

Circuit Court for Montgomery County
Case No.: C-15-FM-22-001697

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1796

September Term, 2024

SHAHRAM NAKHOSTIN

v.

SHAHRZAD NAKHOSTIN

Wells, C.J.,
Kehoe, S.,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 6, 2025

*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).

In the Circuit Court for Montgomery County, Shahram Nakhostin (“Husband”), the appellant, and Shahrzad Nakhostin (“Wife”), the appellee, divorced after a nineteen-year marriage. They resolved custody of and access to their son by consent. The issues of grounds for divorce, marital property, child support, alimony, and attorneys’ fees were decided by the court after a merits hearing. The court granted Husband a divorce, ordered him to pay Wife a monetary award and to transfer a share of his retirement assets to her, directed him to pay child support, ordered him to pay rehabilitative alimony to Wife for five years on a gradually decreasing scale, and denied both parties’ requests for attorneys’ fees.

Husband appeals, presenting four questions for review, which we have reordered and rephrased:

- I. Did the circuit court err or abuse its discretion by ordering Husband to pay Wife rehabilitative alimony for five years?
- II. Did the circuit court err in calculating the value of the marital property and/or abuse its discretion in determining the monetary award?
- III. Did the circuit court err in calculating child support?
- IV. Did the circuit court abuse its discretion by declining to award Husband attorneys’ fees?

For the following reasons, we answer the first question, “Yes,” and shall vacate the award of rehabilitative alimony and remand for further proceedings. Although we reject Husband’s claims of error with respect to the monetary award and the calculation of child support, we shall vacate those awards for recalculation given the vacation of the alimony award. We shall affirm the court’s denial of Husband’s request for attorneys’ fees.

FACTS AND PROCEEDINGS

Both Husband and Wife were born and raised in Iran. Husband has lived in the United States since at least 1993. Wife, who is ten years younger than Husband, moved to the United States in October 2004, after she and Husband were introduced through family members and became engaged to be married. Prior to moving to the United States, Wife had obtained her master’s degree in graphic arts and was employed by a large newspaper in Iran as the head of advertising.

The parties married in November 2004. They moved into a home in Gaithersburg, Maryland, that Husband had purchased a month earlier.

Since 2012, Husband has worked as an engineer for Microsoft. At the time of the merits hearing, he was earning \$291,000 annually in salary and bonuses.

Wife learned English and obtained employment working for a small Persian newspaper. She also worked as a lifeguard and taught swimming lessons at a fitness club in Rockville. In 2009, after working for social media and publishing companies, she was hired by Voice of America. She worked there for the next fifteen years, eventually earning \$89,000 annually. She was “laid off” in March 2024, three months before the merits hearing.

During the marriage, Wife started a business called VenoArt, LLC, which operated online art auctions. VenoArt contracted with artists to sell their work, retaining 30% of the sales price.

In 2014, the parties’ son, now age eleven, was born.

The parties separated on March 19, 2022, when Wife moved out of the marital home. The court admitted video evidence¹ and credited Husband's testimony that Wife was physically and verbally abusive to him during the marriage, which, among other factors, led to its dissolution.

Wife filed for divorce on March 28, 2022. Husband filed a counter-complaint for divorce on June 7, 2022. Wife sought a monetary award and a share of Husband's retirement assets, an award of indefinite alimony based on unconscionable disparity in the parties' incomes, a child support award, and attorneys' fees. Husband asked the court to grant him a monetary award and to order Wife to pay child support and contribute toward his attorneys' fees.

On April 24, 2023, the court entered a consent custody order, incorporating the parties' custody agreement. The parties agreed to share joint legal custody, with Husband having tie-breaking authority in the case of an impasse, and to share physical custody, with Husband receiving 65% of the overnights and Wife the remaining 35%. The custody agreement did not include child support.

The issues of marital property/monetary award, alimony, child support, and attorneys' fees were tried over four days in June 2024. In her case, Wife testified and called Husband. In his case, Husband testified, called Wife, and called seven lay witnesses to testify concerning alleged transfers of property made by Wife.

¹ Because Husband has a top-secret security clearance for his job, he installed security cameras in his home office.

On October 17, 2024, the court issued a detailed memorandum opinion and order. As a threshold matter, the court made credibility findings. It found that Wife evaded answering questions posed by her attorney and opposing counsel, that she was insincere at times, and that she was not credible when she testified about certain messages being deleted from her phone and about the reason she lost her job. The court found Husband's testimony more credible, but did not credit his testimony concerning the value of the marital home and other financial information or concerning his allegation that Wife had altered discovery materials he had produced to her. The court found both parties to lack credibility on the issue of compliance with discovery.

The court granted Husband a divorce on the dual grounds of a voluntary separation and cruel and excessively vicious conduct.

The court thoroughly reviewed the parties' marital and non-marital property and made detailed findings, the vast majority of which are not challenged on appeal. We will review the findings challenged by Husband in our discussion. In sum, the court determined that there was approximately \$2.78 million in marital property, of which \$2.49 million was titled in Husband's name, \$229,527 was titled in Wife's name, and \$58,019 was jointly titled. It found that Husband had almost \$500,000 in non-marital property titled to him, whereas Wife had \$22,000. After assessing the statutory factors, the court ordered Husband to transfer to Wife a 40% share of his retirement assets (\$642,725.82) and to pay her \$428,626.07 as a monetary award.

The court determined that Wife was not entitled to an award of indefinite alimony because she was currently capable of being fully self-supporting upon obtaining a new job

but ordered Husband to pay her rehabilitative alimony for a period of five years on a gradually decreasing scale: \$5,000 per month for the first eighteen months; \$3,500 per month for the next eighteen months; and \$2,500 per month for the final two years. The court ordered Husband to pay Wife \$111 per month in child support. The court denied the parties' requests for attorneys' fees.

Husband's motion to alter or amend the judgment, as amended, was denied. This timely appeal followed.

STANDARD OF REVIEW

We review the circuit court's determinations regarding divorce, alimony, child support, disposition of marital property, and attorneys' fees for errors of law in applying legal standards, for clear error in factual findings, and for abuse of discretion in the ultimate awards. *Malin v. Mininberg*, 153 Md. App. 358, 414-15 (2003). Factual findings underlying a circuit court's decision are not clearly erroneous if supported by competent and substantial evidence. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016); *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). A ruling is an abuse of discretion only when "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Velasquez v. Fuentes*, 262 Md. App. 215, 228 (2024) (cleaned up).

DISCUSSION

I.

Alimony

Because the statutory purpose of alimony is to rehabilitate an economically dependent spouse, Maryland favors alimony for a fixed term. *Goicochea v. Goicochea*, 256 Md. App. 329, 357 (2022). Nevertheless, in cases where the court finds 1) that the party seeking alimony cannot make substantial progress toward becoming self-supporting due to age, illness, infirmity, or disability, *or* 2) even after making “as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate[.]” the court may award indefinite alimony. Md. Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”) § 11-106(c).

Before making an award of alimony – whether rehabilitative or indefinite – the court must consider twelve statutory factors:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;
- (4) the duration of the marriage;
- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (6) the circumstances that contributed to the estrangement of the parties;
- (7) the age of each party;

- (8) the physical and mental condition of each party;
- (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
- (10) any agreement between the parties;
- (11) the financial needs and financial resources of each party, including:
 - (i) all income and assets, including property that does not produce income;
 - (ii) any award made under §§ 8-205 and 8-208 of this article;
 - (iii) the nature and amount of the financial obligations of each party; and
 - (iv) the right of each party to receive retirement benefits; and
- (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

FL § 11-106(b).

In the instant case, Wife sought an award of indefinite alimony based upon unconscionable disparity. The court considered the above factors, making the following relevant findings. Wife worked throughout the parties' marriage up until three months before the merits hearing, earning \$89,000 annually when she lost her job at Voice of America. The court did not credit Wife's testimony that she was "laid off," but did not find that she "voluntarily quit," as Husband had argued. Wife was actively seeking new employment, having applied for forty positions and engaged a recruiter to assist in that effort. The court found that Wife could earn "up to \$89,000.00 per year" and that she was "fully capable of becoming wholly self-supporting . . . at th[at] income level." Significantly, Wife did not require any additional education or training to enable her to find

suitable employment as she was highly educated and had been employed for the entirety of the parties’ nineteen-year marriage.

The court found that the parties’ standard of living during their marriage was “moderate” and that both parties contributed to the well-being of the family in monetary and non-monetary ways. Although the parties had longstanding issues during their marriage, the court found that Wife’s violence toward Husband was “the final blow that led to their separation.”

At the time of the merits hearing, Husband was age sixty-one and Wife was age fifty-one. Both were healthy. Husband had the ability to pay alimony because he earned \$24,300 per month, which the court found was \$18,463 more than his reasonable monthly expenses. The court found that Wife’s reasonable monthly expenses were \$5,767.86.

Based upon those findings, the court rejected Wife’s request for indefinite alimony. The court found that Wife was able to be self-supporting *and* if she obtained employment at her prior income level of \$89,000 per year, the parties’ standards of living would not be unconscionably disparate.² However, the court concluded that Wife was entitled to an award of rehabilitative alimony, for a term of five years. As set out above, the alimony payments began at \$5,000 per month and decreased to \$2,500 per month over that term. The court explained that five years was a “sufficient time for [Wife] to secure suitable employment in her field of experience and become self[-]supporting earning up to \$89,000 per year[.]”

² Wife did not note a cross-appeal on the issue of indefinite alimony.

On appeal, Husband argues that the court’s finding that Wife was currently able to be self-supporting based upon her education and training should have precluded an award of rehabilitative alimony. He also maintains that the court failed to weigh Wife’s discovery failures, which he alleged prevented him from discovering the value of Wife’s marital and non-marital property, in assessing the parties’ financial statuses.

Although we perceive no error in the court’s findings on the statutory factors, we conclude that the court’s ultimate decision to award Wife rehabilitative alimony for a period of five years must be vacated. We explain.

A party “is self-supporting if the party’s income exceeds the party’s ‘reasonable’ expenses, as determined by the court.” *St. Cyr*, 228 Md. App. at 186. An award of rehabilitative alimony ““must be grounded in a finding that the recipient spouse is not [currently] self-supporting *and* needs training, education, *or other steps* to help that spouse achieve financial self-reliance.”” *Id.* at 194 (emphasis added) (quoting *Karmand v. Karmand*, 145 Md. App. 317, 328 (2002)). In other words, ““there must be some relation between the length of the award and the conclusion of fact as to the income disparity made by the court.”” *Id.* (quoting *Benkin v. Benkin*, 71 Md. App. 191, 204 (1987)).

Here, the court determined that, at the time of the merits hearing, Wife had no income, was incurring reasonable expenses of nearly \$5,800 a month, and that if she obtained employment at the same income level she previously enjoyed – \$89,000 annually – she would be wholly self-supporting. The court found that Wife did not require additional training or education to obtain employment but did require time to “secure suitable employment” at her prior income level. This finding was not clearly erroneous given that

Wife had been unemployed for just three months. The court made no finding, however, about the length of time Wife would need to obtain new employment at (or above) her prior income level, and there was no evidence that five years was a reasonably necessary time frame for that. The evidence showed that Wife had been employed continuously throughout the marriage and that she was actively seeking employment.

To be sure, the court stated that five years was a “sufficient” time for Wife to obtain suitable employment in her field of expertise and to become self-supporting by earning (at least) what she had been paid by Voice of America. A sufficient time could be much longer than the amount of time reasonably necessary to accomplish that, however. The record does not show any evidence about how the five-year term set for rehabilitative alimony award bears any relationship to the steps Wife would need to take to become employed at or above her most recent income level of \$89,000 annually. Indeed, the fact that Wife was employed consistently throughout the marriage and that only three months before the merits hearing she was earning a sum that would make her self-sufficient militates strongly against five years being a reasonably necessary period of time for her to find employment at a self-sufficient earnings level. Accordingly, we must vacate the award of rehabilitative alimony. On remand, the court may, in its discretion, receive additional evidence on the sole issue of Wife’s current employment status and job search to enable it to determine the duration and amount of any award of rehabilitative alimony. We otherwise affirm the court’s findings on the issue of alimony.

II. & III.

Marital Property & Child Support

Our decision to vacate the award of rehabilitative alimony also affects the monetary award and the award of child support. “[A] court’s determinations as to alimony, child support, [and] monetary awards . . . involve overlapping evaluations of the parties’ financial circumstances.” *St. Cyr*, 228 Md. App. at 198. Consequently, “when this Court vacates one such award, we often vacate the remaining awards for re-evaluation.” *Turner v. Turner*, 147 Md. App. 350, 400-01 (2002) (collecting cases). Although, for reasons we shall explain, we reject Husband’s claims of error by the court relative to its determination and valuation of the marital property, its grant of a monetary award, and its calculation of child support, we shall vacate those awards solely to permit reevaluation by the court in light of its redetermination of alimony.

Disposition of Marital Property

In a divorce case, the court must follow a three-step process to determine whether a monetary award is appropriate. *Wasylyuszko v. Wasylyuszko*, 250 Md. App. 263, 279 (2021). First, the court must determine whether a disputed item of property is marital or non-marital. *Id.*; FL § 8-203. Second, the court must determine the value of any marital property. *Wasylyuszko*, 250 Md. App. at 279 (citing *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019)); FL § 8-204. Third, “the court must decide if the division of marital property according to title would be unfair, and if so, it may make a monetary award to rectify any inequality created by the way in which property acquired during marriage happened to be

titled.” *Wasylyuszko*, 250 Md. App. at 279-80 (cleaned up); FL § 8-205. As part of this third step, the court must consider the eleven factors listed in FL § 8-205(b).³

Husband contends the court erred in the first and second steps, which necessarily affected the third step. Specifically, he challenges the court’s determination and valuation of the parties’ marital property for four reasons: 1) the court clearly erred by adopting Wife’s claims about title and valuation of real property in Iran; 2) the court erred by allowing Wife to opine as to the value of the marital home and by accepting her valuation,

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

FL § 8-205(b).

rather than Husband’s valuation; 3) the court erred by finding that Wife did not dissipate marital property; and 4) the court erred by finding that the VenoArt, LLC, inventory was non-marital property. We address each in turn.

1. Real property in Iran

In their Rule 9-207 Statement, the parties agreed that five items of real property in Iran were non-marital but disagreed as to whether Wife had an interest in the property and/or the value of Wife’s interest. As to two properties – a shopping mall and Wife’s late mother’s home – the court found that there was no evidence that Wife had an interest in the property. As to two other properties – an apartment in Tehran and a commercial property in Tehran – the court determined that Wife had an interest in the property and credited Wife’s testimony about the value. As to the fifth property, a mansion in Tehran previously owned by Wife’s late grandfather, the court found that there was no evidence presented by either party as to the value and valued it at \$0. Husband does not direct us to any evidence in the record supporting his assertions about the title to or value of these properties, and his argument is merely that the court should not have credited Wife’s testimony about these properties. It is not within our purview on appeal to second guess the circuit court’s credibility findings or reweigh the evidence. *See, e.g., Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020) (“It is not our role, as an appellate court, to second-guess the trial judge’s assessment of a witness’s credibility.”); *Kremen v. Md. Auto. Ins. Fund*, 363 Md. 663, 682 (2001) (“Our function is not to retry the case or reweigh the evidence[.]”).

2. Valuation of the marital home

Husband purchased the marital home, located in Gaithersburg, in October 2004, about one month before the parties married, for \$648,888, making a down payment of \$129,778. At the merits hearing, Husband testified that the current value of the marital home was less than what he had paid twenty years earlier, valuing it at between \$580,000 and \$590,000. He was aware that the projected market price on Zillow⁴ was \$900,000 but testified that that value was incorrect. He acknowledged having made numerous improvements to the home but claimed that its condition had deteriorated and that it would require extensive remodeling. Wife opined that the value of the home was \$900,000 based upon the Zillow estimate. The court accepted Wife’s valuation, concluding that Husband’s testimony about the current condition of the home lacked credibility.

Husband contends the court erred by accepting Wife’s valuation of the property based upon “improper hearsay” in the form of the Zillow valuation. We perceive no error. Both parties referenced that valuation in their trial testimony, and Husband did not object to Wife’s use of that valuation. Both parties were permitted to opine as to the value of the marital home, and the trial judge was in the best position to assess their credibility and the value of those opinions. *See Brown v. Brown*, 195 Md. App. 72, 119 (2010) (explaining that owners of property are “presumed to be familiar with its value so that [their] opinion of its value is admissible as evidence” (cleaned up)). The court reasonably disregarded

⁴ Zillow is a commercial website that provides, among other things, an estimated market value for many residential properties. *See* www.zillow.com.

Husband’s testimony that the property had decreased in value and accepted Wife’s valuation, which was consistent with current market conditions.

3. Dissipation

Ordinarily, property disposed of prior to a merits hearing in a divorce case cannot be included in marital property or considered in making a monetary award. *Abdullahi*, 241 Md. App. at 414. An exception exists, however, for property that has been dissipated, meaning that one party used the marital funds or property for a purpose unrelated to the marriage “at a time where the marriage [wa]s undergoing an irreconcilable breakdown.” *Omayaka v. Omayaka*, 417 Md. 643, 651 (2011) (cleaned up). The party claiming dissipation has the initial burden of producing evidence to show dissipation and the ultimate burden of proving dissipation. *Id.* at 656. Here, although both parties alleged that the other dissipated marital property, we are concerned only with Husband’s claim that Wife dissipated marital property.

Husband called seven witnesses who he claimed had engaged in financial transactions with Wife whereby she gave them money and they repaid her by depositing funds in an account she maintained in Iran. The court found that all of the transactions were loans that were repaid and found the evidence equivocal on the issue of whether money was repaid to Wife in the United States or in Iran. The court further found that there was no evidence that Wife benefited from the transactions; that the financial transactions occurred over a very lengthy period of time; most of the transactions predated the breakdown of the marriage; and the evidence showed that Husband was aware of most of the transactions. These findings were not clearly erroneous and supported the court’s

determination that Husband did not meet his burden to show that Wife had dissipated marital property. That the court was not persuaded by Husband’s testimony and evidence to the contrary does not render the court’s findings clearly erroneous. *See Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (“[I]t is . . . almost impossible for a judge to be clearly erroneous when he [or she] is simply not persuaded of something.” (emphasis removed)).

4. VenoArt, LLC inventory

Inventory for Wife’s online art auction business remained in the marital home when Wife moved out. Wife testified that that artwork was owned by her aunt, except for one item that was owned by another individual. Husband claimed that the artwork was owned by VenoArt and was marital property subject to valuation and distribution. The court credited Wife’s testimony about the ownership of the artwork and, consequently, concluded that the artwork was non-marital property. Because there was competent evidence in the record supporting the court’s finding, it was not clearly erroneous.

Child Support

The court ordered Husband to pay Wife \$111 per month in child support. In calculating child support, the court found that Wife’s actual income was \$5,000, that is, the amount of monthly alimony the court had ordered Husband to pay. Husband contends the court erred by not including potential income for Wife in calculating child support because, in its ruling on alimony, the court “found that Wife is voluntary[il]y impoverished, and imputed income to [her] of \$89,000.” This contention is wholly without merit. The court did not find that Wife “made the free and conscious choice, not compelled by factors beyond [her] control, to render [herself] without adequate resources[.]” FL § 12-201(q),

and its opinion makes no reference to voluntary impoverishment. Rather, the court found that Wife no longer had her position with Voice of America and was actively seeking new employment. The court did not err by not imputing income to Wife when it calculated child support.

IV.

Attorneys' Fees

Attorneys' fees are allowable by statute in proceedings involving divorce, the disposition of marital property, alimony, and child support. *See* FL § 7-107 (divorce); FL § 8-214 (disposition of marital property); FL § 11-110 (alimony); FL § 12-103 (child support). Under those statutes, before the court may make an award of fees, it is obligated to consider: 1) each parties' financial resources and financial needs, and 2) whether there was substantial justification for prosecuting or defending the proceeding. We will not disturb a court's decision to award or deny attorneys' fees absent an abuse of discretion. *Richards v. Richards*, 166 Md. App. 263, 285 (2005).

In the instant case, the court explained that it had addressed the parties' financial resources and needs in detail in its discussion of the other issues and, based upon those findings, determined that an award of fees was not appropriate here. The court further found that neither party was credible about their compliance with discovery and that "both [p]arties equally contributed to the costs of the other." On those bases, it denied their requests for attorneys' fees.

Husband contends the court abused its discretion, pointing us to cases in which the court made a finding that one party engaged in conduct that caused protracted litigation.

See Frankel v. Frankel, 165 Md. App. 553, 590 (2005); *Brown v. Brown*, 195 Md. App. 72, 123 (2010). As explained, however, the court made no such finding in this case, concluding to the contrary that both parties engaged in pretrial conduct that caused the other party to expend more fees. The circuit court was in the best position to assess the parties’ competing arguments regarding discovery compliance.

The court’s finding that Husband’s financial needs did not weigh in favor of an award of fees likewise was amply supported by the record, which showed that his annual income exceeds his total attorneys’ fees by more than \$100,000. For all these reasons, the court did not abuse its broad discretion by denying Husband’s request for attorneys’ fees.⁵

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED, IN PART, AND AFFIRMED, IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID 75% BY THE APPELLANT AND 25% BY THE APPELLEE.

⁵ Husband is correct that, by order entered November 20, 2023, the circuit court awarded him fees in association with the filing of his amended and renewed motion to compel and for sanctions for failure to respond, with the amount of those fees “to be determined at the scheduled merits.” A review of the attorney invoices submitted by Husband at trial reveals that his attorneys did not bill any time for the drafting and filing of this motion, however. Because Husband did not adduce any evidence at trial bearing upon these fees, the court did not err by not awarding them.