELLEE'S COUNSEL]: And are you saying that because the monies ended up in the [ ] 6349 [account]?
>
> [EGERT]: **Yes, after everything started rotating throughout the accounts and transferred into all the different joint accounts, it ultimately funneled into th[e] 6349 account, in which all the cash withdrawals and the cashier checks would have come against.**
>
> * * *
>
> [APPELLEE'S COUNSEL]: Okay. If I understood, you just testified that, you know, within a day or two of the protective order being filed, there were all these cash withdrawals or

transfers from joint accounts into [appellant's] solely titled [6349 account]?

[EGERT]: Yes.

[APPELLEE'S COUNSEL]: And then those monies then came out of the [6349 account]? Right?

[EGERT]: Correct.

[APPELLEE'S COUNSEL]: So were you able to ascertain what other account or where that money had gone?

[EGERT]: No, I wasn't able to, based off the documents that were made available to me.

(Emphasis added).

When asked "would there be [a need] for [appellant] to have taken $161,000 or more dollars from the parties' joint accounts?" Egert responded, "I don't believe there would be a marital need or a lifestyle need for any of it. There's no reason that I foreseeably saw for the $161,000 to be utilized."

The trial court made a finding that appellant had dissipated $161,000 in marital funds. The court ordered appellant to "pay [appellee] the sum [ ] $80,500, as and for [appellee's] share of marital funds dissipated by [appellant.]"

A. Finding of Dissipation

Appellant contends that appellee did not produce sufficient evidence for a finding of dissipation. Appellee responds that the trial court's finding that appellant dissipated $161,000 was not clearly erroneous, because appellee established a *prima facie* case of dissipation through the documentary evidence and Egert's expert testimony, which then

required appellant to meet his burden to show that marital funds were expended appropriately. Appellee further argues that, because appellant did not meet his burden, the trial court had ample evidence to support its finding that appellant dissipated the $161,000 in marital funds. We agree with appellee.

"[D]issipation [may be found] where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown." *See Omayaka v. Omayaka*, 417 Md. 643, 651 (2011) (internal quotation marks omitted); *see also Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 308 (1994). The spouse alleging dissipation bears the burden of proving that the other spouse used the marital property during the marriage to prevent the inclusion of such property in any consideration of a monetary award. *See Omayaka*, 417 Md. at 654. After the alleging spouse establishes a *prima facie* case that marital funds have been dissipated, the burden of going forward shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate. *Jeffcoat*, 102 Md. App. at 311. If such evidence is not produced, then the property taken is "extant" marital property, titled in or owned by the individual who took the marital property without permission. *See Omayaka*, 417 Md. at 656.

A trial court's finding regarding dissipation is a factual one and is reviewable under the clearly erroneous standard. If an appellate court finds that there is competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous. *See Fuge v. Fuge*, 146 Md. App. 142, 180, *cert. denied*, 372 Md. 430 (2002).

As part of her *prima facie* case of dissipation, appellee alleged appellant dissipated

$161,000. During appellee's case, Egert testified that, although it is not clear exactly where the money was located at the time of trial, appellant had withdrawn $161,000 in marital funds from the parties' joint accounts in either cash or cashier's checks between 2013 and 2014. Egert stated that in May 2013, when appellee first moved out, appellant began to transfer funds from the joint marital accounts to a number of different accounts including the 6349 account. Immediately after appellee obtained a temporary protective order from appellant on November 12, 2013, appellant began withdrawing funds from the 6349 account and from a number of other accounts. Egert testified that ultimately all of the money funneled into the 6349 account was withdrawn in cash or by cashier's checks. In addition to Egert's testimony, appellant admitted that he withdrew funds from the joint accounts so that appellee would not have access to it. Such withdrawals began when appellee obtained a temporary protective order and continued after appellant filed a complaint for limited divorce.

Based on this evidence, we conclude that appellee established a *prima facie* case for dissipation. The burden of going forward then shifted to appellant to adduce evidence that his expenditures were appropriate and that marital funds were spent for family purposes. Appellant failed to produce any evidence that he spent the marital funds for family purposes. Indeed, when asked where the marital funds went, appellant testified that he spent the funds at casinos and nightclubs. Appellant thus provided no evidence to support his position that he did not dissipate $161,000 in marital funds. Therefore, we hold the trial court's finding that appellant dissipated $161,000 was supported by competent evidence, and thus was not clearly erroneous.

B. Dissipation Award

During its oral ruling, the trial court stated to the parties: "I've granted [appellee's] request that [appellant] reimburse her for half of [the dissipated amount] which is $80,500. That's why there is a negative $80,500 in [appellant's] column and there is a plus $80,500 in [appellee's] column for dissipation." In its Order, the court ordered appellant to "pay [appellee] the sum [ ] $80,500, as and for [appellee's] share of marital funds dissipated by [appellant.]"

Appellant argues that the trial court was erroneous in ordering appellant to pay $80,500 to appellee for her share of marital funds dissipated by appellant. We agree with appellant.

"Where one dissipates marital property to defeat its equitable distribution, its value may be added back to determine the monetary award." Daniel F. Thomas, *Maryland Divorce & Separation Law*, § 3-111 (2009). The value of extant marital property may form the sole basis for the grant of a monetary award. *Broseus v. Broseus*, 82 Md. App. 183, 202-03 (1990); *see generally Rock v. Rock*, 86 Md. App. 598, 618-20 (1991). Once the court titles extant marital property in the name of one spouse, "the other spouse may be given a monetary award to make things equitable." *Omayaka*, 417 Md. at 656.

FL § 8-202(a)(3) states: "[E]xcept as provided in § 8-205 of this subtitle, the court may not transfer the ownership of personal or real property from 1 party to the other." FL § 8-205(a)(1) states that, after determining what property at issue is marital and its value, "the court may transfer ownership of an interest in property described in paragraph (2) of this subsection, grant a monetary award, or both, as an adjustment of the equities and rights

of the parties concerning marital property, whether or not alimony is awarded." FL § 8-205(a)(2) provides that the court may transfer a property interest in: a pension, retirement, profit sharing, or deferred compensation plan; family use property; or real property that served as the principal marital residence.

There is no authority under the relevant sections of the Family Law Article for a trial court to order one party to pay to another party an amount representing a part of the marital funds dissipated by the payor party. Rather, once extant marital property is titled in the name of one party, a monetary award may be made to adjust the equities in such extant property. In the instant case, when the trial court made a finding of dissipation and labeled the dissipated sum, $161,000, as extant marital property titled in the name of appellant, the court then had the authority to make a monetary award to appellee. Because the court specifically stated that it was not making a monetary award, we conclude that the court had no legal authority to order appellant to pay appellee one-half of the dissipated sum, $80,500. Accordingly, that portion of the trial court's order directing payment of one-half of the dissipated marital funds by appellant to appellee must be vacated.

IV. Transfer of Property

A. Real Property

On the Rule 9-207 form the parties listed five real properties as "marital property" – (1) 597 Kingfisher Ave., Gaithersburg, Md. ("the marital home"), (2) 4319 Vintage Lane, Owings Mill, Md., (3) 2869 Leechburg Rd., Upper Burrell, PA., (4) Hyderabad, India ("Hyderabad property"), and (5) other property in India ("other India property"). Although all of these properties were listed by the parties as jointly titled, appellant's counsel advised

the court at trial that the other India property was titled in appellant's name alone. Appellee's counsel agreed that the title to the other India property could be changed to appellant's name alone on the Rule 9-207 form.[3]

During the closing argument of appellant's trial counsel, she stated to the trial court:

> In terms of the 9-207 [form], [appellant] would like, if the Court's going to apportion the properties to each party, he would like to keep the [marital] home, because he never wanted to be in the Owings Mills, and he would like to keep the Pennsylvania property. That's lines 19 and lines 21. **Line 22, the [Hyderabad property], was [appellee's] family home where she grew up. He would like her to keep that**, and he would like her to keep the Owings Mills house on line 20 because it was purchased for her to be closer to where she works."

(Emphasis added). During direct examination on the topic of the Hyderabad property, appellee testified: "I would like a transfer of the [Hyderabad property] title to my name so I can keep my family property." Regarding the properties in India, the court awarded the other India property to appellant and the Hyderabad property to appellee.

Appellant contends that the trial court's transfer of the parties' two real properties located in India was not permitted by Maryland law. In particular, appellant claims that under the Family Law Article, the court cannot transfer real property from one party to the other unless the property is jointly owned and used as the principal residence of the parties,

[3] Appellee's counsel also insisted that the other India property remain entirely marital property. The trial court agreed that the title of the other India property could be changed to appellant's name alone on the Rule 9-207 form, but remain entirely marital property. Appellant does not challenge the classification of the other India property as entirely marital property.

and that there was no evidence that the India properties were so used.[4] Appellee responds that it is improper for appellant to ask this Court to conclude that the trial judge erred in transferring the India properties, because appellant asked the trial court to make those very transfers.

FL § 8-101(a) provides that spouses "may make a valid and enforceable deed or agreement that relates to alimony, support, *property rights*, or personal rights." (Emphasis added). In *Droney v. Droney*, 102 Md. App. 672, 690 (1995), this Court emphasized that such provision allows a trial court to "merge the terms of a deed, agreement, or settlement made between the parties *during the divorce* as a part of the divorce decree." (Emphasis added). In *Harbom v. Harbom*, 134 Md. App. 430 (2000), we considered the application of this authority to an agreement made between the parties' attorneys during a hearing before the trial court. In that case, the husband's counsel stated to the court that "*we consent to it as part of the [c]ourt's Order*, to transfer the van [and] whatever equitable consideration you give to that[.]" *Id.* at 455 (alterations and emphasis in original). We concluded that, because a valid agreement existed between the parties, the trial court did not err in ordering the husband to transfer the van to the wife. *Id.*

In the instant case, appellant's trial counsel made a statement regarding the Hyderabad property that was very similar to the one made by the husband's counsel regarding the van in *Harbom*. In her closing argument, appellant's trial counsel stated that

[4] Appellant incorrectly states that there is an additional condition on the trial court's authority to transfer title to jointly held real property, namely, that "there is a minor child of the parties[.]" *See* FL § 8-205(a)(2)(iii).

the Hyderabad property was appellee's "family home where she grew up. *[Appellant] would like her to keep that.*" (Emphasis added). Although appellant's trial counsel expressed appellant's desires regarding the other real properties, no express conditions were placed on appellant's consent to the transfer of the Hyderabad property to appellee. The statement by appellant's counsel therefore constitutes an enforceable agreement as contemplated by FL § 8-101(a), which gave the trial court the authority to include it in the divorce decree. Regarding the other India property, the parties and the trial court agreed that such property was titled in appellant's name alone. Consequently, the trial court's award of the other India property to appellant did not effect a transfer of that property to him. Accordingly, the trial court did not err by awarding the Hyderabad property to appellee and the other India property to appellant.

B. Vehicles and Jewelry

Listed on the Rule 9-207 form were four cars: the 2000 Lexus, the 2002 Lexus, the 2014 Lexus, and the 2006 Toyota Forerunner. The 2002 Lexus and the 2000 Lexus were listed as jointly titled marital property, and the 2014 Lexus was listed as marital property, but titled in appellant's name alone. Appellant testified that he was currently driving the 2014 Lexus; appellee testified she wanted to keep the 2002 Lexus. The parties stipulated the "2006 Toyota 4Runner" would be retitled to the parties' son. The court awarded appellant the 2000 Lexus and the 2014 Lexus, and appellee the 2002 Lexus. The court awarded the 2006 Toyota 4Runner to the parties' son. Under FL § 8-205(a)(2)(ii), the court had the authority to transfer ownership of the three Lexus vehicles, because those vehicles were family use personal property. *See* FL § 8-201(d)(1). The transfer of the Toyota

4Runner to the parties' son was permitted by virtue of the agreement between the parties. *See* FL § 8-101(a).

In terms of the jewelry listed on the Rule 9-207 form, the parties agreed that the jewelry was jointly titled marital property, but disagreed as to the value: $88,000 claimed by appellant versus $5,000 asserted by appellee. The trial court ordered "that all remaining personal property, including, but not limited to, jewelry . . . currently in each party's possession shall remain each party's sole separate property[.]" The court's order was based on its finding of fact that there was "[n]o way to accurately determine what jewelry is currently owned by either party or its value, if any." Given the lack of evidence regarding the identity and value of the jewelry, we cannot conclude that the trial court erred or abused its discretion in ordering that the jewelry in each party's possession remain such party's sole separate property.

V. Disability Settlement

On July 1, 2007, appellant and appellee used marital funds to purchase disability insurance through Standard Insurance for appellant for "disability income." In September 2007, appellant suffered a stroke. When Standard Insurance failed to make payment to appellant for his loss of income following his stroke, appellant filed suit against Standard Insurance. On October 7, 2009, Standard Insurance offered appellant the option of receiving a lump sum of $243,397, or a monthly payment of $1,700. Appellant took the lump sum of $243,397. The parties did not separate until May, 2013, and then permanently on November 12, 2013.

Appellant testified that he deposited the $243,397 disability settlement into a joint

account of the parties sometime between November and December 2009. Appellant withdrew $137,385.21 from that joint account on April 23, 2010. Appellant stated it was his and appellee's intention to take the $137,385.21 to pay down the mortgage on the marital home. As previously stated, the parties listed the marital home as jointly titled marital property on the Rule 9-207 form. During a bench conference at trial, the trial court stated to the parties' attorneys:

> So, I would say going, at least going forward, my understanding of the common disability type of policy you are talking about is that the benefit is to pay for lost income due to a disability. So, if that's the case, I would consider it to be wages or income, and therefore, marital property. If at some point during these proceedings in the next couple of days **you have something to show that it's not, I'll be glad to look at it. But at this point, from the outset, I would start with the assumption that it's replacing income.**

(Emphasis added).

Appellant argues that, because $137,385.21 from the disability settlement was used to pay down the mortgage on the marital home, that part of the equity in the marital home is appellant's non-marital property.[5] For the reasons discussed below, we disagree.

The parties listed the marital home as entirely marital property on the Rule 9-207 form. In so doing, appellant admitted that all of the equity with the marital home was marital property. *See Beck v. Beck*, 112 Md. App. 197, 205 (1996) ("[F]acts and averments as to the properties made in the statements required to be filed by [Md. Rule 9-207]

[5] Appellant further argues that he "needed to be compensated for the portion of his lump sum disability settlement representing lost earnings after the parties' divorce." Because, as appellant concedes, no evidence was adduced showing the amount of such portion attributable to lost earnings after the divorce, we conclude that appellant has waived this issue, and thus will not discuss it.

constitute judicial admissions and may be considered as evidence without the necessity for the formal introduction at trial of these documents."), *cert. denied*, 345 Md. 546 (1997). Because appellant admitted on the Rule 9-207 form that the marital home was entirely marital property, any claim to the contrary has been waived for appellate review.

Even if the issue has not been waived, we conclude that the marital home is still entirely marital property. Assuming that the $137,385.21 did not constitute marital funds because the funds came from appellant's disability settlement, the money was used to reduce the debt on the marital home. In other words, non-marital funds were used to increase the equity in the marital home. The marital home was owned by the parties as tenants by the entirety, and thus was marital property. FL § 8-201(e)(2). As provided in FL §§ 8-201(e)(2)&(3), no part of real property held as tenants by the entirety can be non-marital even if it was directly traceable to non-marital sources. Therefore, all of the marital home is marital property.

VI. Reservation of Alimony

Appellant's monthly income was approximately $11,351.00 at the time of trial:[6] $5,650 per month came from three disability policies issued by Northwestern Mutual, $1,977 per month from the Social Security Administration, and $3,723.91 per month from the Federal Employees Retirement System.

Plaintiff's exhibit number 1 showed that appellant's monthly expenses were

[6] Appellant's income, including income from the parties' rental properties totaled, approximately $14,076.00. Appellant's rental income would not continue after the parties' divorce, because the trial court ordered such rental properties sold.

$13,499.46. However, at trial appellant testified that he no longer incurred monthly costs of $994 for replacement of furnishings/appliances, $2,411.00 for a car payment, and $4,500 for attorney's fees. Appellant conceded that his actual monthly expenses thus were "somewhere in the range of [$] 5,250 or [$] 5,350[.]". During its oral ruling, the trial court discussed the reasons why rehabilitative and permanent alimony would not be awarded to either party, denied alimony to both parties, and did not reserve on the issue of alimony.

Appellant argues the trial court abused its discretion by not reserving on the issue of alimony in favor of appellant because the income from his disability insurance, roughly half of his total income, will end partially in five years, and entirely in ten years. Appellee responds that the trial court did not abuse its discretion or commit clear legal error in not reserving on the issue of alimony. Although appellee disputes appellant's claim that his disability insurance policies will end when he turns sixty-five years old, appellee argues, nonetheless, that appellant failed to raise the issue of the reservation of the alimony issue, and thus should be precluded from raising it on appeal.

In Maryland, "[t]he long-standing rule . . . has been that the right to claim alimony is extinguished at the time of the severance of the marital relationship." *Altman v. Altman*, 282 Md. 483, 490 (1978); *see also Turrisi v. Sanzaro*, 308 Md. 515, 521 (1987). Circuit courts have the inherent power to award alimony, and inherent power to reserve as to alimony. *See Turrisi*, 308 Md. at 526. "To hold that the power to reserve [] exists is not to say that it may be appropriately exercised in every case." *Id.* at 528.

In *Turrisi*, both parties were physicians and one spouse was diagnosed with multiple sclerosis during the marriage. *Id.* at 517. The diagnosed spouse sued the other spouse for

divorce and requested indefinite alimony. *Id.* At a hearing on the alimony issue, however, the diagnosed spouse testified that she did not want alimony at that time, but explained that, based on the progressive nature of the disease, she may need alimony at some point in the future if she became permanently or totally disabled. *Id.* at 519. The trial court found that the diagnosed spouse had declined an immediate award of alimony, and held that it had no authority to reserve on the question of future alimony. *Id.*

On appeal, the Court of Appeals held that a trial court has the authority to reserve alimony, but it is a discretionary power, and whether a trial court exercises its discretion to reserve alimony is affected by both statutory and non-statutory considerations. *Id.* at 528. The Court explained that "it would not be appropriate to reserve simply because there may be some vague future expectation of circumstances that might show a basis for alimony." *Id.* at 528-29. In other words, just because there is a possibility that a spouse "might become aged, infirm, or disabled . . . at some unknown future date, thus potentially invoking [FL] § 11-106(c), would not provide a basis for reservation." *Id.* at 529. On the other hand, the Court stated that, if the record contains evidence showing that "in the *reasonably foreseeable future*, [there] will be [] circumstances that would justify an award of rehabilitative or indefinite alimony, it would not be an abuse of discretion to reserve." *Id.* at 530.

Regarding appellant's argument that the trial court abused its discretion by not reserving on the issue of alimony, we conclude that this issue was not raised in the trial court, and thus, is not preserved for appellate review under Maryland Rule 8-131(a). Even if the issue had been preserved and appellant's disability insurance income were to expire

within the timeline claimed by appellant, appellant's income would still exceed his expenses by between $351 and $451.[7] Consequently, the record does not contain evidence showing circumstances that would justify an award of rehabilitative or indefinite alimony in the reasonably foreseeable future. *See Turrisi*, 308 Md. at 530. Accordingly, the trial court did not abuse its discretion by failing to reserve on the issue of alimony.

VII. HELOC Repayment

After the parties separated and the instant litigation was instituted, appellant withdrew $84,289.85 from the home equity line of credit ("HELOC"), which was a lien on the marital home. Appellant did not tell appellee that he had withdrawn funds from the HELOC until a week prior to trial.[8] At trial, appellant testified that he used the funds from the HELOC to pay his Discover credit card balance, his 2013 income taxes, the lien on the 2014 Lexus, and his attorney's fees.

In its order entered on August 20, 2015, the trial court ordered the marital home to be sold and the proceeds to be divided equally between the parties. The court also ordered that

> [appellant] shall be, and hereby is, required to pay, in full, the balance of the [HELOC] account ending in 2514, which is in [appellant's] sole name and is attached as a lien against the [ ] marital home [ ], no later than September 4, 2015. The payment of the balance of the [ ] HELOC account **shall be the sole responsibility**

[7] Appellant's stated monthly income of $11,351 less disability insurance monthly payment of $5,650 = $5,701 monthly income, less monthly expenses of between $5,250 and $5,350 = between $351 and $451 excess income per month.

[8] Appellant also failed to tell appellee that he had withdrawn the funds from the HELOC at the parties' mediation on February 9, 2015.

> **of [appellant] and [appellant] shall close the [ ] HELOC account immediately upon the repayment of the balance of the loan.**

(Emphasis added).

Appellant contends that it was clear error or an abuse of discretion for the trial judge to order appellant to pay off the HELOC. Appellant argues that his use of the $84,289.85 obtained from the HELOC was justified, because the money was not dissipated; it was used to pay off his Discover credit card balance, his 2013 income taxes, the lien on the 2014 Lexus, and his attorney's fees. Appellee responds that the trial judge did not abuse his discretion or commit clear error in ordering appellant to pay the HELOC. According to appellee, the trial court did not order repayment of the HELOC because the funds were dissipated; rather, the trial court ordered repayment on the basis that the HELOC was a non-marital debt incurred by appellant.

Whether the trial court erred or abused its discretion by ordering appellant to pay off the HELOC is not resolved by a determination that the funds withdrawn from the HELOC were used for marital purposes and not dissipated, as argued by appellant, or that such funds were a non-marital debt, as claimed by appellee. A more fundamental issue is raised and must be addressed – whether a trial court has the authority under the Family Law Article to order one party to pay a joint obligation of the parties.

With one exception, the statute does not authorize the circuit court to order one party to pay a joint debt. That exception involves the award of possession and use of the "family home" or "family use personal property" under FL § 8-208. Section 8-208(c) specifically provides:

> (c) *Allocation of financial responsibilities*. – The court may order or decree that either or both of the parties pay all or any part of:
> (1) any mortgage payments or rent;
> (2) any indebtedness that is related to the property;
> (3) the cost of maintenance, insurance, assessments, and taxes; or
> (4) any similar expenses in connection with the property.

In the instant case, the HELOC was a lien against the jointly titled marital home.[9] The marital home, however, was not a "family home" within the meaning of the Act, because it was not being used or was not going to be used "as a principal residence by 1 or both of the parties *and a child*." *See* FL § 8-201(c)(1)(iii) (emphasis added). Consequently, the trial court did not have the authority to order appellant to pay off the HELOC.

As previously stated, appellant withdrew money from the HELOC after filing the instant lawsuit and failed to tell appellee that he had done so until one week before trial. Although appellant testified at trial that he spent the money for marital purposes, he did not produce any documentary or other evidence to corroborate those expenditures. It is clear from the trial court's August 20, 2015 order that the court did not believe that appellant spent the HELOC funds for marital purposes, and concluded that it was inequitable for appellant to encumber the marital home with the HELOC loan. To correct such inequity, the trial court could have granted appellee a monetary award in an amount equal to her share of the funds that appellant withdrew from the HELOC. Under FL § 8-205(b)(11), the trial court, in determining the amount of a monetary award, can consider

[9] The parties and the trial court apparently agreed that the HELOC was established in appellant's name alone. Nevertheless, because the HELOC is a lien on jointly titled real estate and thus must be paid from the proceeds of any sale, we will treat the HELOC as a joint debt of the parties.

"any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award[.]" In the alternative, the trial court could have divided the net proceeds of the sale of the marital home in such a way that appellee would have been reimbursed for her share of the withdrawn HELOC funds. Under FL § 8-205(a)(2)(iii), the trial court has the authority to transfer any interest of one of the parties to the other party in "the principal residence of the parties when they lived together" and may consider "any other factor" in making such transfer.[10] *See* FL § 8-205(b)(11). Unfortunately, the trial court did not grant a monetary award to appellee, nor did it transfer any portion of the net proceeds of the sale of the marital home to appellee. Accordingly, the trial court erred by ordering appellant to pay off the HELOC.

[10] We recognize that in *Hart v. Hart*, 169 Md. App. 151, 155 (2006) (decided June 2, 2006), this Court held that the trial court erred when it awarded 2/3 of the proceeds of the sale of the jointly titled marital home to the wife in lieu of granting her a monetary award. We stated that the unequal division of the sale proceeds would circumvent the statutory prohibition against the trial court ordering the transfer of ownership of real property from one party to the other. *Id.* at 164-65. *Hart*, however, was decided before the General Assembly enacted subsection (a)(2)(iii) of Section 8-205, which expressly authorizes the trial court to transfer from one party to the other "any interest" in jointly titled real property used as the spouses' principal residence. *See* Chapter 431, 2006 Laws of Maryland (effective October 1, 2006). In *Fader's Maryland Family Law*, the authors stated:

> Note that the enactment of Md. Code Ann., Fam. Law § 8-205(a)(2)(iii) might permit an order like the one in *Hart* where the home had been sold and the court decided to divide the proceeds unequally, treating it as a transfer of "any interest of one of the parties in the real property."

§ 13-4[b], at 12-13 (footnotes omitted).

VIII. Survivor Annuity Award

In his amended supplemental complaint for absolute divorce, appellant requested "[t]hat the Court award [appellant] an equitable interest in the marital portion of any of [appellee's] pension and/or retirement and other employment benefits and survivor benefit rights [("survivor annuity")] relating thereto[.]"

During trial, appellant testified that "in the survivor [annuity], [appellant and appellee] marked initially 100 percent, but later [appellee] changed to 25 percent, I guess, 25, yeah. Twenty-five percent she selected[.]" When asked why appellee changed the percentage, appellant responded: "So at that time she wanted to get more money [for retirement]."

During the trial court's oral ruling on July 14, 2015, the following took place:

> [APPELLANT'S TRIAL COUNSEL]: Your Honor, I just wanted to remind you my client is in retirement status. He's getting his [Federal Employee Retirement System ("FERS")] now.
>
> COURT: Okay. So there's no, but there was no value --
>
> [APPELLANT'S TRIAL COUNSEL]: Correct.
>
> COURT: **-- placed upon that by either of the parties so that's why there was no value that appears on this statement.** So I've just simply based upon looking at all of this **I have indicated that each part[y] is going to just retain whatever retirement assets that they have, the ones that are titled in their own name.**

> Each one has a TSP, well [appellee] has a TSP, a UPMC401(k), a PMC IRA, an American Funds IRA titled in her name. She will retain that.
>
> [Appellant] has a TSP, a PMC IRA, an American Funds IRA and his own FERS. He will retain that.

(Emphasis added). However, in the court's written order entered on August 20, 2015, the court ordered "that [appellee] shall be entitled to claim *a full, maximum* survivor annuity from [appellant's] [ ] FERS [ ] pension/account[.]" (Emphasis added).

On September 15, 2015, the court entered an order[11] stating:

> [T]hat the Order previously issued by this Court on August 20, 2015 is still in effect and that the following provisions are to be considered in addition to all provisions contained in the August 20, 2015 Order; and . . . that the Circuit Court for Montgomery County, Maryland shall retain and reserve jurisdiction for the receipt, entry, alteration, and/or amendment of any and all orders necessary to effectuate the transfers of any retirement assets, including survivor benefits; and . . . that **in the event it becomes known that one of the parties may not be able to obtain the other's survivor annuity benefits associated with the parties' respective FERS accounts, then no survivor annuity benefits shall be awarded to either party unless both parties agree, in writing, that the other party may still claim the survivor annuity benefit of the other**[.]

(Emphasis added).

On October 28, 2015, the court entered a further order that modified the earlier survivor annuity provision. The Order provided:

> [T]hat in the event it becomes known that one of the parties may not be able to obtain the other's **full** survivor annuity benefits associated

[11] There were no motions filed by the parties that were entered on the Docket Entry to indicate a reason why the court entered additional orders regarding the parties' survivor annuity benefits.

> with the parties' respective FERS accounts, then no survivor annuity benefits shall be awarded to either party unless both parties agree, in writing, that the other party may still claim the **full** survivor annuity benefit of the other[.]

Appellant apparently contends that the trial court erred when it awarded appellee the maximum survivor annuity under appellant's pension plan. Appellee responds that the court did not commit error because it entered a modified order on October 28, 2015, and thus, appellant's issue is moot.

From our review, it is apparent that appellant's claim of error revolves around the order entered by the court on August 20, 2015, instead of the modified court order entered on October 28, 2015. Appellant never articulated in his brief the specific error that the trial court committed regarding its modified order of October 28, 2015, nor did appellant provide an argument for that claim of error. Appellant has an obligation to provide argument in support of every issue raised by him on appeal. *See* Md. Rule 8-504(a)(6). Although it does not appear that in the October 28, 2015 modified order the court awarded the full, maximum survivor annuity to appellee, as appellant contends, we nonetheless decline to review this question, because appellant has not properly articulated his claim of error, nor submitted sufficient argument regarding the same.

IX. Awards of Attorney's Fees and Expert Witness Fees

A. Attorney's Fees

On October 27, 2014, appellee filed Defendant's Motion to Compel Discovery and for Sanctions ("motion to compel") because of appellant's alleged failure to provide answers to interrogatories and certain requested documents. A hearing was held on

December 12, 2014.[12] In an order issued on the same date, Judge Sharon Burrell granted appellee's motion to compel, ordering, *inter alia*, that appellant "shall provide [appellee] with his full and complete Answers to Defendant's Interrogatories (Numbers [5- 13]) and a full and complete written Response to Defendant's Request for Production of Documents along with accompanying documents in response to (Requests No. [1-19, 21-27, 29-32, 34, 35, 38-43, 45-50, 53, and 54])" by December 20, 2014. The order provided further that sanctions for appellant's failure to comply with the order to compel could include an Order of Default, an Order refusing to allow appellant to support or oppose any claims or defenses, a prohibition of appellant presenting certain matters into evidence, and attorney's fees and expenses incurred, in an amount to be determined by the merits hearing judge.

When appellant failed to comply with Judge Burrell's order, appellee filed on December 23, 2014, Defendant's Motion for Sanctions and Other Relief. On January 7, 2015, appellee filed Defendant's Amended Motion for Sanctions and Other Relief ("amended motion for sanctions"), which explained that long after close of business on December 22, 2014, appellee received appellant's supplemental answers by e-mail, and on December 23, 2014, appellee received additional documents, but both were deficient.[13]

[12] On December 9, 2014, appellee filed an Addendum to the motion to compel, alleging that appellant failed to respond to appellee's second set of interrogatories and request for documents.

[13] Appellee stated in her motion that appellant still did not provide her with documents that she had requested and he was ordered to produce. In addition, many of appellant's supplemental responses

> repeat the very same excuses and arguments used at the hearing on [the motion to compel], e.g., that it would be costly and burdensome for him to provide the requested document, despite the fact that they

On January 29, 2015, Judge David Boynton granted in part the amended motion for sanctions, prohibiting appellant from introducing any matters into evidence that were requested but not produced in accordance with Judge Burrell's December 12, 2014 order, and ordering appellant pay to appellee reasonable attorney's fees in an amount to be determined by the trial judge. At trial, the court noted that appellee's attorney's fees claim "is based upon the fact that [appellee] had to spend additional monies for things because [appellant], for example, failed to respond to discovery, didn't provide things, [appellee] had to file a motion to compel, motions for sanctions, [and appellee] had to hire experts[.]" In its order entered on August 20, 2015, the court ordered appellant to pay appellee $4,779.48, representing attorney's fees and court costs relating to discovery disputes documented in the amended motion for sanctions filed on January 7, 2015, and also considered in Judge Burrell's Order dated December 12, 2014.

Appellant contends that the trial court's award of $4,779.48 in attorney's fees to appellee was clearly erroneous because the discovery violations committed by appellant were extremely minor.[14] Appellee responds that appellant made the same argument before

> are purely within his possession, custody, and control. These arguments were heard and rejected by the Court and Judge Burrell ordered [appellant] to provide the documents, responses, and Answers to Interrogatories no later than December 20. Despite this, [appellant] has still failed to do so.

The amended motion to compel also provided a breakdown of the fees and expenses that appellee had incurred as a result of appellant's failure to comply with appellee's discovery requests, which totaled $4,779.48.

[14] Although appellant does not challenge the amount of attorney's fees awarded, he does challenge the failure of the trial court to consider the statutory criteria under FL § 11-110. The award by the trial court, however, was for discovery violations, not a request for

the trial court, and the court properly rejected such argument because appellant failed to comply with a court order to provide discovery, which caused appellee's counsel to spend additional time to obtain the discovery responses. Appellee further asserts that the trial court followed Maryland Rule 2-433(a)(3) in awarding attorney's fees and thus did not abuse its discretion in making the award. We agree with appellee and shall explain.[15]

Maryland Rule 2-433(a)(3) states in part that upon a motion filed under Rule 2-432(a),

> the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable costs and expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust.

Md. Rule 2-433(a)(3).

"It is well settled in Maryland that the trial judge is entrusted with the role of administering the discovery rules and, as such, is vested with broad discretion in imposing sanctions when a party fails to comply with the rules. We will not disturb a trial court's decision to impose sanctions on a party unless there has been 'a clear showing that this discretion was abused.'" *Att'y Griev. Comm'n v. Kreamer*, 404 Md. 282, 342 (2008)

attorney's fees under FL § 11-110. Therefore, the court did not have to consider the statutory criteria required by that section.

[15] We note that appellant inexplicably raises in this question whether the denial of an alimony award was clearly erroneous. Appellant makes no argument, nor states any relevant facts, regarding the denial of an alimony award to him. Under Maryland Rule 8-504, a party has the obligation to present a concise statement of material facts and provide an argument in support of each issue raised. Md. Rule 8-504. Therefore, we will not address appellant's challenge to the denial of an alimony award to him.

(internal citations omitted). Thus a trial court's determination of discovery sanctions are reviewed under an abuse of discretion standard. *See Rodriguez v. Clarke*, 400 Md. 39, 57 (2007).

Under Maryland Rule 2-433(a), it is clearly within the authority of the trial court to award attorney's fees to a discovering party upon the opposing party's failure to comply with the discovery rules. Here, appellant completely failed to comply with Judge Burrell's order to compel by close of business on December 20, 2014.[16] When appellant did attempt to comply with the order after the close of business on December 22, 2014, and on the next day, appellant still failed to provide the requested documents and adequate answers to interrogatories, as required in Judge Burrell's order. Appellant's failure to provide the requested discovery to appellee required appellee's counsel to spend extra time to obtain discovery, file motions with the court, and hire an expert witness. Therefore, we conclude that the trial court did not abuse its discretion in awarding appellee attorney's fees in the amount of $4,779.48 because of appellant's discovery violations.

B. Expert Witness Fees

As appellee's expert witness, Egert testified that based on his identification of appellant's transactions and how much appellant withdrew from various marital bank accounts, he was able to show where the money went and/or how much of the money disappeared. Appellee asked the court to award her an expert witness fee. In its order

[16] Giving appellant the benefit of the doubt, we note that December 20, 2014, was not a regular business day, because it was a Saturday. Consequently, appellant would have had until the close of business on the next business day, Monday, December 22, 2014, to comply with Judge Burrell's order to compel. Appellant failed to meet that deadline.

entered on August 20, 2015, the trial court awarded appellee $20,185 in expert witness fees.

Appellant contends that the trial court erred when it awarded $20,185 in expert witness fees to appellee because, according to appellant, the expert's testimony was worthless. Appellee counters that the trial court did not abuse its discretion when it awarded expert witness fees, because the testimony was helpful to the court in tracking the transactions and appellant's moving of money. We agree with appellee.

In *Gallagher v. Gallagher*, 118 Md. App. 567, 579 (1997), *cert. denied*, 349 Md. 495 (1998), this Court quoted Maryland Rule 5-702: "'Expert testimony may be admitted . . . if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue that an expert witness's testimony is. '". At the trial in *Gallagher*, the expert witness was qualified as a certified public accountant ("CPA") in the areas of taxation, accounting, finance, and asset valuation. The expert was called to testify on the appellee's alimony claim and "testified as to [the] appellant's income and expenditures and traced certain assets held in various bank accounts. He also took certain statements and income tax records and drew from them conclusions." *Id.* at 578-79.

On appeal, the appellant argued that the expert witness did not provide an opinion as an expert and rather, was merely a fact witness and that the witness's testimony was speculative. *Id.* at 578. This Court rejected the appellant's argument by stating that, although the trial court might have misstated that the witness did not testify as an expert, "[t]he numerous, complex, financial transactions in which [the] appellant was involved required that an expert, such as a [CPA], be consulted in order to determine the nature and

extent of [the] appellant's income and expenditures." *Id.* We determined that the witness properly testified as an expert and that his testimony assisted the trier of fact to understand the evidence and facts in issue. *Id.* at 579. In addition, we noted that the expert was cautious in drawing conclusions, and thus his testimony was not unfairly speculative. *Id.* Therefore, this Court concluded that the granting of expert witness fees for the prosecution of the alimony claim was properly awarded. *Id.*

Here, Egert was able to trace appellant's transactions and determine the amount of marital funds, at a minimum, that were dissipated by appellant from joint marital bank accounts. It is clear that Egert's testimony assisted the trier of the fact, the circuit court in this case, because the court adopted as a finding and in its order exactly what the expert opined. In its oral ruling, the court stated: "I've also determined from the evidence that there was a total amount of dissipation on behalf of [appellant] of $161,000 so I've granted [appellee's] request that [appellant] reimburse her for half of that which is $80,500."

FL § 8-214(a) states that reasonable and necessary expenses include 1) suit money, 2) counsel fees, and 3) costs. FL § 8-214(b) provides that "[a]t any point in a proceeding under this subtitle, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding." Before ordering a party to pay, the court must consider "the financial resources and financial needs of both parties" and "whether there was substantial justification for prosecuting or defending the proceeding." FL § 8-214(c). This Court in *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 470 (2002), labeled expert witness fees as "costs." We concluded in *Steinhoff*

that the award of expert witness fees was reasonable and necessary because the alimony claim was at issue and the expert witness's testimony was helpful on that issue. *Id.* at 488.

We hold that the trial court's award of $20,185, representing appellee's expert witness fees and court costs, was not an abuse of discretion. In its oral ruling and order, the court considered the parties' financial resources and needs, because the court stated that the financial circumstances of the parties were roughly equal. In addition, based on the intricate and complicated nature of the subject matter and Egert's testimony, coupled with the large amount of marital funds that disappeared from the joint marital bank accounts shortly after appellee obtained a temporary protective order, there was substantial justification for prosecuting the proceeding.

Therefore, we conclude that, not only was Egert's testimony helpful to the court in determining whether appellant had dissipated marital funds, but the court's award of expert witness fees in the amount of $20,185 was reasonable and necessary under FL § 8-214. Accordingly, the trial court did not abuse its discretion in making such award.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 7/9 BY APPELLANT AND 2/9 BY APPELLEE.