

Circuit Court for Prince George's County
Case No. CAD17-01547

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2183

September Term, 2018

DAVID NEUMANN, JR.

v.

JANELLE NEUMANN

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

JJ.

Opinion by Friedman, J.

Filed: December 30, 2019

*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.

David and Janelle Neumann were married in 2008 and have 2 children. The Neumanns were granted an absolute divorce in the Circuit Court for Prince George’s County in 2018. As part of that divorce, the circuit court awarded child custody, determined an appropriate amount of child support, decided what part of the family’s property was marital and what part was nonmarital, transferred title to the family home to Janelle, made a monetary award, and considered (but did not award) attorneys’ fees. David raises numerous challenges on appeal. In fact, the only thing he doesn’t challenge is the judgment of divorce itself.

DISCUSSION

We begin by making two observations about appellate review that inform our analysis of David’s claims: (1) findings of fact by circuit courts are treated with great deference on appeal; and (2) circuit courts are not required to provide detailed check lists or read every statutory factor aloud when making a ruling. *See* MD. RULE 8-131(c); *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003). These two bedrock principles will dispose of each of David’s complaints.

I. MARITAL PROPERTY

Many of David’s issues on appeal stem from the marital property award. Maryland courts must follow a three-step process when distributing marital property. MD. CODE, FAMILY LAW (“FL”) § 8-205(a)(1). *First*, the court determines what property is marital and what property is nonmarital. *Id.* *Second*, the court determines the value of the marital property. *Id.* And, *third*, the court determines whether an “adjustment of the equities and rights of the parties concerning marital property” is required to rectify any inequity. *Id.*

Whether to grant a monetary award and transfer title of property is left to the discretion of the circuit court. *Hart v. Hart*, 169 Md. App. 151, 161 (2006).

At trial, the court followed the requisite three-step process and, at the end, transferred title of the family home to Janelle and granted her a monetary award of \$69,534. On appeal, David challenges aspects of the circuit court’s decisions at each of the three steps.

A. Step One: Classification of Marital and Nonmarital Property

As described above, FL § 8-205(a)(1) requires the circuit court to first classify each item of property as marital or nonmarital. David appeals from the circuit court’s decision to classify two items as Janelle’s nonmarital property: the “Brooklyn property” and the “Capital One Account.” On appeal, we give great deference to the circuit court’s decisions about whether items should be classified as marital or nonmarital property. *Murray v. Murray*, 190 Md. App. 553, 568 (2010) (holding that determination of whether property is marital or nonmarital is a question of fact and reviewed under the clearly erroneous standard of review).

1. *The Brooklyn Property*

David argues that the Brooklyn property, a rental home, is marital property and was improperly classified as Janelle’s nonmarital property. Failing that, David argues that even if the Brooklyn property itself is Janelle’s nonmarital property, any increase in value of the property (in which we include rental profits) should have been classified as marital property.

The circuit court, in determining that the property was Janelle’s nonmarital property, relied on Janelle’s mother’s testimony that she gave the Brooklyn property (Janelle’s parents’ home) as a gift to Janelle only and not to Janelle and David jointly. In this Court, David argues that the circuit court should have given greater weight to the fact that the parties listed the Brooklyn property as a marital asset on their joint federal tax return. This is a factual dispute. The circuit court’s decision to believe Janelle’s mother’s testimony was not clearly erroneous and we, therefore, affirm. Moreover, once the trial court determined that the Brooklyn property itself was Janelle’s nonmarital property, it follows that any increase in value of the property was also nonmarital, unless David could produce evidence showing that marital funds were used for upkeep or improvements. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000) (noting that the party who “asserts a marital interest in property bears the burden of producing evidence” to support the assertion); *Golden v. Golden*, 116 Md. App. 190, 205 (1997) (recognizing that the increased value of property acquired during the marriage is marital property, unless it can be directly traced to a non-marital source). The circuit court found that David failed to carry this burden of production. Moreover, there was testimony from Janelle’s mother, which the circuit court was entitled to believe, that she gave Janelle, in her individual capacity, \$70,000 for upkeep and improvements on the Brooklyn property, making that money her nonmarital property. Thus, we cannot hold that the circuit court was clearly erroneous in classifying the increased value of the Brooklyn property as Janelle’s nonmarital asset as well.¹

¹ Because we affirm the circuit court’s classification of the Brooklyn property as Janelle’s nonmarital property, we need not reach David’s arguments that the circuit court

2. *The Capital One Bank Account (#2899)*

David also claims that the circuit court erred in failing to classify Janelle’s Capital One bank account (#2899) as marital property. We begin by noting that the Maryland Rules are quite specific and require the parties to identify all property subject to the three-step marital property analysis on a joint financial worksheet. MD. RULE 9-207. Among the purposes of this worksheet is to identify contested property for the circuit court. Here, neither party identified this account on the worksheet. More importantly, at trial, David only alleged the existence of this account—he presented no evidence about the source of the funds in the account or its current balance. As such, David failed to carry his burden. *See Melrod v. Melrod*, 83 Md. App. 180, 194 (1990) (stating that “the burden is upon the party who asserts a marital interest in property to present evidence as to identity and value of property”).² We, therefore, affirm this aspect of the decision as well.

B. Step Two: Valuation of Marital Property

The second step of the marital property analysis requires the circuit court to determine the value of each item of marital property. FL § 8-205(a)(1). David’s sole

erred in accepting Janelle’s valuation of that property. Nevertheless, we note that Maryland law is clear that the owner of a property is “presumed to be qualified to testify” as to its value. *Abdullah v. Zanini*, 241 Md. App. 372, 413 (2019).

² David argues, in effect, that he failed to identify the Capital One account on the joint financial worksheet because Janelle was actively concealing the existence of the account. Essentially, he is alleging that she abused the discovery process by concealing the existence of the account. Of course, such allegations must be made at the circuit court. We are in no position to consider these allegations, for the first time, on appeal. *See Food Lion v. McNeill*, 393 Md. 715, 735 (2006) (noting that discovery violations should be raised and resolved during the discovery period).

argument here is that the circuit court’s valuation is incorrect because Janelle dissipated \$76,000 of marital funds. According to David, at the time the parties separated, this money was in a joint banking account at PNC Bank, and that without David’s permission, Janelle subsequently transferred the money into a PNC account titled in her name only.³ Janelle testified that she did, in fact, transfer \$76,000 into her individually titled PNC account, but that she used that money for a marital purpose: to pay for renovations to the family’s Upper Marlboro home.

Dissipation of marital property is, in general terms, the spending of money so that a soon-to-be-former spouse cannot have it. *Heger v. Heger*, 184 Md. App. 83, 96 (2009) (explaining that “[t]he doctrine of dissipation is aimed at the nefarious purpose of one spouse’s spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets”). A party alleging dissipation has the initial burden of showing dissipation has taken place. *Collins v. Collins*, 144 Md. App. 395, 417 (2002). Once a *prima facie* case is proven, the burden shifts to the other party to show that the assets were “expended appropriately.” *Id.*

The circuit court didn’t make any specific finding on this issue, but it is clear from its order and distribution of marital assets that it found that Janelle neither dissipated nor concealed this money. *See id.* at 413 (noting that a specific finding of dissipation has “never” been required). And for us, so long as there were facts to support Janelle’s story,

³ David argues that this money was transferred into Janelle’s Capital One bank account (#2899) discussed in the previous section. Our review confirms, however, that the money was transferred into Janelle’s PNC account.

we must defer to the circuit court that heard the testimony and had the opportunity to judge the credibility of the witnesses. David presented general allegations of dissipation—that the money was transferred, and that he only knew where “some” of the money went. Janelle testified that the money was used for renovations on the family home, for which David had given her explicit plans (thereby suggesting his acquiescence in the expenditure). David thinks Janelle is lying. But the circuit court didn’t think so. The circuit court believed Janelle’s testimony and disbelieved David’s. As such, we defer to the circuit court’s findings and hold that there is no evidence of dissipation. And, as a result, we also hold that there is no evidence that the circuit court erred in step two of the marital property analysis.

C. Step Three: Distribution of Marital Property

Step three of the marital property analysis requires the court to distribute the marital property in an equitable manner. In this case, the circuit court found that to balance the equities, it needed to transfer title of the family home to Janelle and grant her a monetary award in the amount of \$69,534. David challenges both awards.

1. *The Upper Marlboro Home*

David first argues that the circuit court erred in transferring the family’s Upper Marlboro home to Janelle. David’s theory is that the parties entered into an oral agreement, in effect, a partial settlement of the financial aspects of this case. Under that oral, partial settlement agreement, David says, the parties agreed that David would waive his interest in the Brooklyn property and in exchange, he would be permitted to purchase Janelle’s interest in the family’s home in Upper Marlboro. David argues that the circuit court erred

by disregarding this agreement and instead transferring title in the house as part of the marital property award.

This was a classic factual dispute: David said there was a deal; Janelle said no deal. It is the circuit court’s job to resolve these kinds of factual disputes. David has given us no reason—other than his apparently sincere belief that there was an oral agreement—to disturb this finding. We, therefore, will not.

2. *Monetary Award*

After transferring title of the family home, Janelle’s assets totaled \$161,374 and David’s assets totaled \$304,942. The circuit court then made a monetary award to Janelle of \$69,534. As a result, the marital property was divided with Janelle receiving assets valued at \$230,908 and David receiving assets valued at \$235,408 (\$304,942 minus \$69,534). David argues that this monetary award was an abuse of discretion.

In granting a monetary award, the circuit court must consider the eleven factors listed in FL § 8-205(b). The court need not list all factors in making its ruling. *See, e.g., Malin*, 153 Md. App. at 429 (noting that a circuit court does not need to provide a “detailed check list” or “enunciate every factor considered on the record”). Here, the court noted, on the record, the following considerations: that David provided more of the “wage earning contributions, while Janelle provided the lion’s share of the non-monetary things, though she did make a monetary contribution;” that the Maryland home was purchased by both Janelle and David in June 2016, and secured by a mortgage in both their names; that the Neumanns were married for ten years; that Janelle is 29 years old and David is 41 years old; and that both parties are “certainly less well off if the descriptions of their legal bills

are accurate.” This recitation more than sufficiently demonstrates that the circuit court considered the mandatory considerations from FL §8-205(b). We see nothing out of the ordinary here and will not substitute our judgment for that of the circuit court. *Innerbichler*, 132 Md. App. at 230.

A circuit court is not required to divide marital property evenly between the parties. Rather, it is “improper for the [circuit] court to succumb to the temptation to divide the property equally” because every divorce is different and must be evaluated independently. *Id.* at 236-37. A circuit court has “broad discretion” to reach an equitable result when distributing marital property. *Hart*, 169 Md. App. at 161; *see Flanagan v. Flanagan*, 181 Md. App. 492, 522 n.11 (defining an abuse of discretion as “where no reasonable person would take the view adopted by the trial court” or the court acts “without reference to any guiding rules or principles”). The circuit court awarded David slightly more of the parties’ marital property (\$4,500) than it awarded Janelle. We will not disturb this minor disparity.

In conclusion, we affirm the circuit court’s classification of what property is marital and what property is nonmarital; its valuation of the marital property; and its equitable distribution of that marital property.

II. CHILD CUSTODY

The circuit court awarded David and Janelle joint legal custody of their children with “tie-breaking” authority to Janelle. The circuit court also awarded Janelle primary physical custody. David does not challenge the award of physical custody to Janelle, but challenges the award of joint legal custody in two respects. *First*, he argues that joint legal custody is improper because, he says, Janelle is “unwilling” to communicate with him.

Second, David complains that the circuit court failed to explicitly consider each of the relevant factors guiding custody determinations.⁴

The resolution to both of David’s issues on custody is found in the Court of Appeals’ landmark decision in *Taylor v. Taylor* and its progeny. 306 Md. 290 (1986). In *Taylor*, the Court of Appeals identified fourteen factors for courts to consider in making custody determinations. *Id.* at 303. The *Taylor* Court placed special emphasis on the parents’ ability to communicate:

[The] [c]apacity of the [p]arents to [c]ommunicate and to [r]each [s]hared [d]ecisions [a]ffecting the [c]hild’s [w]elfare ... is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate.... Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.

Id. at 304 (heading italics removed). Recently however, the Court of Appeals held that an inability to communicate does not preclude the award of joint legal custody. *Santo v. Santo*, 448 Md. 620, 630 (2016).

David’s first argument is that Janelle is unwilling to communicate with him and as such, the circuit court erred by awarding joint legal custody. In support of that theory, David cites Janelle’s alleged refusal to participate in a home study evaluation. We hold,

⁴ Because he has not challenged the award of physical custody, it is not plain to us what custody arrangement David would prefer. We need not speculate, however, because for the reasons that follow, we reject his arguments.

first, that the circuit court did not err by failing to assign Janelle’s refusal to participate dispositive weight. Second, and more importantly, we hold that even if their ability to communicate hasn’t been great, the circuit court did not commit reversible error by granting joint legal custody to these parents. *Santo*, 448 Md. at 630 (2016).

David’s second argument is that the circuit court failed to list all fourteen of the *Taylor* factors and make specific findings as to each factor. Although that may be helpful practice (and certainly makes appellate review easier), we have never required circuit courts to list every factor. *See, e.g., Malin*, 153 Md. App. at 429. Rather, we will affirm if there are sufficient facts in the record to support a decision to award joint legal custody. *See, e.g., McCarty v. McCarty*, 147 Md. App. 268, 273 (2002) (noting that it is advisable to leave the “delicate weighing process” of child custody decisions to the circuit court and not allow this Court to substitute our judgment for that of the circuit court). Here, the circuit court specifically found the following facts to support awarding joint legal custody: that both parents are fit; that their homes are adequate residences; that they live in proximity to one another; that they are deeply “rooted in the area;” and that they have the potential for “meeting natural family relations.” As such, the circuit court concluded that it was in the best interest of the children to award joint legal custody. Seeing no abuse of the circuit court’s discretion, we affirm.

III. CHILD SUPPORT

The circuit court ordered David to pay \$2,365 per month in child support. David challenges the amount of child support on two grounds: *first*, because he claims Janelle

concealed assets from the court; and *second*, because twice during discovery she amended her financial statement.

We begin by reiterating the purpose of child support: it is for the children. The “critical underpinning” of the Maryland child support system is to provide the child with the “same proportion of parental income, thereby [allowing the children to] enjoy the standard of living they would have experienced had the parents remained together.” *Voishan v. Palma*, 327 Md. 318, 322 (1992). When the parents’ combined income is less than \$15,000 per month, the circuit court simply applies the statutory guidelines. *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018). When the parents combined income exceeds \$15,000 per month, the circuit court has greater discretion in determining the child support award. *Id.*

David’s arguments, which relate to Janelle’s alleged malfeasance in discovery and at trial, are largely irrelevant to the circuit court’s computation of the parent’s financial abilities and the children’s needs. *See Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018) (noting that when granting an above guidelines award, the circuit court “must balance the best interests and needs of the child[ren] with the parent’s financial ability to meet those needs”). Moreover, Janelle is allowed to amend her financial statements. MD. RULE 9-203(c). The circuit court considered both parents’ income and Janelle’s expenses for the children (as the primary residential parent) and determined that based on the guidelines

\$2,365 per month was the appropriate amount of child support.⁵ Seeing no abuse of discretion, we affirm.

IV. ATTORNEYS' FEES

David argues that the circuit court erred in denying his request for attorneys' fees. He claims that because the circuit court did not specifically address the factors under FL § 12-103(b) when denying his request, this Court should reverse and award him fees.

We review a circuit court's denial of attorneys' fees under an abuse of discretion standard. *Leineweber v. Leineweber*, 220 Md. App. 50, 65 (2014). The decision to grant attorneys' fees (or not) requires the court to consider the following: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding. FL § 12-103(b). As observed in our introduction, rote recitation of these factors by the circuit court is not required.

There were sufficient facts in the record relating to David's financial status, needs, and justification for bringing the case to support denying David's request. We, therefore, cannot say the circuit court abused its discretion in so doing. David, who initiated the case in the circuit court, had attorneys' fees totaling \$59,051.13 as of January 31, 2018.⁶ David, who provided "more of the wage-earning contributions to the well-being of the family,"

⁵ Application of the guidelines yields a monthly award of \$2,458. The circuit court decreased this to \$2,365 because it perceived a decrease in the need for daycare. Because Janelle has not challenged this reduction, we will not disturb it.

⁶ Janelle, who also requested and was denied attorneys' fees, had a total of \$41,739.50 in attorneys' fees as of July 10, 2018.

earns \$114,590 annually, compared to Janelle’s annual salary of \$65,606. The circuit court further found that the value of assets in David’s name is almost double the value of those in Janelle’s name. Moreover, the court commented on David’s failure to sign the financial disclosure form which “wasted time” and observed that neither party appeared to “care about wasting money” by drawing out litigation. These findings are sufficient to support the circuit court’s determination that David’s request for attorneys’ fees should be denied. Accordingly, we hold that the circuit court did not abuse its discretion.⁷

CONCLUSION

In sum, we hold that: (1) the circuit court did not err in finding that the Brooklyn property was Janelle’s nonmarital property and that Janelle did not conceal a bank account; (2) the circuit court did not err in finding that Janelle had not dissipated marital funds; (3) the circuit court did not err in failing to find an oral agreement as to the family home

⁷ David also appeals from the circuit court’s denial of his motion for a mistrial. David’s theory is that Janelle presented “scandalous and prejudicial testimony” in pursuit of a fault-based divorce, which he says “undoubtedly influenced” the circuit court in dividing the marital property. The decision to grant a mistrial is within the circuit court’s discretion. *Bradley v. Bradley*, 208 Md. App. 249, 265 (2012). Absent an abuse of that discretion, reversal of the circuit court’s decision is only warranted if the defendant “clearly was prejudiced” by the denial. *Klaunberg v. State*, 355 Md. 528, 555 (1999). First, because the circuit court granted the absolute divorce based on Janelle and David’s one-year separation, David’s allegation that a mistrial was warranted to prevent a fault-based divorce judgment is essentially moot. Second, there is no basis for the suggestion that the circuit court relied on the “scandalous” testimony—relating to David’s sexual proclivities and his alleged membership in sex clubs—when identifying, valuing, and distributing marital property in nearly equal amounts. Moreover, because judges are presumed to know the law, we find no merit in David’s allegation that the circuit court impermissibly considered this testimony. *Marquis v. Marquis*, 175 Md. App. 734, 755 (2007). We, therefore, affirm the decision to deny David’s motion for a mistrial.

existed; (4) the circuit court did not abuse its discretion in transferring title of the family home to Janelle and granting an additional \$69,534 monetary award; (5) the circuit court did not abuse its discretion in awarding joint legal custody, with tie breaking authority to Janelle; (6) the circuit court did not abuse its discretion in granting child support in the amount of \$2,365 per month; and (7) the circuit court did not abuse its discretion by denying David's request for attorneys' fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**