Circuit Court for Baltimore City
Case No. 24-D-18-001838

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1612

September Term, 2019

RUDOLF KAMPER

v.

MARCIA KAMPER

Berger,
Arthur,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 31, 2021

After a marriage of 13 years, the parties to this litigation, Rudolf Kamper and Marcia Kamper, separated in 2016, and were divorced by judgment of the Circuit Court for Baltimore City in July 2019. In its judgment, the circuit court resolved all issues of custody, child access and child support. The court reserved on marital property issues and, on September 5, 2019, entered a Marital Property Order. This appeal is related solely to the court's marital property findings and Order.

In his appeal, appellant/Husband presents seven questions for our review, which we have recast for clarity and brevity:[1]

1. Did the court err in finding that two family businesses were marital property and in valuing appellant's fractional interests in those businesses?

2. Did the court err in its valuation of personal property?

[1] In his opening brief appellant asks:

1. Did the Court err when it found that the two family businesses were "marital property?"

2. Did the Court err when it valued the two family businesses and Appellant's fractional shares?

3. Did the Court err when it failed to follow its own method to value the two family businesses it announced that it would follow to value the personal property listed on the Joint Statement?

4. Did the Circuit Court err when it found that two of the clocks were marital property?

5. Did the Circuit Court err when it valued the items of personal property, i.e., 4 cars, a musical instrument and the clocks it awarded to Appellant?

6. Did the Court err when it did not make a monetary award to Appellant?

7. Did the Court err in the manner it valued the assets it found were marital?

3. Did the court err in not making a monetary award to appellant?

4. Did the court err in failing to follow "its own method" in its valuation of property?

For the reasons that follow, we shall affirm in part, but vacate the court's finding that Husband's interest in certain corporate property is marital property, and remand for further proceedings.

BACKGROUND and PROCEEDINGS

The parties were married in Omaha, Nebraska in September 2003 and moved to Maryland in 2005, where they have resided ever since. They formally separated in November 2016 when Wife, appellee and plaintiff below, left the marriage. Two children were born of the marriage — in 2009 and 2011, respectively. At the time of trial both parties were employed. Husband was an employee, and part owner of, two family-owned businesses — North Coast Imports, Inc. and Suburban Clock and Repair, Inc.[2] Although temporarily laid off for the summer season, Wife was employed as a musician by the Baltimore Symphony Orchestra.

Suit was filed by Wife, *pro se*, on May 31, 2018, seeking an absolute divorce based on a 12-month voluntary separation. Wife later retained counsel. Husband responded through counsel on June 22, 2018, by filing an answer and a counter-complaint for divorce,

[2] With respect to Suburban Clocks, there is also a non-familial, minority shareholder of the corporation. Both businesses are located in Berea, Ohio. The physical location of both North Coast and Suburban Clock is in real estate owned by a separate corporation that is wholly owned by Husband's mother. That corporation is not implicated in this litigation.

alleging both adultery and voluntary separation. The parties sought resolution of marital property disputes, and monetary awards, and thus filed the required Rule 9-207 Joint Statement of Marital and Non-Marital Property.[3] Trial was held on June 26–27, 2019. On July 19, 2019, the court entered a judgement of absolute divorce that: granted a divorce to Wife; ordered joint legal and physical custody of the children; resolved all issues of child access; and reserved on marital property issues. On September 5, 2019, the court entered a Marital Property Order, the details of which are challenged in this appeal.

Standard of Review

Our review of a decision of a trial court sitting without a jury is governed by Md. Rule 8-131(c):

> (c) **Action Tried Without a Jury**. When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

As we have explained, in divorce cases, courts must follow a three-step procedure when 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."

[3] Maryland Rule 9-207(a) provides that, when a monetary award is an issue, "the parties shall file a joint statement listing all property owned by one or both of them."

Richards v. Richards, 166 Md. App. 263, 272 (2005) (quoting *Collins v. Collins*, 144 Md. App. 395, 409 (2002)). *See also* Rule 8-205(a)–(b). While courts are afforded broad discretion in their ultimate decision to grant a monetary award, each of the three steps require the court to make factual findings to support its decision.

In *Murray v. Murray*, 190 Md. App. 553, 560 (2010), we reminded that "[t]he deference shown to the trial court's factual findings under the clearly erroneous standard does not, of course, apply to legal conclusions[,]" and "[w]e, instead, review *de novo* the trial court's legal conclusions." (Internal quotation marks and citations omitted).

However, as to facts, "[w]hen the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000) (citing *Ryan v. Thurston*, 276 Md. 390, 392 (1975)).

Under those standards, we take up Husband's contentions and provide detail where needed.

North Coast Imports, Inc./Suburban Clock and Repair, Inc.

North Coast Imports and Suburban Clock are family-owned corporations that were owned and operated primarily by Husband's father until his death in 2017, at which time, Husband's mother became the majority shareholder of both companies. At the time of trial, the majority interest in each of the businesses was still held by Husband's mother. Husband claims a minority interest in each of the businesses by virtue of gifts from his father in 2007, during the marriage. Although Husband was vague in his testimony about his interest in Suburban Clock, the record supports a conclusion that he owns 15% of the stock. His fractional share in North Coast was established to be 25%. The trial court found

those fractional interests to be marital property and applied those percentages to its valuation of each of the businesses.

Husband asserts that the evidence does not support a finding that his interests in the businesses were marital property, despite having been acquired during the marriage. He argues, first, that those interests were acquired by gift from his father and, thus, are not marital property. He argues further that Wife, having asserted a marital interest in the businesses, bore the burden of proving that Husband's interests were, in fact, marital and that she failed to carry that burden. As we shall describe, the evidence before the court relating to the status of the corporations was, at best, sparse.

On direct examination, Wife's counsel questioned her, item by item, as to her claimed interest in both real and personal property, apparently following the assertions set out in the Rule 9-207 Joint Statement filing. Ultimately, reaching husband's business interests, the following ensued:

> [WIFE'S COUNSEL]: Okay. You put on here that he's got these two businesses and you put a million dollars as the value of his businesses. Do you - - did you have an expert determine was the values are?
>
> [WIFE]: No, I did not.
>
> [WIFE'S COUNSEL]: Okay.
>
> [WIFE]: I just sort of guessed how much their gross sales were and it was about a million dollars - -
>
> [WIFE'S COUNSEL]: Okay.
>
> [WIFE]: - - for each business.
>
> [WIFE'S COUNSEL]: And so that's where that number came from - -

[WIFE]: Right.

[WIFE'S COUNSEL]: - - but it's not an evaluation of - -

[WIFE]: Correct.

[WIFE'S COUNSEL]: - - how much he could sell or sell the business for?

[WIFE]: Correct.

[WIFE'S COUNSEL]: Okay. And did he - - he says it's unknown so he's never told you how much he thinks the business - - or has he ever told you how much he thinks the businesses are worth prior to this litigation?

[HUSBAND'S COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[HUSBAND'S COUNSEL]: Well, if I may, Your Honor, if - -

THE COURT: Yes.

[HUSBAND'S COUNSEL]: - - the question is being asked for purposes of establishing the value of the business, the business owner is not qualified to give an opinion as to the business' value unless they are qualified as an expert, which my client is not.

THE COURT: Okay. Overruled.

The question was has he ever told you what he thought the business was worth.

[WIFE'S COUNSEL]: Has he ever told you?

[WIFE]: That he can live off of it the rest of his life.

[WIFE'S COUNSEL]: Okay. Did you - - did he purchase the business from anyone during the marriage?

[WIFE]: Not that I'm aware of.

[WIFE'S COUNSEL]: Okay.

[WIFE]: It was given to him - -

[WIFE'S COUNSEL]: Okay.

[WIFE]: - - through - - yeah.

[WIFE'S COUNSEL]: He says he owns 15 percent of the company and 25 percent of the company. Do you know whether that's true or not?

[WIFE]: I don't know. I would guess it was higher, but his - -

[HUSBAND'S COUNSEL]: Objection, Your Honor.

[WIFE'S COUNSEL]: You can't guess.

THE COURT: Sustained.

[WIFE]: Okay.

[WIFE'S COUNSEL]: Were you ever provided documents that show that?

[WIFE]: Yes.

[WIFE'S COUNSEL]: Okay. Were you provided business documents showing all of the bank accounts and transactions and all that kind of stuff?

[WIFE]: Some of it.

[WIFE'S COUNSEL]: Some of it? Okay….

At that point, in an unusual segue, Wife's testimony continued with discussion of the ownership and value of other personal property. The foregoing few pages constitute the sum and substance of Wife's evidence relating to the ownership and value of North Coast and Suburban Clock.

Marital property is property acquired by one or both of the parties during the marriage. Maryland Code (1984, 2012 Repl. Vol.) Family Law Article (FL), § 8-201(e)(1). But marital property does not include property "acquired by inheritance or gift from a third

party." FL § 8-201(e)(3)(ii). Having asserted a marital interest in Husband's minority ownership of both North Coast and Suburban Clock, Wife bore the burden of proof of her claims. *See Murray*, 190 Md. App. at 570 (recognizing that "[o]ur case law is clear that the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property" (citing *Pickett v. Haislip*, 73 Md. App. 89, 97 (1987))).

Wife offered no evidence to support her claims of marital interest, or even suggest that the gifts from Husband's father were to the marital unit. Remarkably, her testimony supports, rather than denies, Husband's assertion that his interests in North Coast and Suburban Clock were acquired by gifts of his father. Her testimony in that regard failed to establish substantial evidence of a marital interest. Indeed, Husband's testimony as to the gifting was supported by the admission of Internal Revenue Service gift-tax filings. The trial court's finding that Husband's minority interests in North Coast and Suburban Clock are marital property is not supported by substantial evidence. *Innerbichler*, 132 Md. App. at 230.

We conclude that the trial court erred in its finding that Husband's interests in North Coast and Suburban Clock were marital property. Therefore, we shall remand this matter to the trial court for reconsideration of its marital award after eliminating the value of Husband's interests in North Coast and Suburban Clock from its calculations.

Valuation of North Coast and Suburban Clock

Having determined that Husband's interests in those corporations ought not to have been found to be marital property, we need not address directly his claim that the trial court erred in its valuation of those interests. Nonetheless, were we called upon to do so, we would find that the evidence does not support the court's inferential finding that North Coast and Suburban Clock each had a value of one million dollars.

The only references to a value — of each — of one million dollars is found in Wife's assertion in the Joint Statement filing. Husband's assertion in the Joint Statement as to either company's value is stated as: "Unknown."

At trial, each party was asked for an estimate of value of the businesses. After establishing that Wife had just "guessed" about the gross sales for each company being "about a million dollars" and qualifying that her guess was not an evaluation of how much it could be sold for, she was asked if Husband had ever told her how much he thought the businesses were worth. Husband's counsel objected, arguing that Husband, as a business owner, is not qualified to give an opinion as to a business's value unless qualified as an expert, "which [he] is not." The court overruled the objection, and Wife responded with only, "That he can live off of it the rest of his life." Husband was asked twice by Wife's counsel about the value of the companies; each question was objected to by Husband's counsel; and each objection was sustained without explanation by the court, presumably, on the basis that Husband had not been qualified as an expert. When asked, Husband acknowledged that the 2018 "combined" gross receipts for both companies totaled "around a million dollars before costs and expenses were deducted[.]"

Indeed, no experts as to value were called and no expert appraisal reports were offered into evidence by either party. The court appeared to have merely accepted Wife's lay opinion of value in its finding. Absent some form of forensic valuation or appraisal, Wife's opinion was no more than speculation and wholly insufficient to establish the value of a privately held corporation.

Determination of Marital Property

As provided by FL § 8-202(a)–(b) the trial court determined the ownership of items of personal property and, pursuant to FL 8-203(a), determined which property is marital property.[4] In addition to several bank and IRA accounts, that are not in dispute, the court determined 15 items of personal property to be marital property, including four automobiles, three pianos, a flute head joint, five clocks, a watch and antique rugs. Husband challenges the court's determination of certain items of personal property as marital property, namely, the "Small wall clock from 1800's" and the "Hermle maple wall clock." He contends that Wife "did not testify about the basis of her contention that these items were not [sic] marital and did not apparently offer evidence to establish value."

[4] However, as Wife correctly points out in her brief, the court failed to address Husband's two Raymond James accounts in its marital property order. Furthermore, in our review of the Joint Statement and the court's marital property order, it appears that the court also failed to address the ownership or marital property determinations of the Steinreiter trademark, two PayPal accounts, and the three Schwab accounts of which the parties are custodians for their sons. On remand, the court must comply with FL §§ 8-202 through 8-205 and make ownership, marital property, and valuation determinations for the disputed property omitted from its original order prior to its reconsideration of the marital property distribution and award in accordance with this opinion.

Wife testified that the 1800's wall clock was a gift from Husband's parents to both parties. Husband, to the contrary, testified that he "considered it a gift from [his] father." Nevertheless, "[i]n Maryland, one who asserts the status of donee bears the burden to demonstrate … 'donative intent [on the part of the donor][.]'" *Richards,* 166 Md. App. at 276–77 (quoting *Fantle v. Fantle,* 140 Md. App. 678, 689 (2001)). There was no evidence offered by Husband to establish a donative intent by his father that limited the gift as being intended only for Husband and not for both Husband and Wife as the marital unit. The court, having been presented with conflicting testimony, was entitled to weigh the evidence and the credibility of the witnesses to resolve the dispute of fact. *See Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (explaining that "[i]n its assessment of the credibility of witnesses, the [court] was entitled to accept — or reject — *all, part,* or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence"). We find no error in the court's determination that the 1800's wall clock was marital property.

However, with respect to the Hermle maple wall clock, other than Wife's assertion in the Joint Statement that the clock was marital property, there was no evidence or testimony offered by her to support that assertion. In fact, Wife had asserted in the Joint Statement that both Hermle clocks — the black lacquered clock and the maple wall clock — were marital property that were titled to Husband. Husband, on the other hand, asserted in both the Joint Statement and in his trial testimony that both the Hermle maple wall clock and the Hermle black lacquered clock were non-marital property that he had purchased prior to the marriage. For reasons that are not clear from the record, the court determined

that the Hermle black lacquered clock was not marital property but found that the Hermle maple wall clock was marital property. There is nothing in the record from which we can discern a difference in the status of the two clocks that accounts for why one would be found to be marital property, while the other was not. The court must revisit that issue on remand.

Additionally, in our review of Husband's challenges, we find that the court also erred in its determination and valuation of the "August Hoffman Baby Grand Piano." While the parties agreed that the piano was marital property in their Joint Statement, Husband also asserted in a footnote therein that "[n]either party owns this property[,]" because he had sold the piano for $2,000 prior to trial, allegedly to pay for "household expenses." Nonetheless, Wife asserted in the Joint Statement that the piano was worth $6,510 while Husband valued it at $0. At trial, Wife testified that she did not know the status or location of the piano but acknowledged that Husband had told her that he was "thinking about selling it." Husband testified that he had "tried to sell it for as much as [he] could[,]" and that he "used the money for household expenses." Even though there was unrebutted testimony that the piano had already been sold, the court determined that it was marital property, awarded it to Husband, and averaged Wife's $6,510 valuation with Husband's $0 valuation from their Joint Statement, valuing it at $3,250.

As we have said,

> "… marital property which generates a monetary award must ordinarily exist as 'marital property' as of the date of the final decree of divorce based on evidence adduced at the trial on the merits or a continuation thereof. Therefore, property disposed of before commencement of the trial under most circumstances cannot be marital property."

Hiltz v. Hiltz, 213 Md. App. 317, 348 (2013) (quoting *Gravenstine v. Gravenstine*, 58 Md. App. 158, 177 (1984)). Wife made no accusation of wrongful dissipation of assets for the Husband's pre-trial sale of the piano, other than to state that if it had been sold, it was done without her consent. Accordingly, the court's finding that the piano, disposed of prior to trial, was marital property was error. On remand, the value of the piano must be omitted from the court's recalculation of the marital property.

Valuation of Marital Property

We next address Husband's challenges with respect to the court's valuation of the remaining marital property. In accordance with FL § 8-205, once the court has undertaken a review of all disputed property listed in the Rule 9-207 Joint Statement and determined both the ownership of the property, pursuant to FL § 8-202(a), and its classification as either marital or non-marital, pursuant to FL § 8-203(a), the court must determine the value of all marital property, pursuant to FL § 8-204(a).

In addition to the 1800's wall clock, Husband also challenges the court's valuation of three other clocks, the four cars, and the Steinway grand piano from the marital property awarded to him. Husband contends that the court merely "averaged" the competing values assigned by the parties in their limited testimony and in their Rule 9-207 Joint Statement filing. Use by the court of that method, Husband posits, was error because it did not comply with FL § 8-205 and therefore denied him rights afforded under the Fifth and Fourteenth Amendments and the Maryland Declaration of Rights. Husband argues that "[t]he Court's methodology to arrive at a determination of value was not so much a determination as a

compromise which effectively excused [Wife] from shouldering her evidentiary and procedural burdens." Further, he contends that, "[i]n fashioning the award that it did, the Court denied [him] at least procedural due process inasmuch as it was [Wife's] burden to establish what items were marital property and the value of the marital property." We are not persuaded. Moreover, we reject Husband's overwrought and wholly unsupported assertions of constitutional deprivations.

While it is true that the court's valuations generally track the very limited testimony of the parties and their respective Joint Statement assertions, it is also true that neither party offered an expert appraisal with respect to any of the disputed items of personal property.

Family Law § 8-201, *et seq.*, does not prescribe a method or formula that a court must follow in the valuation of personal property that is not susceptible of precise valuation, as would be bank accounts, retirement accounts, share values, etc. The court must rely on the evidence produced at trial, including the opinions of the parties. And, as we shall discuss, the court may refer to, and rely on, the parties' Rule 9-207 Joint Statement. The owners of personal property are entitled to offer an opinion as to the value of their property. *See Pitt v. State*, 152 Md. App. 442, 465 (2003) (providing that "[a]n owner of goods is presumptively qualified to provide testimony regarding the value of his goods" (citing *Cofflin v. State*, 230 Md. 139, 142 (1962))).

We rest our conclusion that the court did not err in its valuation of the remaining marital property on our earlier opinion in *Beck v. Beck*, 112 Md. App. 197 (1996), this Court's consideration of the predecessors to Rule 9-202(e), governing the parties' required individual financial statements, and Rule 9-207(a), governing the parties' required Joint

Statement of Marital and non-Marital Property, in relation to a court's consideration of a monetary award, pursuant to FL § 8-205 of Maryland's Marital Property Act.[5] *Id*. at 203-04. In *Beck*, Judge Cathell, writing for this Court, undertook a thorough review of the Act's corresponding Rules that were adopted by the Court of Appeals Standing Committee on Rules of Practice and Procedure to implement the procedural aspects of the legislation, particularly Rules S72 and S74, now Rules 9-202 and 9-207, respectively. *Id*. at 203–08. After a review of the development of Rule S74, and its adoption by the Court of Appeals, Judge Cathell stated:

> It is clear that the purpose of the rule was to provide for a method by which, through the use of the admissions or stipulations contained in the S74 Statements, the trial courts, in the absence of other evidence, would, nevertheless, be able to comply with the Family Law Article provision mandating that the trial courts "shall determine the value of all marital property." FL § 8-204. In the statement, the parties are required to agree as to the classification and valuation of property in which there is no dispute. The purpose of the rule was also to reduce the complexity of the property issues by reducing the disputes in respect to them through the generation of admissions and stipulations resulting from the procedures contained in the rule. These statements are, by rule, required to be produced in the course of litigation.

[5] For context, in 1978, the Maryland General Assembly enacted what is commonly known as the Marital Property Act, which was originally codified under the Maryland Code, Courts and Judicial Proceedings Article § 3-6A-01, *et seq*, but was repealed in 1984 and reenacted under the newly-added Family Law Article in Title 8, Subtitle 2, governing Property Disposition in Annulment and Divorce, § 8-201, *et seq*. 1978 Maryland Laws, ch. 794; 1984 Maryland Laws, ch. 296. In 1994, the General Assembly enacted amendments to the Marital Property Act statutes, which modified the definition of "marital property" to include real property held by the parties as tenants by the entirety and amended, what is now, FL § 8-205 to include a spouse's nonmarital contributions in the acquisition of such real property in the court's consideration of whether to grant a monetary award. 1994 Maryland Laws, ch. 462. For an in-depth discussion of the legislative history of the Marital Property Act, refer to *McGeehan v. McGeehan*, 455 Md. 268 (2017).

> We reiterate that the admissions and stipulations contained in Maryland Rule S72 and S74 Statements, when filed in a case as required, may be considered as evidence by trial courts ….

112 Md. App. at 207–08.

In ruling that, in *Beck*, the trial court properly considered the parties' asserted valuations from their S72 (Rule 9-202(e)) and S74 (Rule 9-207(a)) financial statements, we held

> … that the facts and averments as to the properties made in the statements required to be filed by Maryland Rules S72 and S74 constitute judicial admissions and may be considered as evidence without the necessity for the formal introduction at trial of these documents. That admissions by parties contained in such statements may be used as evidence is buttressed by the Rules Committee's proceedings relative to the passage of Rule S74.

112 Md. App. at 205.

In the present appeal, the court explained in its marital property order that "where the parties provided contrasting values of personal property [in the Joint Statement], with no corroborating evidence upon which [it] could rely to resolve discrepancies, [it] valued the property at an amount that is the average of the two amounts provided by the parties[.]"

We adhere to *Beck* and conclude that the trial court in the matter before us did not err in its manner of valuing the disputed items of personal property.

Monetary Award

Following its valuation and distribution of the parties' marital property, the trial court ordered a monetary award in favor of Wife to compensate her for the transfer of her interest in the marital home. Husband asserts that the court erred in not granting a monetary

award in his favor, but he failed to present any argument or otherwise discuss that issue in his brief.

As we have said, "[w]hile a 'trial court is vested with broad discretion in deciding whether to grant a monetary award, [ ] the exercise of that discretion should be informed and based upon reason.'" *Murray*, 190 Md. App. at 572 (quoting *Freese v. Freese*, 89 Md. App. 144, 153 (1991)).

Because we have found error in the court's order, from its erroneous omission of the various accounts and trademark and in its determinations that Husband's interests in the corporate entities, the Hermle maple wall clock, and the August Hoffman piano are marital property, we shall vacate that aspect of the court's judgment and remand for reconsideration of its marital property award. Therefore, we need not undertake a review of Husband's final issue.

COURT'S MARITAL PROPERTY ORDER IS VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; JUDGMENT AS TO MONETARY AWARD TO ABIDE THE REMAND; JUDGMENT AFFIRMED IN ALL OTHER RESPECTS. COSTS ASSESSED EQUALLY TO THE PARTIES.