UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1042

September Term, 2013

RAUL VILLARREAL

v.

MARIA PILAR VILLARREAL

Meredith,
Woodward,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: July 19, 2016

The instant appeal arises out of a contentious divorce between appellant, Raul Villarreal ("Husband"), and appellee, Maria Pilar Villarreal ("Wife"). The Circuit Court for Montgomery County granted the parties an absolute divorce on July 3, 2013, awarding Wife child support, alimony, attorneys' fees, and the marital home. On the same day, the court found Husband in contempt for failure to comply with previous court orders requiring him to pay alimony and child support.

On appeal, Husband presents seven questions for our review, which we have rephrased as follows:[1]

[1] Husband's questions presented, verbatim from his brief, are:

1. Did the Circuit Court err when it failed to inquire why Mr. Villareal appeared without counsel at the contempt proceeding and failed to afford Mr. Villareal the opportunity to present his case?

2. Did the Circuit Court err when it found Mr. Villareal in contempt for failing to pay child support and alimony after incorrectly determining that he had the present ability to pay?

3. Did the Circuit Court err when it determined a purge provision without determining whether Mr. Villareal had the ability to pay the purge provision?

4. Did the Circuit Court err when it awarded Ms. Pilar indefinite alimony in the amount of $1,200.00 per month, despite Mr. Villareal's substantial decrease in income?

5. Did the Circuit Court err when it order[ed] Mr. Villareal to pay Ms. Pilar's attorney's fees?

(continued...)

1. Did the circuit court err in holding Husband in constructive contempt without first determining whether he knowingly and intelligently waived his right to counsel?

2. Did the circuit court err in holding Husband in contempt?

3. Did the circuit court err in setting the purge provision for Husband's contempt?

4. Did the circuit court err or abuse its discretion in awarding Wife indefinite alimony?

5. Did the circuit court err or abuse its discretion in ordering Husband to pay $25,000 in attorneys' fees to Wife?

6. Did the circuit court err or abuse its discretion in refusing to modify child support?

7. Did the circuit court err or abuse its discretion in awarding the marital home to Wife?

Furthermore, we perceive an additional issue in the main body of Husband's brief, namely, whether the circuit court erred in limiting Husband's cross-examination of Wife. *See Janelsins v. Button*, 102 Md. App. 30, 35 (1994) (noting that, although appellant's "actual Question Presented does not specifically mention [the issues], in a generous reading of his brief, those issues appear in the argument section") (footnote omitted).

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[1](...continued)

6. Did the Circuit Court err when it failed to modify child support after Mr. Villareal's income decreased substantially?

7. Did the Circuit Court err when it awarded the marital home to Ms. Pilar without any adjustment or award of any kind to Mr. Villareal?

For the reasons stated below, we conclude that the appeal of the order finding Husband in contempt is moot and, thus, the appeal of that order is dismissed. We will vacate the trial court's award of attorneys' fees to Wife but affirm the rest of the court's determinations embodied in the judgment of absolute divorce. We, therefore, remand the instant case to the circuit court solely for a determination of the Wife's request for attorneys' fees.

BACKGROUND

The parties were married on December 13, 1987. Three children were born of the marriage of the parties, one of whom was a minor at the time of the trial that precipitated the instant appeal.[2] All three children reside at the marital home with Wife.

On November 1, 2007, Wife filed a complaint for limited divorce in the circuit court. Following a hearing on the issues of child custody, visitation, and support of the parties' minor child, the court issued an order awarding joint legal custody, but primary physical custody to Wife. Furthermore, the court ordered Husband to pay child support in the amount of $590 per month.

Following Wife's attempt to amend the complaint to seek an absolute divorce, which Husband opposed, the trial court conducted a trial on the complaint for limited divorce. In an order entered on May 5, 2009, the court granted a limited divorce to the parties.

[2] This child has since been emancipated by age.

Additionally, the court ordered Husband to pay Wife alimony of $1,200 per month and $10,000 in attorneys' fees.

Shortly thereafter, Husband filed motions to modify child support and terminate alimony, which Wife opposed. Wife then filed a motion for contempt, alleging that Husband had failed to pay the alimony and child support ordered by the court. The court denied Husband's motions and found Husband in contempt. On January 12, 2010, the court entered an order finding Husband in arrears for child support in the amount of $3,894 and for alimony in the amount of $7,200, and entered judgments against Husband for those amounts.

On June 19, 2012, Husband, now *pro se,* filed a complaint for absolute divorce under a new case number. The trial court consolidated the new case with the prior limited divorce case. Wife responded with a motion for contempt, alleging that Husband had failed to pay child support and alimony. Husband countered by filing a motion to modify child support.

On July 2 and 3, 2013, the parties appeared in the circuit court for trial as to the complaint for absolute divorce, Husband's motion to modify child support, and Wife's motion for contempt. At the close of the trial, the court granted the parties an absolute divorce. The court also: (1) awarded the marital home to Wife; (2) ordered Husband to pay $727 per month in child support, in addition to $100 per month for child support arrearages; (3) ordered Husband to pay Wife $1,200 per month in alimony, such payments to continue indefinitely; (4) found Husband in contempt for failure to pay child support and alimony, as

well as Husband's failure to pay the judgments resulting from the prior contempt proceeding; (5) found Husband in arrears for child support in the amount of $23,988.78 and for alimony in the amount of $51,600; and (6) ordered Husband to pay $25,000 in attorneys' fees to Wife. As a sanction for the finding of contempt, the court sentenced Husband to the Montgomery County Detention Center for one year, with a purge provision of fifteen percent of the amount in arrears for both child support and alimony. Accordingly, the purge provision amounted to $3,598.32 for child support and $7,740 for alimony, for a total of $11,338.32. On July 5, 2013, Nestor Villareal, Husband's brother, paid $11,338.32 to satisfy the purge provision, and Husband was released. Husband timely noted an appeal.

On August 9, 2013, the trial court issued an order memorializing its rulings from the July 3 hearing. Additionally, the court denied Husband's motion to modify child support. Because the purge provision had been paid, the court entered judgment against Husband in the amount of $20,390.46 for child support arrearages and $43,860.00 for alimony arrearages. Husband filed another notice of appeal.

Additional facts will be set forth below as necessary to resolve the issues in the instant appeal.

DISCUSSION

At the outset, we address two preliminary motions filed by the parties in this Court. Husband filed a motion to strike and for sanctions, alleging that Wife had impermissibly referred to settlement negotiations between the parties in her brief to this Court. Husband

contends that Wife stated in her brief that, during settlement talks at this Court, Husband indicated that he is unable to pay the judgments against him. Husband asserts that these discussions are subject to a confidentiality agreement, and because Wife has impermissibly alluded to inadmissible statements, she should be sanctioned. We will strike those statements in Wife's brief, but we decline to impose sanctions.

Wife filed a motion to strike Husband's reply brief as untimely. Maryland Rule 8-502(a) provides that a reply brief may be filed "not later than the earlier of 20 days after the filing of the appellee's brief or ten days before the date of scheduled argument." Wife filed her brief on May 20, 2014. Husband filed a reply brief on July 18, 2014, which is later than the twenty days allowed by the Rule. We will, however, exercise our discretion to consider the reply brief, and thus deny Wife's motion.

The Contempt Order

Husband alleges several errors in the trial court's contempt order. First, Husband contends that, because alleged contemnors have a right to counsel when incarceration is a possible sanction, the court violated Maryland Rule 15-206(e) by failing to inquire if he knowingly and voluntarily waived his right to counsel. Husband also argues that the circuit court erred by setting a purge provision without first determining that Husband had the present ability to pay that amount. Because the purge provision was satisfied, we hold that any appeal of the order of contempt is moot and, therefore, is dismissed. We shall explain.

"'A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.'" *Albert S. v. Dep't of Health & Mental Hygiene*, 166 Md. App. 726, 743 (2006) (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996)). Stated another way, "[a]ppellate courts generally do not decide academic or moot questions." *Bond v. Slavin*, 157 Md. App. 340, 353-54 (2004). We, therefore, generally dismiss moot cases. *See Dep't of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007). There are, however, exceptions to the mootness doctrine when important public interest is involved or in cases that are capable of repetition, yet evade review. *See Albert S.*, 166 Md. App. at 744.

The Court of Appeals and this Court have held that an appeal of an order of contempt is normally moot if the contempt is purged. *See Arrington v. Dep't of Human Res.*, 402 Md. 79, 89-90 (2007) (noting technical mootness of appeal but vacating sanctions due to public interest exception); *Chase v. Chase*, 287 Md. 472, 473 (1980) (dismissing appeal as moot where one contemnor purged himself by serving 90 days in jail, and the other paid the purge amount designated by the trial court); *Bradford v. State*, 199 Md. App. 175, 181, 190 (2011) (noting mootness of appeal as to contempt because contemnor paid purge provision, but reaching merits of appeal because of public interest exception).

The mootness of an appeal of a contempt order is not affected by a violation of a contemnor's right to counsel. In *Bradford*, the Child Support Unit of the Washington County Department of Social Services ("the Department") filed a petition to find Bradford in

contempt for her failure to pay child support, and, at a "conciliation conference" between Bradford and the Department, she, without the guidance of counsel, signed a "delayed sentencing agreement" or "DSA." *Id.* at 181-82. In the DSA, Bradford admitted, among other things, that she was in contempt for failing to pay child support, and she waived her right to counsel and to a hearing before a judge. *Id.* at 183.

Pursuant to the DSA, if Bradford failed to comply with the purge provisions during the next ninety days, a sixty day period of incarceration would be imposed. *Id.* The circuit court entered an order incorporating the terms of the DSA. *Id.* at 184-85. When Bradford failed to satisfy the purge provisions of the DSA during that ninety day period, the court imposed the sixty day sentence, but suspended the imposition thereof, provided that Bradford continued to pay the full amount of her child support obligation, plus a portion of her arrearages. *Id.* at 185. Several months later, Bradford, now represented by counsel, appeared in court, again having failed to pay child support. *Id.* The court ordered Bradford to be incarcerated for thirty days unless she paid a purge provision of $250, which her husband paid. *Id.* at 189-90.

This Court noted that Bradford's appeal of the contempt order was moot because the purge provision had been paid. *Id.* at 190-91. Nevertheless, we addressed the merits of her appeal concerning the violation of her right to counsel when she signed the DSA, because we determined that there was a public interest in providing judicial guidance to the Department's frequent use of DSAs. *Id.* at 191. This Court stated that Bradford's right to

counsel had been violated because she had not knowingly and voluntarily waived the right to counsel pursuant to Maryland Rule 15-206(e). *Id.* at 198-99. We concluded, however, that

> errors by the circuit court . . . would have justified reversing the orders holding [Bradford] in contempt and sentencing her to incarceration had this appeal not been moot. However, the fact remains that [ ] Bradford's husband paid the modified purge amount imposed by the circuit court . . . . Thus, her appeal is moot and our mandate must reflect this reality.

Id. at 203 (citations omitted).

Similarly, in the instant case, Husband's purge provision was satisfied when his brother paid the amount set by the trial court. The appeal of the July 3, 2013 order finding Husband in contempt and setting the purge provision is now moot. Unlike in *Bradford*, we do not perceive, and Husband does not argue for, a public interest exception to address the merits of his moot case. Accordingly, we will dismiss the appeal of the contempt order.

The Judgment of Absolute Divorce

Rule 8-131(c) governs our standard of review in an 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.

At trial, Wife, who was represented by counsel, called four witnesses: Victor Gustamante, her brother; Christopher Villareal, the parties' adult son; Husband; and herself.

Husband did not call any witnesses, nor present any evidence.[3] The testimony at trial included several incidents of Husband's bad behavior, including: physical and emotional abuse toward Wife; emptying the marital home of all furniture, reporting the furniture stolen to the insurance company, and keeping the proceeds; abandoning the house and telling Wife "when the house went into foreclosure to give him a call"; and transferring approximately $45,000 of credit card debt to Wife's name.

In a detailed ruling from the bench, and the subsequent order memorializing the court's ruling, the trial court granted the parties an absolute divorce. The court also made rulings as to indefinite alimony, child support, marital property and attorneys' fees. With regard to the credibility of the parties, the court stated:

> In any trial, the credibility of the witnesses is a primary concern and consideration by the court or in the case of a jury trial, certainly credibility is no less important. In this case, the court finds that [Wife] is a very credible witness. She answered questions directly and without equivocation. [Wife] provided all necessary documents to support her testimony and the evidence that was put forth.
>
> [Husband] on the other hand . . . did not comply with discovery requests up until the date of trial. Much of what [Wife]'s counsel had requested was not produced to support the evidence that [Husband] propounded. Though he didn't testify on direct examination, he didn't put himself on as a witness. He certainly testified on cross

[3] Husband made an opening statement and a closing argument. On appeal, Husband argues that the trial court should have considered his opening and closing as testimony in support of his case because he was *pro se*. Opening statements and closing arguments, however, are not evidence. *See Keller v. Serio*, 437 Md. 277, 288 (2014).

> examination, attempted to offer evidence in his interest through cross examination questions but had nothing produced by him.
>
> Now it is true that he is not an attorney, and he is not represented by counsel. This court chooses not to comment on that. There's no evidence before the court as to–no expressed evidence as to why he chose to represent himself. [Husband] was evasive in some of his responses that were put by counsel. He prevaricated to the court about his lifestyle and telling the court initially that he rents the room in a small house with a family in Naples. And that turned out as it came out in his closing argument not to be the case.
>
> One writer said, "Oh, what webs we weave when first we practice to deceive." Later in his argument, [Husband] refers to the person that he lives with as his girlfriend. [Husband] gives no credible explanation for leaving his wife and family and ultimately moving in with a quote "lady," or "friend," who turns out to be his girlfriend. Now, it's of no real moment to the court that [Husband] made the decision to live with someone whether it's his girlfriend or not. But it is of a real moment that he was deceptive and not truthful about his living arrangements.

Cross-Examination of Wife

Husband contends that the trial court impermissibly limited his cross-examination of Wife. He argues that he attempted to introduce documents into evidence to impeach Wife's testimony concerning payment of property taxes, and the court blocked these efforts. Moreover, Husband believes that the court should have taken an active role in assisting him as to the introduction of evidence and presenting his case because he was *pro se*. We perceive no error.

"It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel." *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999); *see also Tretick v. Layman*, 95 Md. App. 62, 86 (1993) (explaining that "the procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear *pro se*. If an uneven 'playing field' results when parties represent themselves, it is not because the rules are applied differently, but that one side has available the education, training, and experience of a lawyer who functions in the legal arena to assist and represent his client to the fullest extent of his ability"). In the instant case, the trial court acted appropriately and, indeed, could not have aided a party in prosecuting or defending a case, even if that party was *pro se*. *See Tretrick*, 95 Md. App. at 70.

Furthermore, we discern no error in the trial court's handling of Husband's cross-examination of Wife. Rather than attempting to impeach Wife's testimony, Husband was attempting to testify through his questioning, which is not permitted. Indeed, at one point the court offered guidance to Husband: "Sustained. You have to ask questions, sir, you can't make comments. . . . Sustained. You can't testify and ask questions." Accordingly, the trial court did not err in its handling of Husband's presentation of his case or his cross-examination of Wife.

Alimony

Husband contends that the trial court erred in ordering him to pay $1,200 per month as indefinite alimony. Specifically, Husband argues that the court erred in calculating Wife's income because (1) the court should have considered payments made by two of the parties' children to Wife as income, and (2) the court determined Wife's income to be below the minimum wage. Moreover, Husband asserts that the court erred in failing to find that his income had decreased. Finally, Husband claims that the court did not make the required findings for an award of indefinite alimony, in that the court did not find an unconscionable disparity between the parties' standards of living. We disagree.

The Court of Appeals has explained that a determination of alimony is reviewed under the abuse of discretion standard:

> An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong. This standard implies that appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.

Tracey v. Tracey, 328 Md. 380, 385 (1992) (citations omitted); *see also Brewer v. Brewer*, 156 Md. App. 77, 98 (noting that an appellate court defers to the trial court's findings and judgment when determining alimony), *cert. denied*, 381 Md. 677 (2004). "[A]n abuse of discretion occurs when a decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'"

Consol. Waste Indus., Inc. v. Standard Equip. Co., 421 Md. 210, 219 (2011) (quoting *King v. State*, 407 Md. 682, 711 (2009)).

A trial court's determination of alimony is governed by Maryland Code (1984, 2012 Repl. Vol.), § 11-106 of the Family Law Article ("FL"). FL § 11-106(b) sets forth the factors that the court must consider in making an alimony determination:

> (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
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> (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;
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> (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.

As to alimony, the trial court stated:

> With respect to the issue of alimony, there are several factors that the court should consider under the statute, whether the person that is being asked to pay alimony can afford to pay alimony. The court should consider the standard of living of the parties, the duration of the marriage, contributions monetary and non-monetary, circumstances contributing to the estrangement of the parties, the age of the parties, the physical and mental conditions of the parties, the ability of the person who is to pay alimony to meet his own needs while paying alimony to the person who is requesting alimony. The next factor is any agreement between the parties and also the financial needs of the parties.
>
> Now, at the previous hearing, [Husband] was ordered to pay alimony in this case, and the fact that he has not done that, the court

will address later on in this opinion. [Wife]'s counsel cited Walker versus Grow which is at 190 Maryland App. 255. That case at the time was a case of first impression in which the court said, as a matter of first impression in determining a parent's actual income for child support purposes, a trial court can consider whether subchapter S income shown on a tax [sic] parent's tax return was actually received by the parent as actual income or constituted pass-through income not available for child support.

That's particularly relevant–that issue is particularly relevant in this case, though it was the first time the appellate court had addressed it in the Walker case, because [Husband] was a–paid several of the personal and familial expenses through a business that he was operating at the time, making it appear as if his income was fairly nominal. And clearly the monies expended from the business and used for personal purposes was income. This court finds that [Husband] is able to pay alimony and to support himself. Though [Husband] may have been running his personal expenses through his business, as I said, that was income for purposes of child support and alimony.

With respect to the standard of living of the parties, the parties lived in a detached home in suburban Montgomery County. Both parties worked to support the family contributing as follows. [Husband] contributed during the period prior to the separation and divorce monetarily. The non-monetary contributions the evidence is [sic] was primarily made by [Wife]. The parties' marriage lasted for 22 years prior to the entry of the limited divorce. The contributions made by each party as I mentioned earlier, [Wife] made monetary contributions working in the house cleaning business, which she has had over 20 years working seven days a week, all day Monday through Friday and half days on the weekend.

She made non-monetary contributions as the primary caretaker of the parties' minor children. She also cleaned and maintained the marital home of the parties. The circumstances which contributed to the estrangement of the marriage, the evidence in this case is as follows. [Wife] testified that [Husband] was abusive, that he was abusive to her as well as the children. One particular incident

reflecting that abuse was that [Wife] testified that [Husband] once told her that he came to America to marry a beautiful woman. I'm paraphrasing what he said. And that wasn't her.

[Husband] ended up abandoning the marital home and [Wife] and [Wife]'s minor children and moving to the state of Florida. The age of the parties the court should consider is [Wife] is 59. [Husband is] 49. With respect to physical and mental condition, the next factor, there is [Husband] appears to be in good health. There's no evidence before the court that he is in poor health. In fact there's no evidence before the court regarding his health at all.

[Wife] on the other hand has had some health problems, has suffered some depression during the course of these proceedings. That testimony and evidence came out from [Wife] herself. At one point, she was hospitalized for a brief period of time. Her testimony was that [Husband] attempted to convince people that she was mentally ill, and that is not the case. Whether [Husband] can meet his own needs, [Husband] being the person who's requested to pay alimony, I'm satisfied the court's order to pay alimony.

The evidence in this case is that [Husband] is rather resourceful, that he is living in Florida in a very nice home in a nice neighborhood with a person that he by his own words identified as his girlfriend. It is not clear exactly from him how that came about, but what is clear is that he has not paid child support or alimony since May of 2009. There was an attempt to have it reduced. The court denied the request for reduction, and notwithstanding that, he still refused to pay.

There's no record of any attempt to show the court that there's been a change of circumstances such that [Husband] is unable to do what the court has ordered him to do. In fact, the evidence is quite to the contrary. Using the Walker versus Grow formula, the past three years of the income, an average of that that [Husband] made would be some $73,000. And the fact that he hasn't paid any alimony or child support, I think it's a reasonable inference that the money that he has made, he has used for his own purposes.

> With respect to the one factor that I didn't mention is the time that it would take [Wife] to become self-supporting, she does not have a full command of the English language. In fact, this particular trial is–we need the services of an interpreter. Now, I think it's a reasonable inference that she probably speaks conversational English but needs assistance in matters such as this, a trial. She's been doing work in her house cleaning business for over 20 years. She is 59 years old. She has managed to keep the family home afloat after the abandonment by [Husband] by working seven days a week.
>
> Also, she has had the assistance of her older children working and contributing to the family well-being, as well as her brother has made loans, which he testified he doesn't expect to be paid back. He also made a loan to the parties to purchase the largest piece of marital property that they have, which is not unlike the case in the majority of divorces. The marital home is generally the largest asset, and obviously the home in this case is marital. The parties own it as T by E, tenants by the entirety. And [Wife]'s brother assisted them in the down payment to purchase that home.
>
> So clearly she needs the alimony. She has supported the family home. It is in somewhat of a disrepair, but the mortgage has been paid. She also paid on the second mortgage that was taken out by [Husband], her husband in this case. And so having found all of the factors that the court should consider in alimony, in an alimony request, the court will order that the alimony payment remain at $1,200 per month.

Although the trial court did not make an express finding in the oral ruling regarding Wife's income, the child support guidelines worksheet attached to the written order indicates that the court found Wife's monthly income, before taxes and without factoring in the alimony payment, to be $1,239 for child support purposes. According to her income tax returns, which were admitted into evidence, Wife's gross income was $14,873 in 2012, and $21,964 in 2011. The court credited Wife's testimony, and we will not disturb the court's

findings of fact where they are supported by substantial evidence. *See Innerbichler v. Innerbichler*, 132 Md. App. 207, 230, *cert. denied*, 361 Md. 232 (2000).

Conversely, the trial court did not find Husband credible or forthcoming with his financial information. Husband did not produce in discovery or at trial his 2012 tax returns. Wife introduced into evidence Husband's personal and business tax returns from prior years, showing that in 2011, his business income was $69,213, and his personal income was $3,852; in 2010, the income for Husband's business was $91,591, and his personal income was $6,497; in 2009, the business income was $13,511, and his personal income was $2,692; and in 2008, the business income was $189,388, and his personal income was $13,980. As the preparer of the tax returns for Husband's business, Wife's brother, Gustamante, testified that Husband used money from the business for his personal expenses, including gas and electric bills and car loan payments.

Citing *Walker v. Grow*, 170 Md. App. 255, *cert. denied*, 396 Md. 13 (2006), the trial court found that appellant's annual income was $73,000.[4] The court made an express finding that Husband was using monies generated by the business for personal purposes and that he "is able to pay alimony and to support himself." Given Gustamante's testimony, the trial court's determination that Husband used income from his business as personal income is supported by evidence in the record. Moreover, Husband failed to produce financial records

[4] We note that $73,000 is approximately the total of Husband's reported business and personal income on his 2011 tax returns, the last year for which the court had data.

or other evidence showing that the expenditures using business funds for personal use were in fact business expenses. Therefore, we conclude that the court did not err in finding Husband's income to be $73,000. *Cf. Walker*, 170 Md. App. at 281 (noting that courts may consider business income as personal income for child support purposes.

As to the indefinite nature of the alimony award, FL § 11-106(c) authorizes an award of indefinite alimony. *Innerbichler*, 132 Md. App. at 246. A court may award indefinite alimony if it finds that:

> (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
>
> (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

FL § 11-106(c).

In the instant case, the trial court found that Wife could not reasonably be expected to become self-supporting:

> With respect to the one factor that I didn't mention is the time that it would take [Wife] to become self-supporting, she does not have a full command of the English language. In fact, this particular trial is–we need the services of an interpreter. Now, I think it's a reasonable inference that she probably speaks conversational English but needs assistance in matters such as this, a trial. She's been doing work in her house cleaning business for over 20 years. She is 59 years old. She has managed to keep the family home afloat after the abandonment by [Husband] by working seven days a week.

> Also, she has had the assistance of her older children working and contributing to the family well-being, as well as her brother has made loans, which he testified he doesn't expect to be paid back. . . .
>
> So **clearly she needs the alimony.**

(Emphasis added).

The statute does not require that the trial court find the standards of living between the parties to be unconscionably disparate in order to award indefinite alimony. FL § 11-106(c)(1) provides that a court may award indefinite alimony if it concludes that the recipient party cannot be reasonably expected to make progress toward becoming self-supporting because of age, illness, infirmity, or disability. Here, the court found that Wife had worked in the house cleaning business for twenty years, but made less than the minimum wage working forty-eight to fifty-eight hours per week. The court also found that Wife needed financial assistance from her older children, which she testified was between $500 and $800 per month, as well as loans from her brother. We thus are not persuaded that the court abused its discretion in awarding indefinite alimony in this case.

Attorneys' Fees

Husband claims that the trial court erred in awarding Wife attorneys' fees. Specifically, Husband contends that attorneys' fees may not be awarded in contempt

proceedings. Husband also argues that the court appeared to award attorneys' fees to Wife for his discovery violations, which he contends is improper.[5]

In Maryland, "in the absence of agreement, rule, statutory provision or limited case law exception, [attorneys' fees] are not recoverable." Rule 2-433 authorizes an award of attorney's fees as a sanction for certain failures of discovery. Rule 2-433(a)(3), which lists possible sanctions for certain failures of discovery, provides, in relevant part: "[T]he court . . . shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable costs and expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust."

As to attorneys' fees, the trial court stated:

> Now, before I indicate what the purge provisions are in this case, the court will also order that–and this is not a part of the contempt order, but I neglected to address the attorneys' fees issues. This is serious business. This is not foolishness. The rules are in place for the ease of litigation for both sides, both the defendant and the plaintiff. When a party does not follow the rules, when a party does not comply with the requests for discovery, when a party does not do the things that the rules require, it forces the other side to have to do and be involved in more litigation than necessary, such things as motions to compel, second and third requests for discovery. That kind of thing causes in

[5] In addition, Husband asserts that he cannot afford to pay the attorney's fees. As indicated above, the trial court did not credit Husband's statements regarding his finances, which cannot be challenged on appeal. *See Keys v. Keys*, 93 Md. App. 677, 688 (1992) ("[W]e will not substitute our judgment for the trial court's determination of the credibility of the witnesses.").

> some cases both sides to incur additional attorneys' fees. And in this case, unfortunately, [Husband] did not comply with the rules, did not provide discovery as requested, and did cause extended litigation to have to occur. As a result of that, the court orders that he pay attorneys' fees to [Wife] in the amount of $25,000.

It thus appears that the trial court awarded attorneys' fees to Wife pursuant to Rule 2-433(a).

This Court has recognized that a trial court has "wide discretion" in imposing discovery sanctions. *Klupt v. Krongard*, 126 Md. App. 179, 201 (citing cases), *cert. denied*, 355 Md. 612 (1999). Accordingly, we will affirm a trial court's imposition of discovery sanctions, unless there is a "'clear showing of abuse of discretion.'" *Id.* at 201-02 (quoting *Lone v. Montgomery Cnty.*, 85 Md. App. 477, 485 (1991)).

In the instant case, the trial court awarded Wife $25,000 in attorneys' fees after it found that "[Husband] did not comply with the rules, did not provide discovery as requested, and did cause extended litigation to have to occur." The award of $25,000 was based on invoices and an affidavit submitted by Wife's counsel and admitted into evidence. The total amount of attorneys' fees set forth in these documents was $27,513.63, which represented legal work done from November 1, 2012, through June 30, 2013. It is unclear, however, what portion of the attorneys' fees was expended by Wife's counsel in responding to Husband's discovery failures, as opposed to the usual tasks involved in litigation. Because the court's award of attorneys' fees to Wife was for only Husband's discovery failures and was not based on any findings of fact regarding such failures, we conclude that we are unable to effectively provide appellate review of the propriety of the amount of the award of

attorneys' fees. Accordingly, pursuant to Rule 8-604(e) we will remand without affirming or reversing the issue of attorney's fees for further consideration by the trial court.

Child Support

Husband argues that the trial court erred in ordering him to pay $727 per month in child support, with an additional $100 per month for arrearages. He contends, as with the court's determination as to alimony, that the court should have set his income lower and Wife's income higher for purposes of calculating child support.

In cases where the parents have a monthly combined adjusted income of $15,000 or less, trial courts must apply the child support guidelines to calculate child support awards. *See* FL § 12-204. "There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines . . . is the correct amount of child support to be awarded." FL § 12-202(a)(2)(i). Each parent's child support obligation "shall be divided between the parents in proportion to their adjusted actual incomes." FL § 12-204(a)(1). "Child support awards made pursuant to the Guidelines will be disturbed only if there is a clear abuse of discretion." *Gladis v. Gladisova*, 382 Md. 654, 665 (2004).

In the instant case, the trial court awarded child support in accordance with the child support guidelines. Husband again simply argues that the court erred in determining the award of child support, because he cannot afford it. As we have already discussed, the court did not err in determining either of the parties' incomes, and we will not disturb the court's factual or credibility findings. *See* Md. Rule 8-131(c). Accordingly, the court did not err in

determining Husband's child support obligation or in denying Husband's motion to modify child support.

Marital Home

Finally, Husband argues the trial court erred in awarding Wife the marital home. Husband asserts that he "is not necessarily contesting the award of the marital home to [Wife]. Rather, [Husband] takes issue with the fact that on top of receiving the marital home, she was also awarded indefinite alimony as well as attorney's fees."

A court may make a monetary award as an adjustment of the equities in the parties' marital property. *See* FL § 8-205. The court also may transfer certain marital property from one spouse to the other as such adjustment of the equities. *See* FL 8-205(a). In considering a monetary award or a transfer of marital property, the statute provides a list of factors for the court to consider. FL § 8-205(b). This Court will affirm a monetary award or transfer, "'[u]nless the chancellor abuses that discretion or makes a ruling contrary to law.'" *Brewer*, 156 Md. App. at 105 (quoting *Lemley v. Lemley*, 102 Md. App. 266, 298 (1994)).

Remarking on the parties' marital property, the court determined:

> With respect to the parties' property, as I indicated, the biggest or the largest asset that they have that's marital is the marital home. The–with respect to the 9-207 statement, **the property listed on that statement as [Wife]'s will remain in [Wife]'s column. The property listed as [Husband]'s will remain in his column.** The court finds [Wife]'s assertion that the value of the marital home is $254,000 is the value of the home primarily because of the testimony regarding the repairs that are needed to be done on the marital home.

Now, counsel had requested several things from the court at the end of [Wife]'s case and **gave the court several options that [Wife] would be requesting**–well, several alternatives, I should say. **One would be to fashion a [monetary] award. The other would be to consider any contribution that [Husband] is entitled to for the marital home. The court has opted not to use either of those, but instead pursuant to [FL § 8-205] which provides the ability of a trial court to transfer property** which was not the case prior to the enactment of this statute, the court will make the following findings.

Under the statute, the court must consider the contributions, monetary and non-monetary, made by each side, and I understand that this sounds–may sound somewhat redundant because these are the same factors that the court should consider in an alimony award. But the contributions monetary obviously since the departure of [Husband] from the marital home, [Wife] has paid all the expenses and kept up the marital home. That's a monetary contribution, paying the expenses, paying both mortgages, one of them a second mortgage taken out by [Husband] with no consent from the other tenant by the entirety, and that is [Wife] in this case. She has paid both of those, even at times having to get assistance from her brother and or her children.

The value of the property and the interests of the parties, the court considered that it is owned as tenants by the entirety. The economic circumstances of each party at the time the award is to be made. At this time, [Husband] is living in Florida in–near Naples, Florida with someone else, not his wife, has made no economic contributions to the marital home since 2009. [Wife], on the other hand, has a successful house cleaning business notwithstanding that she doesn't have the ability to make the kind of money that the court finds and has found that [Husband] makes.

The circumstances which contributed to the estrangement of the marriage, I have mentioned that in the alimony column. Essentially, he left the marital home. Now obviously in his argument to the court, he disputed that conduct. He disputed being abusive and so forth, but argument is not evidence. That is just what it says. It is argument, and

there was no evidence to the contrary and the testimony of [Wife]'s brother as well as the parties' older son.

The age of the parties I've considered, almost 10 years apart. The physical and mental condition of each party, physically the parties appear, their health is unremarkable. There is some evidence that [Wife] had some problems during the time when the marriage began to fall apart. How and when the marital property was acquired, beginning with the parties' marriage date, [Wife]'s brother lent them money to start the purchasing of a family home. And then when [Husband] left the family home, [Wife] continued to pay for it.

The testimony of [Wife] was that when he left, that he told her to quote, "call him when the house goes into foreclosure," close quote. She didn't know what that meant, not having sufficient command of the English language or the understanding of such legal matters that–to know what that meant. But she very quickly found out what the house going into foreclosure meant, and she took steps to keep the house from going into foreclosure.

Contributions toward the acquisition of the property held by the parties at [sic] tenants by the entireties, I think I have already addressed that. And any other awards made by the court such as alimony or a monetary award and so forth. **The court is not going to make a monetary award, but instead pursuant to the statute for the reasons that I have stated, the court will award the marital home to [Wife]. And obviously, she will continue to pay the mortgage and expenses for that property as she has been doing.**

And as the court said in Ward versus Ward, which is at 52 Maryland App. 336, a 1982 case, the intent of these provisions governing the distribution of property is to counter-balance unfairness that may result from the actual distribution of property acquired during the marriage. In this case, when [Wife] returned to the home after coming out of the hospital and staying with her brother when the turbulence of the marriage came up, she discovered that all or virtually all of the personalty, all of the personal property, had been sold by [Husband].

> And her testimony was the house was empty. In questioning by [Husband], I think it's a reasonable inference that the house was virtually empty. There may have been a few things there. Their son testified that he became aware that some of the family property was even being sold online, and so consistent with the holding in Ward versus Ward, I think it's fundamentally unfair to allow someone to get away with that. And that is having one party basically take on the entire economic burden of a home and pay all of the expenses including a mortgage taken out by the abandoning party, that kind of conduct is exactly what I find that the legislature envisioned to make a fair–and you don't see fairness very often in family law cases. **But an equitable distribution of the property, I think, with be [sic] potential equity in the home, that certainly balances out any monetary award that the court could give. And so the court will not give [Wife] a monetary award, but instead will award the marital home pursuant to [FL §] 8-205** as well as–and I–it's also important that the one minor child that the parties have can complete his high school studies in that home and in that community where he is active in sports and school activities, and does now not have to be concerned about having to move. The court will not make the decision to order that the house be sold.
>
> I think it's a reasonable inference, and the court can take judicial notice while the economic real estate market might be on the rise, it is not as robust as it was in very recent years. And it may be very difficult to move the home particularly given the fact that it does at this point need some repairs. Obviously, those repairs that the house may need will now fall on [Wife] because the house is awarded to her for the reasons that I have stated.

(Emphasis added).

We fail to perceive an abuse of discretion in the trial court's award of the marital home to Wife pursuant to FL § 8-205. The court clearly considered the relevant statutory

factors, including the court's award of alimony to Wife, and determined that it was equitable to award the marital home to Wife. We will not disturb this ruling on appeal.

APPEAL OF THE JULY 3, 2013 CONTEMPT ORDER DISMISSED.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AS TO AWARD OF ATTORNEYS' FEES REMANDED WITHOUT AFFIRMANCE OR REVERSAL FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; JUDGMENT OF ABSOLUTE DIVORCE AFFIRMED IN ALL OTHER RESPECTS; COSTS TO BE PAID 85% BY APPELLANT AND 15% BY APPELLEE.