Circuit Court for Anne Arundel County
Case Nos. C-02-FM-20-001938 &
C-02-FM-19-000823

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND**

Nos. 1963 & 1964

September Term, 2021

ALAN CRITTENDEN

v.

MARIKO CRITTENDEN

Beachley,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 6, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Alan Crittenden filed a complaint for divorce in the Circuit Court for Anne Arundel County from his wife, Mariko Crittenden; she counterclaimed for divorce and related relief, and filed a separate complaint for child support for their two minor children, who live with her in Japan. After several hearings, the circuit court granted Mr. Crittenden a judgment of absolute divorce and ordered him to pay Ms. Crittenden: $1,500 a month in rehabilitative alimony for 42 months; $3,180 in travel expenses for her to attend the hearing on the petitions for divorce and child support; and $10,000 in attorney's fees. The court also awarded Ms. Crittenden a portion of Mr. Crittenden's military disposable retired pay and survivor benefits. In a separate order, the court ordered Mr. Crittenden to pay $3,435 per month in child support for the parties' two children. Mr. Crittenden has appealed both judgments, which we have consolidated. Mr. Crittenden raises the following seven questions on appeal:

I. Did the circuit court violate his constitutional rights under the Fourteenth Amendment?

II. Did the circuit court err in awarding alimony to Ms. Crittenden?

III. Did the circuit court err in awarding child support and child custody to Ms. Crittenden?

IV. Did the circuit court err in awarding attorney's fees to Ms. Crittenden?

V. Did the circuit court err in awarding travel expenses to Ms. Crittenden?

VI. Did the circuit court err in awarding Mr. Crittenden's military survivor benefits associated with his military disposable retired pay to Ms. Crittenden?

VII. Did the circuit court err in awarding a portion of Mr. Crittenden's military disposable retired pay to Ms. Crittenden?

For the reasons that follow, we shall affirm the circuit court's judgments.

PROCEDURAL AND BACKGROUND FACTS

Alan Crittenden enlisted in the United States Marine Corps ("USMC") in 2000 while living in Georgia. The following year he was stationed in Japan where he met Mariko Crittenden. Ms. Crittenden was born and raised in Japan. Her father is a United States citizen; her mother is a Japanese citizen. The two married on January 6, 2004.

The Crittendens' marriage was tumultuous, due in part to several military deployments and their decision to have an "open marriage" that led to infidelity by both parties. The parties' first son was born in October 2011, in California where Mr. Crittenden was stationed at the time. After their first son was born, Ms. Crittenden, who had worked as a waitress, stopped working outside the home. Mr. Crittenden was restationed to Japan where their second son was born in January 2014. Four years later, in May 2018, the parties separated. The following month Mr. Crittenden was transferred to Fort Meade in Maryland; Ms. Crittenden and their two children remained in Japan.[1] At this time, Mr. Crittenden received a written command child support order from the military to pay roughly $1,800 a month to Ms. Crittenden. Mr. Crittenden has not visited his children

[1] Prior to his deployment to Maryland and while stationed in Japan, Mr. Crittenden filed for divorce in Georgia. The court dismissed the complaint for lack of jurisdiction; Mr. Crittenden appealed to the Court of Appeals of Georgia, which affirmed; and he appealed to the United States Supreme Court, which denied certiorari. *Crittenden v. Crittenden*, 840 S.E.2d 496 (Ga. 2020), *cert. denied*, -- U.S. --, 141 S. Ct. 2856 (2021). He requested a rehearing, which the Supreme Court denied. *Crittenden v. Crittenden*, -- U.S. --, 142 S. Ct. 51 (2021).

since his transfer to Fort Meade.

Six months after residing in Maryland, Mr. Crittenden filed a petition for absolute divorce in the Circuit Court for Anne Arundel County seeking division of the parties' property, sole legal and primary physical custody of the children, and a determination of child support.

Ms. Crittenden filed a motion to dismiss those counts in the divorce petition related to the division of marital property and child custody. Following a virtual hearing on October 3, 2019, the circuit court agreed with Ms. Crittenden that Maryland did not qualify as the children's home state because they have never lived in Maryland and were residing in Japan. Because Japan had not declined to exercise jurisdiction, the circuit court, citing Md. Code Ann. (1984, 2019 Repl. Vol.) § 9.5-201(a)(1-4) of the Family Law Article ("FL"), held that it did not have jurisdiction. The court issued an order in which it dismissed the child custody and child support counts, but declined to dismiss the marital property count.[2]

In March 2020, Mr. Crittenden retired from the USMC and began work for a cybersecurity company. When Mr. Crittenden retired from the military, the roughly $1,800 a month written command child support order was rescinded. Ms. Crittenden subsequently filed a petition for child support. Following a pendente lite virtual hearing on February 5, 2021, a magistrate recommended that Mr. Crittenden pay a total of $3,630 a month in child

[2] After the court dismissed the custody count, Mr. Crittenden filed an application with the Hague Convention. The outcome of that proceeding is unclear.

support, which included arrearages. Following another virtual hearing on Mr. Crittenden's exceptions, the circuit court issued an order adopting the magistrate's recommendation for pendente lite child support.

Starting on October 19, 2021, the court held a four-day merits hearing on the petitions for absolute divorce and child support. Before the hearing, Ms. Crittenden had filed two motions seeking to attend the hearing remotely, citing concerns over COVID, her unfamiliarity with Maryland, and having three young children at home in her care.[3] Mr. Crittenden opposed both motions. The circuit court denied both of her motions, and Ms. Crittenden appeared in person for the merits hearing.

On January 11, 2022, the court entered a judgment for absolute divorce based on the parties' separation for twelve months. As stated above, the court ordered Mr. Crittenden to pay Ms. Crittenden $1,500 a month in rehabilitative alimony for 42 months; $3,180 for Ms. Crittenden's flight and lodging expenses she incurred in physically attending the divorce/child support hearing in Maryland; $10,000 in attorney's fees; and awarded her a percentage of Mr. Crittenden's military disposable retired pay and survivor benefits. The court also entered an order requiring Mr. Crittenden to pay Ms. Crittenden $3,435 a month in child support.

Mr. Crittenden has timely appealed both judgments. We shall include additional facts as necessary.

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[3] In October 2019, Ms. Crittenden gave birth to a third child. Mr. Crittenden is not the father of this child.

DISCUSSION

Standard of Review

In an action tried without a jury, we will not set aside a trial court's factual findings "unless clearly erroneous," giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We view the evidence in the light most favorable to the party who prevailed at trial, and we resolve all evidentiary conflicts in their favor. *Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (2013) (citing *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 451 (2012)). In contrast, we review whether "the [trial] court's conclusions are 'legally correct' under a *de novo* standard of review." *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (alteration in original) (quoting *L.W. Wolfe Enters. v. Md. Nat'l Golf*, 165 Md. App. 339, 344 (2005)).

I.

Mr. Crittenden argues that the circuit court twice violated his Fourteenth Amendment rights when it applied different standards of law to the two parties. Mr. Crittenden argues that the circuit court treated him differently and unfairly when it dismissed that portion of his divorce petition that concerned child support but then allowed Ms. Crittenden's subsequent petition for child support. Mr. Crittenden also argues that his Fourteenth Amendment due process rights were violated when the magistrate referred to the parties' "custodial arrangement" in its pendente lite child support recommendation and report because there is no *legal* custodial order in place. According to Mr. Crittenden, the

magistrate's "custodial arrangement" language "effectively codified that [he] has no custodial rights[,]" which "damaged any chance of a fair custodial hearing in the future in any court of law other than the State of Maryland." Ms. Crittenden disagrees with his arguments, as do we. We shall address each argument in turn.

A. Child support

After the court determined that it did not have jurisdiction over custody because Maryland did not qualify as the children's home state, the court dismissed Mr. Crittenden's custody and child support claims. Although Ms. Crittenden did not request dismissal of the child support claim, we presume that the court dismissed both of Mr. Crittenden's custody and child support counts because it viewed those claims as interrelated, *i.e.* Mr. Crittenden sought custody of the children and a corresponding order that Ms. Crittenden pay child support. After the court's dismissals, Mr. Crittenden's attorney sought clarification of the court's ruling and the following colloquy took place:

THE COURT: He is asking for custody and child support.

[APPELLANT'S COUNSEL]: Okay. We'll --

THE COURT: It does --

[APPELLANT'S COUNSEL]: That's fine.

THE COURT: Am I misreading it?

[APPELLANT'S COUNSEL]: No. I was going a step too far in thinking about her answer to the -- It's fine.

THE COURT: We're good?

[APPELLANT'S COUNSEL]: Yes. Thank you, Your Honor.

This exchange persuades us that Mr. Crittenden acquiesced in the circuit court's dismissal of the child support portion of his divorce petition from which his disparity of treatment argument arises. *See In re Nicole B.*, 410 Md. 33, 64 (2009) ("It is well-settled that a party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order.").

In any event, we do not discern any "disparate treatment" by the court that caused harm to Mr. Crittenden.

B. Child custody

As to Mr. Crittenden's argument regarding the magistrate's use of the words "custodial arrangement" in the recommendation and report regarding child support, we agree with Ms. Crittenden's response. The magistrate did not imply or reference a formal custody arrangement, but only used the term "custodial arrangement" to refer to the parties' informal arrangement regarding custody of their children. We fail to understand the logic of Mr. Crittenden's argument that the magistrate's wording amounted to a legal custody determination in violation of his Fourteenth Amendment due process rights. There is apparently no custody order in place, and the magistrate's words have no effect on Mr. Crittenden's ability to pursue an order for custody in an appropriate court with competent jurisdiction. Accordingly, this argument is without merit.

II.

Mr. Crittenden makes a multi-prong attack on the circuit court's order requiring him

to pay Ms. Crittenden rehabilitative alimony in the amount of $1,500 a month for 42 months. He argues that the court erred in determining that Ms. Crittenden "needed to rehabilitate herself by finishing college" where: 1) there was no evidence that she wanted to finish college or earn a degree, and she instead expressed a desire to become a CrossFit Instructor for which the certification process takes only three months; and 2) she has refused to obtain a paying job. He also argues that the court erred in its alimony award because it refused to credit the amount of money he paid to her under the command support order, pointing out that the court declined to award her alimony at the pendente lite stage of the proceedings because of the extant command support order. Additionally, Mr. Crittenden argues that the court erred in its alimony award because it improperly used his increased salary since his retirement from the USMC, an increase which occurred two years after the parties separated. He further argues that it was unfair to award Ms. Crittenden alimony when she is physically fit, but the Department of Veterans Affairs (the "VA") has given him a 100% disability rating. Lastly, he argues that the law forbids the court from including his VA disability pay as part of his income in determining its alimony award.

A circuit court "may award alimony" to either party pursuant to a decree for divorce. FL §11-101(a) and (b). The court shall consider twelve factors in making an alimony determination, including, among other things: "the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;" "the standard of living that the parties established during their marriage;" "the physical and mental condition of each party;" and "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[.]" FL § 11-106(b)(2), (3), (8), and (9). The circuit court has broad discretion in awarding alimony. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 246 (2000).

Following a four-day hearing, the court made its alimony findings of facts on the record from the bench, referring to the twelve factors in FL § 11-106. The court found, among other things, that both parties were 39 years of age; Ms. Crittenden was mentally and physically in good health; and that despite Mr. Crittenden's 100% disability rating from the VA, he currently works full-time. The court found Mr. Crittenden was the primary "breadwinner" during the marriage, and Ms. Crittenden worked in the restaurant and physical fitness industry until their first child was born, after which she was the primary caretaker for their children and home. During their marriage, she had obtained less than a year of college credits, but the court found that "[i]t was undisputed that the parties had agreed during the marriage that [Ms. Crittenden] would continue her post-secondary education and obtain a degree when their youngest started school" in 2019. To that end, Mr. Crittenden had transferred his "GI Bill"[4] to his wife, which would have provided 36 months of support for Ms. Crittenden to attend school. However, after the parties separated, Mr. Crittenden "took [it] back," and she was unable to use it.

The court found that Mr. Crittenden earns a total of $19,649 a month, which comes

[4] While the term "GI Bill" often describes federal veterans' benefits legislation, it is used here to refer to legislation dealing specifically with veterans' education assistance benefits.

from his salary at his current employment, retainer pay from the USMC, and his VA disability pay. The trial court also found that Ms. Crittenden had no income as a result of her current unemployment and noted that her previous positions in restaurants and fitness instruction have been affected by COVID. She recently obtained unpaid employment, training to become a CrossFit Instructor, and will need three months to become certified to teach CrossFit on her own.

Mr. Crittenden asserts that the court erred in awarding rehabilitative alimony because: 1) Ms. Crittenden never testified that she wanted to finish college or earn a degree but rather testified that she wanted to become a CrossFit Instructor, which will take her only three months to become certified; and 2) Ms. Crittenden refused to obtain a paying job. Both arguments are highly factual in nature, and Mr. Crittenden has not directed us to pages in the record where these facts can be found. We will not "delve through the record to unearth factual support" favorable to appellant.[5] *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (citing *von Lusch v. State,* 31 Md. App. 271, 282 (1976)).

[5] A self-represented party may elect to file either an appellate brief or an informal brief. If a party chooses to file an appellate brief, the brief must contain "[a] clear concise statement of the facts material to a determination of the questions presented" and "[r]eference shall be made to the pages of the record extract . . . supporting the assertions." Md. Rule 8-504(a)(4). For informal briefs, the Chief Judge of the Appellate Court of Maryland shall issue by administrative order the protocols to be followed and the forms to be used. Md. Rule 8-502(a)(9). The first page of the informal brief form states that "[w]hen referencing facts, identify where the facts can be located in the record." Here, Mr. Crittenden elected to file a brief and record extract. As such, he was required to refer to pages in the record extract to support his factual assertions. Even if he had chosen to file an informal brief, he was still required to provide citations in the record where his factual assertions may be found. As noted, Mr. Crittenden has not complied with these requirements.

In any event, in light of the court's findings regarding the parties' agreement that Ms. Crittenden would eventually pursue her post-secondary education and obtain a degree, we see no error in the court's determination that a rehabilitative alimony award for 42 months was necessary to enable Ms. Crittenden to find suitable employment and be self-supporting.

As to Mr. Crittenden's argument that the circuit court erred when it refused to credit the amount of money he paid to Ms. Crittenden under the command support order, this too is a highly factual argument, and he has not directed us to any pages in the record to support it. Nonetheless, whether the court denied pendente lite alimony in light of the command support order then in place is irrelevant to a final award of alimony. Because proceedings relating to pendente lite alimony and rehabilitative or indefinite alimony involve separate and distinct considerations, we reject Mr. Crittenden's argument. *See Guarino v. Guarino*, 112 Md. App. 1, 11 (1996) (noting that pendente lite alimony and alimony awarded under FL § 11-106 are two distinct awards governed by distinct legal standards).

Mr. Crittenden's argument that the court erred by using his increased post-separation earnings is without merit. We are not aware of any authority that would preclude the court from considering a spouse's income at the time of divorce.[6] The parties were

[6] We note that FL § 8-201(e) defines "marital property" as property acquired "during the marriage" and excludes property "acquired before the marriage[.]" It is well-established that "[p]roperty acquired by a party up to the date of the divorce, even though the parties are separated, is marital property." *Reichert v. Hornbeck*, 210 Md. App. 282, 349 (2013) (alteration in original) (quoting *Williams v. Williams*, 71 Md. App. 22, 34 (1987)).

married for most of Mr. Crittenden's military career, during which Mr. Crittenden was able to complete both a bachelor's and master's degree and work full-time while Ms. Crittenden was the primary caretaker of the children and home. When Mr. Crittenden retired, he was able to earn substantially more than when he was employed by the USMC, primarily because of his many years of military experience and training and his earned degrees. In addition, we see no support for Mr. Crittenden's argument that the court improperly used his higher earnings to inform the "standard of living" factor in FL § 11-106(b). Indeed, the court's alimony award was focused on Ms. Crittenden's "needs in order to obtain her college education." In sum, we see no error in the court's consideration of Mr. Crittenden's income at the time of divorce.

Mr. Crittenden's argument that it is unfair to award Ms. Crittenden alimony when she is physically fit while the VA has given him a 100% disability rating is likewise without merit. Mr. Crittenden earns just under $20,000 a month working full-time since his separation from the USMC, notwithstanding the 100% VA disability rating. Mr. Crittenden has not directed us to any statute or caselaw that would preclude an alimony award under these circumstances. Although Mr. Crittenden is correct that VA disability benefits cannot be divided and distributed as part of a marital property award, we are unaware of any authority that makes it improper to consider VA disability pay in the alimony calculus. *See Hurt v. Jones-Hurt*, 233 Md. App. 610, 629-30 (2017) (reasoning that while the United States Supreme Court in *Howell v. Howell*, 137 S. Ct. 1400 (2017), "may have shrunk the size of a slice [*i.e.*, military disability benefits] in the marital award

pie, [] it is still up to our trial courts to determine the size of the pie under state law . . . [and to make] decisions regarding the parties' post-marital financial future"). We therefore reject Mr. Crittenden's argument that the circuit court improperly considered his VA disability benefits in its alimony determination.[7]

III.

Mr. Crittenden argues that the circuit court erred in ordering him to pay $3,435 per month in child support to Ms. Crittenden. He again mounts a multi-prong attack. He argues that it is "fundamentally unfair" to require him to pay child support when there is no custody order in place. He also argues that the amount of the award was in error because it failed to include as income for Ms. Crittenden: 1) money she receives from her father; 2) money she receives from the father of her youngest child; and 3) that portion of his military disposable retired pay awarded to her as a division of marital property. He also argues that it is unfair to order him to pay child support when she is physically fit but has refused to find a paying job. He asserts that the court should have included in its child support determination rent he pays on his two-bedroom apartment where he has listed his two children on the lease. Lastly, he argues that it is "extortion" for Maryland to require him

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[7] To the extent that Mr. Crittenden baldly argues that the court engaged in disparate treatment in determining alimony because the court "refused to calculate any property in [Ms. Crittenden's] possession[] but all the property in [his] possession," we shall not address this argument. Mr. Crittenden again directs us to no facts in the record or any legal authority to support this argument. *See Rohrbeck v. Rohrbeck*, 318 Md. 28, 38 n.4 (1989) (declining to address an issue that had "not been adequately briefed and argued"); *Mohammad v. Toyota Motor Sales, U.S.A., Inc.*, 179 Md. App. 693, 697 n.1 (2008) (same).

to pay child support arrearages before he can obtain a valid passport to travel to Japan to sue for custody, assuming that Japan is the appropriate jurisdiction to determine custody.

Under Maryland common and statutory law, "both parents have a legal as well as a moral obligation to support and care for their children[.]" *Petrini v. Petrini*, 336 Md. 453, 459-60 (1994). By statute, Maryland has a monetary schedule to calculate a child support obligation, which is then "divided between the parents in proportion to their adjusted actual incomes." FL § 12-204(a)(1). "If the combined adjusted actual income [of the parents] exceeds the highest level specified in the schedule . . . , the court may use its discretion in setting the amount of child support." FL § 12-204(d); *see also Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) ("[W]e will not disturb a 'trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion.'" (quoting *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018))). At the time of trial, this was an above the guidelines child support case as the parties' combined income exceeded the highest level of the guidelines schedule.[8] *See* FL § 12-204(e).

In an "above the guidelines" case, the trial court in the exercise of its discretion "may employ any rational method in balancing 'the best interests and needs of the child with the parents' financial ability to meet those needs.'" *Kaplan*, 248 Md. App. at 365 (quoting *Ruiz*, 239 Md. App. at 425). Several factors are relevant in an "above the

[8] At the time of the circuit court's order awarding child support to Ms. Crittenden, the highest combined adjusted actual income listed on the statutory schedule was $15,000 a month. The schedule has been amended, effective July 1, 2022, to $30,000 a month. FL § 12-204(e). Mr. Crittenden does not challenge the court's "basic child support obligation" determination as reflected on the Child Support Guidelines Worksheet.

guidelines" case: "the parties' financial circumstances, the 'reasonable expenses of the child,' and the parties' 'station in life, their age and physical condition, and expenses in educating the child[].'" *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (alteration in original) (quoting *Smith v. Freeman*, 149 Md. App. 1, 20 (2002)). In an above the guidelines case, the rationale of the statutory guidelines still applies: "The conceptual underpinning of [the statutory guidelines] is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together." *Voishan v. Palma*, 327 Md. 318, 322 (1992) (citing Senate Judicial Proceedings Committee, *Bill Analysis*, Senate Bill 49 (1989)); *see also Walker*, 170 Md. App. at 289 ("[A] child is entitled to a standard of living that corresponds to the economic position of the parents.") (quoting *Freeman*, 149 Md. App. at 23)).

Here, both parties submitted financial statements to the court. The circuit court found that Mr. Crittenden earns a total of $19,649 a month from his current employment, retainer pay from the USMC, and disability pay from the VA. The trial court found that Ms. Crittenden was unemployed, noting that her previous positions in restaurants and fitness instruction had been affected by COVID.[9] The court included in her income the $1,500 monthly alimony award, and deducted $1,500 from his gross income. After

[9] Mr. Crittenden does not expressly challenge the court's finding that Ms. Crittenden "is not voluntarily impoverished at this time[.]" To the extent he makes such an argument, we shall not consider it because he has failed to cite to the record or provide any legal authority to support such an argument.

dividing their combined monthly incomes by the percentage of their proportionate share of monthly income, the court ordered Mr. Crittenden to pay Ms. Crittenden $3,435 in child support for their two children. We discern no error in the court's child support calculation as reflected on the Child Support Guidelines worksheet.

As to Mr. Crittenden's argument that it is "fundamentally unfair" to require him to pay child support where there is no custody order in place, we note that custody and child support are separate determinations. We are unaware of any law that requires a custody order to be in place before a court can award child support to a parent actually caring for a child. Mr. Crittenden has failed to direct us to any law to support his position, and it is his burden to do so. *See Rollins*, 181 Md. App. at 201 (appellant violated Rule 8-504(a)(5) by failing to provide legal authority for her contentions).[10]

As to Mr. Crittenden's argument that the court erred because it failed to account for money Ms. Crittenden receives from her father and the father of her youngest child, we disagree. FL § 12-201(b) sets forth the definition of "actual income" and lists over 16 types of income, including salaries; pension income; disability insurance benefits; and third-party payments, such as alimony and gifts. FL § 12-201(b)(3)(i), (vi), (xiii), (xv), and (b)(4)(iii). What is meant by "gifts" is not specifically defined. The question of whether a particular gift should or should not be included as "actual income" is "best left to the

[10] We reject Mr. Crittenden's related assertion that the child support award "codifies" that Ms. Crittenden is entitled to "all overnights with the children." As previously noted, the record does not indicate any extant custody order.

discretion of the trial court, whose decision should not be reversed unless that court acted arbitrarily or made a ruling that was 'clearly wrong.'"[11] *Frankel v. Frankel*, 165 Md. App. 553, 588-89 (2005) (footnote omitted) (quoting *Petrini*, 336 Md. at 461). Again, Mr. Crittenden has failed to direct us to any evidence in the record that would support his argument that monies received by Ms. Crittenden from her father and the father of her youngest child should be included as her income for child support purposes.

As to his argument that the court erred in its child support determination by failing to include in Ms. Crittenden's income that portion of his disposable retired pay the court awarded her, we reject this argument. Ms. Crittenden stated in her financial statement that she receives no income, and the court accepted her testimony on this point. If, and when,

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[11] In *Petrini*, the Supreme Court of Maryland determined that because certain basic living expenses like room and board must be paid out of income, when those expenses are relieved through outside contributions it "may be appropriate under certain circumstances to increase the parent's actual income to account for such contributions." 336 Md. at 464. This is because these gifts "may have the effect of freeing up other income that may not have otherwise been available to pay a child support award." *Id.* The trial court in *Petrini* included living rent-free and not being responsible for many bills as "gifts" by non-custodial Father's mother and included these amounts as part of Father's actual income. *Id.* at 464-65. On appeal, the Supreme Court of Maryland found no abuse of discretion in the trial court's decision to increase Father's actual income by these gifts, which Father's mother had supplied to him "on a regular basis." *Id.* at 467. *Compare Frankel*, 165 Md. App. at 588-89 (trial court was not required to include gifts and loans from wife's parents when calculating wife's income for child support purposes) *and Dillon v. Miller*, 234 Md. App. 309, 321 (2017) (holding that the trial court did not err in holding Father was not voluntarily impoverished when he had available methods to obtaining child support, including gifts he received from his family to support him and his three other children); *see also Allred v. Allred*, 130 Md. App. 13, 17-20 (2000) (trial court erred in imputing as gifts money wife receives from her live-in boyfriend toward rent, electricity, cable, and other bills).

she begins receiving a portion of his monthly disposable retired pay, that income would be attributed to her and would presumably affect a child support determination. Mr. Crittenden, however, has not directed us to any facts that suggest that Ms. Crittenden was receiving a portion of his disposable retired pay at the time of the award.[12] As to his rent argument, Mr. Crittenden fails to explain why rent he pays for his two-bedroom apartment when the children do not reside with him should be designated as a credit to him as a form of child support. Again, he directs us to no underpinning citation in fact or law that supports this argument.

Lastly, we reject Mr. Crittenden's argument that it is unlawful for Maryland to require that he pay child support arrearages because it hampers his ability to travel to Japan to file suit for custody. Specifically, he argues as follows:

> The aforementioned pendente lite order immediately [p]ut [him] in arrears of almost $50,000. In accordance with 42 U.S.C. § 652(k), [he] faces passport suspension and revocation for any child support in arrears over $2,500.00. . . . [He] is now unable to renew his passport to even visit his children based on a flawed assertion that [Ms. Crittenden] is the sole custodial guardian of the minor children. Even if Japan was the proper authority to determine custody in this case, [he] is now unable to travel to the court that the tr[ia]l court asserts has jurisdiction over the minor children. [He] would have too [sic] first pay the State of Maryland prior to being able to travel to determine custody, all based on the a[n] assertion that [she] already has custody. The only way to define this is as state sponsored extortion.

That Mr. Crittenden's child support arrearages may affect the status of his passport under

[12] To the extent that Ms. Crittenden is now receiving a portion of Mr. Crittenden's disposable retired pay, that circumstance would likely warrant Mr. Crittenden filing a motion to modify child support.

U.S. State Department regulations hardly qualifies as "state sponsored extortion." Moreover, we fail to understand why Mr. Crittenden would need to have a passport to *file* for custody of his children in Japan.

IV.

Mr. Crittenden argues that the circuit court erred in ordering him to pay Ms. Crittenden $10,000 in attorney's fees. His principal argument is that this is unfair because she owed no money to her attorney, but he owed an outstanding balance to his attorney.

In a divorce proceeding, a court "may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding[,]" including expenses for counsel fees and costs. FL § 7-107(a) and (b). Before entering an award, the court "shall" consider: (1) the financial resources of the parties; (2) the financial needs of the parties; and (3) whether there was substantial justification for prosecuting or defending the proceeding. FL § 7-107(c). The same criteria apply to counsel fees for alimony awards. FL § 11-110(c). In a custody, support, or visitation proceeding, a court "may" similarly "award to either party the costs and counsel fees that are just and proper under all the circumstances[.]" FL § 12-103(a). The same three factors that are considered in a divorce proceeding are likewise considered in this type of proceeding. *See* FL § 12-103(b). The fee shifting provisions in the Family Law Article are to be construed together. *Henriquez v. Henriquez*, 413 Md. 287, 306-07 (2010) (statute governing fee shifting in divorce, marital property disposition, and alimony matters "must be construed in harmony" with statute governing fee shifting in child custody,

support, or visitation cases).

By using the word "may," a trial court is permitted in its discretion to award attorney's fees and that discretion is "to be exercised liberally in favor of awarding fees, at least in appropriate cases." *Thornton Mellon, LLC v. Adrianne Dennis Exempt Trust*, 250 Md. App. 302, 322 (2021) (quoting *Friolo v. Frankel*, 403 Md. 443, 456-57 (2008)), *aff'd*, 478 Md. 280 (2022). An abuse of discretion occurs when a "ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks omitted) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)). However, "[c]onsideration of the [three] statutory criteria is mandatory in making the award and failure to do so constitutes legal error." *Petrini*, 336 Md. at 468 (citing *Carroll Cnty. v. Edelmann*, 320 Md. 150, 177 (1990)).

The court clearly understood the applicable law, stating

> With regards to the attorney's fees, attorney's fees may not be awarded by the [c]ourt unless they are provided by statute, rule, or agreement. And attorney's fees are allowed by statute in both child support and alimony actions. Essentially, the considerations are the same. The [c]ourt has to consider the financial status of each party, the needs of each party, and whether there was substantial justification for bringing, maintaining, or defending the proceeding.

Here, the court cited and considered the mandatory three criteria before entering an award of attorney's fees. The court discussed the financial resources of the parties, noting that Mr. Crittenden makes almost $20,000 a month and is "more dominant financially."

The court also noted Ms. Crittenden's need for child support as the primary caregiver for their two children. Lastly, the court discussed Ms. Crittenden's substantial justification for bringing a child support action. The court found that Mr. Crittenden had "paid little or no" child support since his return to the United States and has "made every effort to not pay child support[.]" The court noted that Mr. Crittenden went so far in not paying child support under the military command support order that the military was contemplating court-martialing him. Additionally, the court found that "the $10,000 in attorney's fees is sufficient to cover both the--prosecuting the child support and the alimony action[.]"

Mr. Crittenden makes broad allegations and cites no legal or factual references to support his argument. That failure aside, we are convinced that the court recognized and applied the correct statutory provisions concerning attorney's fees, and we discern no abuse of discretion by the circuit court in its attorney's fees award.

V.

Mr. Crittenden argues the circuit court erred in ordering him to pay $3,180 to Ms. Crittenden for her travel expenses from Japan to Maryland to attend the four-day merits hearing. He argues that she could have minimized her costs if she had agreed to his offer for the children to stay with him while in the United States. He further avers that his family could have provided childcare while the parties attended any hearings and that Ms. Crittenden and the children could have flown under "military space available flight options[.]" He also argues that Ms. Crittenden failed to provide the court with receipts or a breakdown of her travel expenses. He seems to argue that if the circuit court intended to

hold him liable for her travel expenses, the court should have granted her motion to appear virtually.

Here, the court ordered Mr. Crittenden to pay Ms. Crittenden $3,180 in travel expenses, consisting of $2,200 in airfare and $980 for lodging. In a highly contentious family law matter, it is not unreasonable for Ms. Crittenden to decline Mr. Crittenden's invitation for the children to stay at his residence, utilize his family for childcare, or partake in Air Mobility Command as a military family member. *Cf. Bracone v. Bracone*, 16 Md. App. 288, 294-96 (1972) (affirming award of travel expenses to wife as an award of "costs"). Mr. Crittenden fails to direct our attention to the record evidence on this issue, but the court clearly had cost figures before it from which it ascertained the expenditures for airfare and accommodations. Lastly, it is not the court's province to dissuade Mr. Crittenden from exercising his right to protest her appearance at the hearing virtually. Under the circumstances, we find no abuse of discretion by the circuit court in awarding travel expenses to Ms. Crittenden, particularly when the court believed that Mr. Crittenden's opposition to her appearing virtually was an attempt to "coerce [Ms. Crittenden] into bringing the children here to Maryland[,]" as "[Mr. Crittenden] would not agree to any temporary order that would allow her to bring the children back to Japan."

VI.

Mr. Crittenden argues that the circuit court erred in awarding Ms. Crittenden survivor benefits associated with his military retirement plan. He states that survivor benefits account for 55% of a person's military disposable retired pay and are payable to

the surviving spouse for life when the military spouse dies. He argues that awarding her survivor benefits was unjust because she was not awarded 55% of his military disposable retired pay as part of the divorce. In his view, the award is unjust because, if he remarries, he would not be able to provide these benefits to his new spouse.

Survivor benefits are a form of marital property, and the decision to award survivor benefits in a divorce proceeding rests within the sound discretion of the trial court. *Potts v. Potts*, 142 Md. App. 448, 462-63, 468 (2002). Mr. Crittenden accrued most of his military service during the parties' marriage, and he is now retired. While the marriage afforded him the opportunity to pursue and complete two degrees, Ms. Crittenden was a stay-at-home mother for the parties' two children. Other than broad allegations that span only one page of his opening brief, Mr. Crittenden has failed to cite any facts or law that would indicate that survivor benefits are not marital property or that the trial court abused its discretion in awarding Ms. Crittenden survivor benefits under the circumstances presented. Accordingly, we find no merit to Mr. Crittenden's argument.

VII.

Lastly, Mr. Crittenden argues that the circuit court erred in awarding a portion of his disposable military retired pay to Ms. Crittenden. He acknowledges that a court has the authority to award disposable retired pay as marital property under the *Bangs* formula,[13]

[13] *See Bangs v. Bangs*, 59 Md. App. 350, 356, 367-68 (1984) (holding that court did not abuse its discretion in determining that the marital portion of a military pension was represented by the fraction where the numerator is the number of months and years in which marriage and employment coincided, and the denominator is the number of months and years of employment at the time of retirement).

and he takes no issue with the court's calculations under that formula. Nonetheless, he argues that the court abused its discretion in awarding a portion of his disposable retired pay to Ms. Crittenden because he was actively seeking a divorce due to her infidelity since December 2017, and she had "drag[ged] out the divorce as long as possible in hopes of reaping more benefits" from him.

"Military retired pay is a federal entitlement that, much like a pension, provides a monthly annuity for life upon retirement from the armed forces." *Dziamko v. Chuhaj*, 193 Md. App. 98, 116 (2010). The Uniformed Services Former Spouses Protection Act ("the USFSPA") provides: "a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court." 10 U.S.C. § 1408(c)(1). Thus, "a state court may divide a military pension as marital property pursuant to Maryland law." *Fulgium v. Fulgium*, 240 Md. App. 269, 280 (2019); *see also* FL § 8–203(b) ("[A] military pension shall be considered in the same manner as any other pension or retirement benefit" when determining whether property is marital property). "[T]he court has broad discretion in evaluating pensions and retirement benefits, and in determining the manner in which those benefits are to be distributed." *Woodson v. Saldana*, 165 Md. App. 480, 489 (2005) (quoting *Welsh v. Welsh*, 135 Md. App. 29, 54 (2000)); *see also Bangs v. Bangs*, 59 Md. App. 350, 367 (1984) (A court "has broad discretion 'when determining the proper allocation of retirement benefits between the parties[.]'" (quoting *Deering v. Deering*, 292 Md. 115, 130 (1981))).

That Mr. Crittenden had allegedly been "actively seeking a divorce" while Ms. Crittenden "fought to drag out the divorce as long as possible" does not undermine the court's exercise of its discretion to award Ms. Crittenden a portion of his disposable retired pay. Moreover, Mr. Crittenden's brief fails to provide factual or legal support for his assertions. *See Rohrbeck v. Rohrbeck*, 318 Md. 28, 38 n.4 (1989) (declining to address an issue that had "not been adequately briefed and argued") and *Mohammad v. Toyota Motor Sales, U.S.A., Inc.*, 179 Md. App. 693, 697 n.1 (2008) (same). Accordingly, we are not persuaded that the court abused its discretion in awarding a portion of his military retirement to Ms. Crittenden.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.