

Circuit Court for Harford County  
Case No. C-12-FM-21-001267

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1606

September Term, 2024

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JENNIFER L. GREENE

v.

DANIEL GREENE

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Graeff,  
Ripken,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, Deborah S., J.

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Filed: February 24, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal by Jennifer L. Greene (“Wife”) in her divorce case against Daniel Greene (“Husband”), in the Circuit Court for Harford County. The case presents usual issues but highly unusual facts. On December 5, 2017, what the court called the parties’ “separation” began when Husband was arrested in the murder of his paramour’s boyfriend. He was tried by a jury in the Circuit Court for Baltimore City from June 14 through 23, 2023, and was convicted of first-degree murder and related crimes. On February 15, 2024, he was sentenced to life in prison plus twenty years consecutive.

In the meantime, on August 10, 2021, in the Circuit Court for Harford County, Wife filed suit for divorce. The case was tried on April 23, 2024. The court held the matter *sub curia* and, on May 17, 2024, entered a memorandum opinion. On September 18, 2024, a judgment of absolute divorce (“JAD”) was entered granting a divorce, distributing the parties’ marital property equally, awarding child support to Wife, and awarding attorneys’ fees to Wife.

Wife noted a timely appeal posing two questions for review, which we have combined and rephrased:

Did the trial court abuse its discretion in its distribution of marital property?<sup>1</sup>

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<sup>1</sup> Wife worded her questions presented as follows:

1. Did the court err in its failure to consider the necessary statutory factors and/or abuse its discretion in rendering an award that provided Mr. Greene 50% of the marital property?
2. Did the court err and/or abuse its discretion in its treatment of the survivor benefit issue?

We answer that question in the affirmative and, for the reasons explained below, shall vacate the judgment in part, affirm the judgment in part, and remand the case for further proceedings not inconsistent with this opinion.

### **FACTS AND PROCEEDINGS**

At trial, Wife and Husband each testified and many exhibits were admitted into evidence. The following facts were adduced. In addition, for context, we take judicial notice of publicly-known facts elicited in the criminal case against Husband.

The parties married on March 31, 2007. The year before, they had purchased Husband’s parents’ house in Harford County, as joint tenants. At a subsequent time, they refinanced and title was changed to tenants by the entireties. The monthly mortgage payment on the home, including property taxes and related expenses, is \$1,286.79.

The marriage produced a daughter (“Child”) born in December 2008. For eight years following Child’s birth, Wife primarily was a stay-at-home mother. In 2012, she started working part-time as a travel agent, earning a very small income.

For eleven years, Husband was employed as a firefighter by the Prince George’s County Fire Department. His employment began before the marriage, in March 2002. In March 2013, Husband received a full medical retirement due to an on-the-job injury to his lungs. The medical retirement provides him a lifetime pension with cost-of-living adjustments (“COLAs”). It is not taxed. Each month, the cost of medical, prescription drug, vision, and dental insurance, and a fee to the Prince George’s County Fire Fighters Association, is subtracted from the gross pension amount and the net pension amount (“net pension”) is paid to Husband. When he retired, Husband selected a payment option that

includes a survivor benefit, which makes his monthly pension about \$56.57 less than it would have been had he not chosen that option. He named Wife as the survivor beneficiary. The pension started to be paid immediately upon Husband’s retirement.

Post-retirement, from September 4, 2013 to April 21, 2017, Husband worked for Veterans Corps of America, Inc., as an urban search and rescue equipment specialist. That position paid \$81,000 annually and required him to travel frequently. On April 21, 2017, he was terminated from employment. He applied for unemployment insurance benefits but was denied upon a finding by the Maryland Department of Labor that he was discharged for “gross misconduct connected with work[.]”<sup>2</sup> He then started a small business of his own in Harford County that produced no income.

Meanwhile, in June 2013, Wife noticed on their joint cell phone account that Husband was sending “thousands” of text messages to a woman named Jennifer McKay, and in December 2013, Wife learned that Husband was having an affair with Ms. McKay. According to Husband, that relationship began in 2012 but did not become intimate until 2013. Wife testified that she confronted Husband “numerous” times about the affair, asking him to call it off and to attend marriage counseling with her. Husband refused to end the affair or go to counseling. In November 2016, Wife contacted Ms. McKay and asked her

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<sup>2</sup> Wife testified that Husband was terminated for lying about expenses on a company credit card he was issued. Husband testified that that was not true, and that he was terminated simply because his services no longer were needed. When the decision of the Maryland Department of Labor disallowing Husband’s request for unemployment insurance benefits was moved into evidence, Husband testified that the document was “contrived by the government[.]”

to end the affair. The affair continued for around three and a half years, during which time Husband became increasingly absent from the family and uninvolved in Child’s life. Wife testified that she wanted the marriage to survive. Husband testified that the marriage had not been good from the very beginning, became worse after he retired, but started to improve around Thanksgiving of 2017, because Wife began “walking with God[.]”

Sometime before that Thanksgiving, Ms. McKay ended her relationship with Husband and became involved with a man named Jon Hickey. Mr. Hickey lived in an apartment in the Upper Fells Point neighborhood of Baltimore City. On November 30, 2017, the police performed a welfare check on Mr. Hickey, at Ms. McKay’s request, after he failed to respond to her calls and did not show up for work. The police found Mr. Hickey on the sofa in his apartment, dead from a gunshot wound to the head. On December 5, 2017, Husband was arrested and charged with first-degree murder and other crimes in the death of Mr. Hickey.<sup>3</sup> On December 28, 2017, he was indicted for those crimes.

From the date of his arrest through his trial in June 2023, Husband was confined in the Baltimore City Detention Center, without bond.<sup>4</sup> Wife testified that, in 2021, she

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<sup>3</sup> The other crimes were breaking and entering the dwelling of another to commit a crime of violence (“home invasion”), use of a firearm in the commission of a crime of violence, and wearing and carrying a handgun.

<sup>4</sup> In 2018, the circuit court granted a motion to suppress evidence, from which the State noted an appeal. This Court reversed, *State v. Greene*, 240 Md. App. 119 (2019), and the Supreme Court of Maryland granted a writ of certiorari and agreed that the suppression motion had been improperly granted. *Greene v. State*, 469 Md. 156 (2020). By the time the case was remanded to the Circuit Court for Baltimore City, the courts were undergoing periodic shut-downs due to the continuing Covid-19 pandemic. All of this accounts for the long stretch of time that elapsed between Husband’s arrest and his jury trial.

decided to be a witness for the State in the criminal trial. She did so when his case went to trial. The State’s evidence showed that Mr. Hickey was murdered in the early morning hours of November 29, 2017.<sup>5</sup> Wife and Ms. McKay each identified Husband as the person shown in surveillance footage from a camera located near the exterior of Mr. Hickey’s apartment. The footage captured Husband outside Mr. Hickey’s apartment trying to get in, eventually succeeding, and later leaving the apartment holding a gun.

As noted, Husband was convicted of all the crimes charged. On February 15, 2024, he was sentenced to life in prison for first-degree murder, a consecutive ten year term for home invasion, and another consecutive ten year term for use of a handgun. The wear and carry a handgun sentence was merged. Husband noted an appeal, which was pending when the case at bar was tried two months after Husband’s sentencing. Since sometime after sentencing, Husband has been confined at the Western Correctional Center in Cumberland, Maryland.

In advance of the trial in this case, the parties agreed to Wife’s having sole legal and physical custody of Child. By her own choice, Child has no communication with Husband, having told him to stop writing letters to her. The parties contested equitable distribution of their marital property. The only marital property at issue was the equity in the marital

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<sup>5</sup> Upon being arrested on December 5, 2017, Husband gave the police a voluntary statement claiming that he could not have killed Mr. Hickey because, in the early morning hours of November 29, 2017, he was at home in bed with Wife. In essence, Wife’s testimony was that she could not vouch for Husband’s presence at home between the time she went to bed on the night of November 28 and when she saw him in the kitchen of their house at 6 a.m. on November 29.

home, which was \$100,451 at the time of trial, and Husband’s pension. They also contested child support and attorneys’ fees. Child was fifteen years old when this case was tried.

Wife struggled financially after Husband’s arrest. Husband had been the primary breadwinner in the family. Before he retired, he brought in extra income from overtime work. After his retirement, he earned income above his pension from the job he was discharged from in 2017. After Husband was arrested, Wife began working full time as a commissioned travel agent. In 2019, she filed for Chapter 7 bankruptcy. She received a discharge in 2020. She waited until 2021 to file for divorce because she did not have the money to do so until after her discharge in bankruptcy. Wife testified that the marital home was and is in need of repairs, some of which she has undertaken. She took out a loan from Husband’s brother to replace the roof. She was able to pay him back.

The evidence showed that Wife earned \$32,814 in 2022, which was in step with what she had earned in prior years, and \$75,297 in 2023. She testified that the increase in her 2023 income was unusual because that year, in addition to working as a travel agent, she worked as a freelance writer for a travel publication, an opportunity no longer available to her. The court rejected that testimony as not credible and concluded that Wife “was capable of earning far more than average salary of just over thirty thousand dollars annually.”

Wife testified that she receives health insurance through Husband’s pension, as does Child, and that, upon divorce, her insurance will end and she will have to obtain her own

policies.<sup>6</sup> Wife has no retirement benefits or accounts. In addition to the mortgage on the family home, she has a car loan. At the time of trial, Wife was forty-five years old and Husband was forty-one years old.

On December 22, 2017, soon after he was arrested, Husband gave Wife his power of attorney (“POA”). Throughout the marriage, the parties had a joint checking account and Husband had a checking account of his own that, prior to being given the POA, Wife did not have access to. After receiving the POA, Wife was able to view Husband’s accounts and saw that he had spent large sums of money on Ms. McKay, including for travel, dining, jewelry, and other gifts. He bought a boat that he kept at a marina. It caught fire and he recovered the insurance proceeds. Wife never used the boat and had no involvement with transactions related to it.

Beginning in January 2018, and continuing until October 2023, Husband directed his monthly net pension to be paid over to Wife. On March 8, 2021, without Wife’s knowledge, Husband gave his POA to his father and revoked all prior POAs. In October 2023, after Wife testified against him in the criminal trial, Husband reduced her monthly payment to one-half of the net pension plus a sum slightly less than one-half of the monthly mortgage.

At the time of trial, Husband’s net pension was \$2,666 per month. He testified that he needed some of the pension to pay legal fees, although it was not clear what fees he was

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<sup>6</sup> There was no testimony about whether Child’s health insurance would continue to be paid by Husband post-divorce. In the Child Support Guidelines the court used, there is no entry for the cost of health insurance for Child.

talking about. He testified that his parents had paid his legal fees for private counsel for the criminal trial. They later filed for bankruptcy. His criminal appeal was being handled by lawyers in the criminal appeals division of the public defenders' office, at no charge to him. Husband testified that he would prefer to be represented by private counsel in that appeal, but presented no evidence as to what that would cost. (On May 22, 2025, after briefs were filed, Husband voluntarily dismissed his appeal in the criminal case. The mandate issued on May 27, 2025.)

In closing argument, Wife's counsel asked that the equity in the house be distributed so that she would receive 50% plus her full attorneys' fees of \$14,258, with Husband receiving the balance. That would result in \$63,682 for Wife and \$35,166 for Husband, which counsel described as an "80/20" split.<sup>7</sup> Wife's counsel further asked that Husband's full pension be divided 80% to her and 20% to him. At that time, she took the position that Husband had not met his burden to prove that there was a non-marital portion to the pension, so it all would be treated as marital. She asked that she remain the survivor beneficiary. She also asked for a use and possession order for the family home until Child reaches the age of majority.

Husband's counsel took two alternative positions about equitable distribution. First, that Husband receive 100% of his pension and Wife receive the entire equity interest in the marital home. Or second, that the house be sold and the parties split the equity, and

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<sup>7</sup> The actual numbers used do not coincide with the sum used by the court as the equity value in the house because counsel for Wife used a slightly smaller number, \$98,848.

Husband and Wife split the entire pension, both the marital and non-marital portions. (Counsel acknowledged that that would give Wife a greater part of the pension “than what [she] is legally entitled to under Maryland law.”) Counsel for Husband asked the court to allow Husband to keep the survivor benefit and place it in Child’s name and argued that there should not be a use and possession order.

As noted, the court took the matter under advisement. On May 17, 2024, the judge issued a memorandum opinion and asked counsel for the parties to draft and submit a JAD based on it.

In its memorandum opinion, the court found that Husband’s pension is 6/11 marital and 5/11 non-marital (roughly 55% marital and 45% non-marital). Using the monthly net pension amount of \$2,666, it determined that Wife should receive 3/11, that is, 50% of the marital share.<sup>8</sup> That comes to \$727 per month or \$8,724 annually. Husband will receive his 5/11 non-marital share (\$1,211.65) plus 3/11, which is the other 50% of the marital share (\$727), for a total of \$1,938.33 per month, or \$23,259.96 annually. The court further determined that “[e]ach party should be permitted to leave to the survivor of their choice their portion of the pension.” It ordered the parties to enter into a QDRO pertaining to the pension.

The court granted Wife use and possession of the marital home for three years from the date of entry of the JAD or until Child is emancipated by age, whichever is sooner. Child will turn eighteen years old in December 2026, however, which is less than three

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<sup>8</sup> As we shall discuss *infra*, the monthly gross pension amount, not the monthly net pension amount, should be used.

years from the date of the JAD. The court gave Wife ninety days after the expiration of the use and possession period to refinance the mortgage and buy out Husband’s one-half interest. If she does not do so, the marital home will be sold and the net equity will be divided equally between the parties. Until that time, Husband would be responsible for paying one-half of the \$1,286.79 monthly mortgage.

The court determined that Husband’s child support obligation is \$380 per month from August 10, 2021, the date Wife filed suit, until the date of the JAD (a total arrearage of \$13,680), and \$353 per month after the QDRO has gone into effect. (It did not address the period between the date of the JAD and the effective date of the QDRO). Based on Husband’s prior payments of all or part of his monthly net pension to Wife, the court credited him with \$28,801 toward child support.

The court awarded Wife \$3,500 in attorneys’ fees plus an additional \$700 in fees for the cost of completion of the QDRO, all to be paid by Husband at a rate of \$200 per month. (That is, for twenty-one months.)

We will discuss additional evidence, the court’s memorandum opinion, and the JAD in greater depth in our discussion of the issues.

### **STANDARD OF REVIEW**

We review the rulings of a circuit court sitting without a jury “on both the law and the evidence[,]” giving “due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c); *Friedman v. Hannan*, 412 Md. 328, 335 (2010). We review the court’s factual findings for clear error. *MAS Assocs., LLC v. Korotki*,

465 Md. 457, 474-75 (2019). We review the court’s legal conclusions *de novo*. *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020).

A trial court’s decision to grant a monetary award, and the amount of that award, is reviewed for abuse of discretion. *Flanagan v. Flanagan*, 181 Md. App. 492, 521-22 (2008). “Under that lenient standard, the ruling ‘will not be reversed simply because the appellate court would not have made the same ruling.’” *McAllister v. McAllister*, 218 Md. App. 386, 400 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)). For a decision to be an abuse of discretion, it must be “‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Id.* (quoting *North*, 102 Md. App. at 14).

### DISCUSSION

Wife contends the trial court abused its discretion by distributing the marital property equally instead of awarding her most of the marital property, given Husband’s egregious conduct that wreaked havoc on the marriage and their daughter’s life and that Husband will spend the rest of his life in prison. In its memorandum opinion, the court opined that it would not be in Child’s best interest for Husband to become “penniless” but then be charged generally with child support. Wife argues that this was not a proper consideration of Child’s welfare and that, in fact, even if she were given all the marital property, Husband still would receive his non-marital share of his pension, so he would not be rendered penniless and would have ample money to take care of his needs in prison. Wife points out that the court found the “parties’ relationship was long destroyed by [Husband’s] decision to physically and emotionally leave the marriage” but nevertheless

found that “[t]hat alone does not warrant the complete transfer of all of his [marital] assets to [Wife].” Wife maintains that awarding her most of the pension would have provided her additional funds “to care for [Child] during the remaining years of her childhood, and to support her financially as she pursues college, employment and other endeavors into her adulthood”; would have been equitable given the length of the marriage and her monetary and non-monetary contributions to the marriage; and would have “assist[ed] in offsetting the horrific scenario created by [Husband].” Wife argues in addition that the court abused its discretion by dividing the survivor’s benefit for the pension.

Not surprisingly, Husband contends the court did not abuse its discretion in equally distributing the marital property and dividing the survivor’s benefit.

In Maryland, when granting a divorce and determining the equitable distribution of marital property, a court must employ a three-step process. *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). First, the court must identify which property is marital. Md. Code, FAM. LAW (“FL”) § 8-203(a). Second, it must value the marital property. FL § 8-204(a). And third, it must decide whether distributing the marital property by title would be unfair, and if so, decide how to adjust the equities by granting a monetary award or a permissible transfer of property. *See* FL § 8-205(a)(1)-(2). *See also Alston v. Alston*, 331 Md. 496, 506 (1993) (stating that the purpose of a monetary award “is to provide a means for the adjustment of inequities that may result from distribution of certain property in accordance with the dictates of title” (quotation marks and citation omitted)). Overall, the distribution of marital property must be “fair and equitable.” *Long v. Long*, 129 Md. App. 554, 578 (2000).

Pursuant to FL § 8-205(a)(2)(i), the court may transfer ownership in a pension from one party to either or both parties. And pursuant to FL § 8-205(a)(2)(iii)(1), subject to the terms of any lien, the court may order the transfer of ownership of real property owned jointly, and used as the parties' principal residence, from one party to the other if the party to whom the property is transferred obtains a release of the other party from any lien. Under subsection (2) of the same law, the court may authorize one party to purchase the interest of the other in the real property, in accordance with terms and conditions the court orders. (The court also may do both, pursuant to subsection (3).)

FL § 8-205(b) lists factors the court must consider, if relevant, when deciding the equitable distribution of marital property by monetary award or permitted transfer. They are:

- (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 [non-marital] property ... 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.

Consideration of the relevant factors is mandatory. Nevertheless, 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.” *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003) (quotation marks and citation omitted). “This is because a judge is presumed to know the law, and is not required to ‘enunciate every factor he considered on the record,’ as long as he or she states that the statutory factors were considered.” *Id.* (quoting *Randolph v. Randolph*, 67 Md. App. 577, 585 (1986)). “But, ‘the chancellor who fails to provide at least some of the steps in his thought process leaves himself open to the contention that he did not in fact consider the required factors.’” *Id.* at 430 (quoting *Campolattaro v. Campolattaro*, 66 Md. App. 68, 81 (1986), *superseded on other grounds by Rule*).

The memorandum opinion in this case does not mention the statutory factors, although it includes express findings on some of them, such as the ages of the parties, their physical conditions, and the value of their property interests, and implicit findings on others, such as the length of the marriage and the monetary and nonmonetary contributions of the parties to the well-being of the family.

One factor that must be considered to fairly distribute the parties' marital property is the economic circumstances of the parties at the time the award is made. In its nine-page memorandum opinion, the court makes only one mention of the most distinguishing fact, economically and otherwise, about this case: that Husband is serving a life sentence plus twenty years consecutive in prison. The court makes no mention of the fact that, due to his incarceration, Husband incurs **no** expenses for housing (mortgage or rent, insurance, maintenance and repairs, water, gas and electric, internet, and cleaning), food, phone, transportation (either public or a vehicle, including the cost of purchase, repairs, insurance, and gas), clothing, and entertainment. Instead of bearing these usual living expenses, his expenses are limited to incidental personal items permitted in prison. He testified that he wants to save money for a legal fund for private counsel in his criminal appeal but did not introduce evidence of what that would cost. In fact, he was being represented by counsel from the criminal appeals division of the public defenders' office, at no cost. And after the trial in this case, he voluntarily dismissed that appeal. Basically, Husband comes as close as an adult can be to having no living expenses and that circumstance is likely to remain for decades.

The court does not appear to have considered this critical economic circumstance in determining a fair distribution of marital property. And despite comments in the opinion that it would be wrong to leave Husband "penniless," the evidence established that he never will be penniless because he has a lifetime pension, 5/11 of which is his non-marital

property.<sup>9</sup> Even using the monthly sum of \$2,666 for the net pension at the time of trial, the non-marital portion is \$1,211.65 per month. That is an annual income of \$14,539.80, tax free, for a person with no living expenses.

Relatedly, there is nothing in the court’s memorandum opinion to show any consideration that Wife, by contrast, has no non-marital property, savings, or retirement funds and incurs all the living expenses described above and more.

Beyond that, there are several unfortunate comments in the memorandum opinion that strongly suggest the court was placing blame on, if not punishing, Wife in its distribution of marital property for having testified against Husband in his criminal trial:

- The court found that information Wife learned about the money Husband had spent on Ms. McKay “caused [Wife] to no longer remain supportive or silent regarding [Husband], but to become a witness for the State and against her estranged husband.” It further found that Husband’s affair with Ms. McKay was “open and notorious,” so Wife should not have been surprised to learn that he had spent considerable sums on Ms. McKay. These findings imply that Wife was unjustified in her reaction to Husband’s using the family’s money to fund his affair and testified against him based on that unjustified reason. That is not supported by the evidence.
- The court found that Husband changed his POA from Wife to his father due to “her active role as a witness against him in the murder trial[,]” implying that he was justified in doing so as it was wrong for her to have testified. This finding was not supported by the evidence (in part because the POA change happened in 2021, two years before Husband’s trial).
- The court found that “[t]he already deplorable state of [the parties’] relationship was made even more untenable when [Wife] determined to assist the State against [Husband] in his pending murder trial.” The same implication is made here.
- The court commented that Wife’s “request [to be given all of Husband’s pension] appears more related to [Husband’s] current legal issues, but the

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<sup>9</sup> The evidence was sufficient to show that 5/11 of the pension is non-marital.

marriage was already over by December 2017.” Wife did not ask to receive all of Husband’s pension and the evidence contradicted the finding that the marriage was “already over by December 2017.” Husband testified that the couple’s relationship had improved around Thanksgiving of that year and Wife testified that before the arrest she had wanted to reconcile. The comment suggests that Wife’s request for a sizable distribution of Husband’s pension was vindictive, despite evidence that she was trying to protect herself and Child from the economic hardship brought about by Husband’s criminal conduct.

During trial, the court interjected and asked follow-up questions, as often happens in a bench trial. Although there was evidence that Wife had testified for the State in the criminal trial, there was no evidence about the substance of her testimony or the circumstances that led her to testify. The court did not pose any questions to ferret out that information, which would not be surprising if the court did not think it was significant. The opinion reveals to the contrary, however, and as discussed, that the court took a negative view of Wife based on it. The court was critical of Wife for testifying without knowing anything about her testimony or the circumstances surrounding it. It was a clear abuse of discretion for the court to fault Wife for testifying at Husband’s trial and factor that into the equitable distribution of their property, especially without knowing the surrounding circumstances and not taking steps to learn about those circumstances.<sup>10</sup>

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<sup>10</sup> As mentioned above, we have taken judicial notice of publicly available information about Husband’s criminal case. This includes that, on the day of his arrest, he told the police he had been home in bed with Wife, in Harford County, when Mr. Hickey was murdered in Baltimore City. His statement cast Wife in the role of an alibi witness. Yet, when surveillance camera footage was obtained, it showed Husband breaking into Mr. Hickey’s apartment and then leaving it with a gun in hand. The alibi testimony Husband wanted Wife to give would have been untruthful. The court’s remarks strongly suggest that, if Wife’s truthful testimony would not support Husband, she should not have testified (continued...)

We also are troubled by the use the court made of the evidence that, during his period of incarceration from January 2018 until the date of divorce, Husband paid his full net pension to Wife for sixty-four months and half his net pension plus half the mortgage to her for nine months. The court determined that these payments, which it calculated as totaling \$197,737 over that seven year period, were “advanced support to [Wife].” On that basis, the court rejected Wife’s “request that she be awarded all of the equity in the marital home.”

This is an out-of-context analysis of these payments. Husband always was the primary breadwinner in the family. In April 2017, he lost his job that paid \$81,000 a year and was denied unemployment insurance benefits because he had been discharged for cause. He did not obtain another job but instead started a small business that earned no money. At that point, with Husband spending most of his time away from home with Ms. McKay, the family’s income consisted only of Husband’s pension and the small income Wife was earning from part-time work as a travel agent. Then, Husband was arrested for murder and jailed without bond. He continued to receive his pension but no longer had any living expenses, while Wife suddenly was left to pay all the household expenses and all the expenses of raising Child, with very little income.<sup>11</sup>

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at all. Wife should not be criticized, let alone punished, for choosing to testify and to do so truthfully.

<sup>11</sup> In her Financial Statement submitted in this case on April 22, 2024, Wife listed her expenses and those of Child, which totaled \$5,713.95 per month. It would have been less in prior years, but likely would have been significantly more than Husband’s monthly net pension.

The pension payments to Wife were not “advanced support.” They were payments that supported the family at the time they were made, over a period of years in which there was little other means of support for the family - - to the point that Wife had to file for bankruptcy - - and Husband had no living expenses. Moreover, the payments had no connection to a fair distribution of the equity in the marital home. The court’s approach would be the same as counting the amount of pendente lite alimony received by a spouse against that spouse’s claim to marital property. It is apples and oranges.

Then, having already used the pension money Husband paid to Wife for his benefit in determining the distribution of the equity in the marital home, the court essentially double dipped, applying a large portion of the same money as a “credit” for Husband against child support. Using August 2021 as the starting point (as that is when suit was filed), the court subtracted from each monthly net pension payment \$727 (the one-half of the marital value of the pension it had determined Wife was entitled to), \$380 (the child support it had calculated from August 2021 to the entry of the JAD) and \$636 (one-half the monthly mortgage), arriving at a \$923 “credit” for Husband per month through September 2023, and a \$226 “credit” for Husband per month from October 2023 to the date of divorce. That produced a total child support “credit” for Husband of \$28,801. The court awarded a child support arrearage of \$380 per month from August 2021 through September 2024 (the date of divorce), which totals \$14,440; and child support of \$353 per month from the date of the JAD to the month Child reaches the age of majority. That sum will total \$9,531. Those two amounts (\$14,440 and \$9,531) of child support total \$23,971, which is less than

Husband’s \$28,801 “credit.” Thus, Husband will never have to pay child support arrears or child support going forward.

Wife has not appealed the part of the judgment granting child support arrears or child support going forward, and for that reason we are not vacating that part of the judgment. We point out the court’s credit decision because it illustrates the basic unfairness to Wife of the court’s rulings under the total circumstances in the case. In that vein, it is worth noting that the court’s award to Wife is less than Husband’s counsel suggested she receive in closing argument.<sup>12</sup>

We conclude that, under the circumstances, the court’s distribution of marital property was not equitable, and its exercise of discretion in that regard was ““well removed from any center mark imagined by [this Court] and beyond the fringe of what [we] deem[] minimally acceptable.”” *McAllister*, 218 Md. App. at 400 (quoting *North*, 102 Md. App. at 14).

Finally, as explained, when Husband retired, he selected a plan that included a 100% survivor’s benefit and named Wife as the beneficiary. The court determined that the survivor’s benefit is divisible, and each party is entitled to name a survivor beneficiary for “their portion of the pension.” There was no evidence about the workings of the pension plan, however, including whether the survivor’s beneficiary can be changed, whether and

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<sup>12</sup> Using Husband’s counsel’s figures, \$2,666 per month net pension and \$98,848 equity in the marital home, Husband was willing for Wife to receive one-half of the full monthly pension, including the non-marital portion (\$15,996 a year) **and** one-half of the equity in the home (\$49,424). The court awarded Wife one-half of the equity in the marital home (\$49,424) and one-half of the martial portion of the pension (\$8,724 a year).

how an alternate beneficiary may designate a separate beneficiary, and whether the pension plan permits dual survivor beneficiaries. In addition, the evidence showed that Wife was designated the survivor beneficiary during the marriage, not prior to it, and the payments toward the survivor's benefit were made during the marriage. There was no consideration of how marital funds used to purchase the survivor's benefit should factor into the equitable analysis. Thus, the decision to divide the survivor's benefit was not supported by the evidence and was an abuse of discretion.

On remand, the court may hear additional evidence so the information it considers is timely and accurate. When considering the equitable distribution of Husband's pension, the court's starting point should be the monthly gross pension amount, not the monthly net pension amount. The evidence showed that, in 2024, at the time of trial, the gross distribution to Husband each month was \$3,241.03. As explained, from that amount, the cost of health and other insurance was deducted, resulting in the monthly net pension amount of \$2,666. The parties are now divorced, and Wife will not be receiving any health or other insurance benefits through the pension. It is unclear whether Child is receiving benefits. In any event, whatever the division may be, it should be made from the gross amount, with Husband thereafter deducting the benefits that apply to him.

Because both parties are liable on the mortgage, the portion of the JAD requiring Husband to pay one-half of the monthly mortgage amount shall remain in effect.<sup>13</sup>

**JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY VACATED WITH RESPECT TO EQUITABLE DISTRIBUTION OF MARITAL PROPERTY AND PENSION SURVIVOR BENEFICIARY DESIGNATION, EXCEPT APPELLEE TO CONTINUE PAYING APPELLANT ONE-HALF OF MONTHLY MORTGAGE AMOUNT. JUDGMENT OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.**

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<sup>13</sup> To avoid any appearance of continuing unfairness, we recommend that, on remand, the case be reassigned.