Circuit Court for Montgomery County
Case No. 0000134351FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2233

September Term, 2017

BYRON A. BAUGHMAN

v.

LISA M. BAUGHMAN

Graeff,
Beachley,
Gould,

JJ.

Opinion by Graeff, J.

Filed: February 19, 2020

*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.

On December 6, 2017, the Circuit Court for Montgomery County granted Lisa M. Baughman, appellee ("Ms. Sundquist"), a Judgment of Absolute Divorce against Byron A. Baughman, appellant.[1] As part of the judgment, the court ordered Mr. Baughman to pay Ms. Sundquist, among other things, $3,000 per month in indefinite alimony, as well as a monetary award of $4,333.50, based on the court's finding that he had dissipated marital assets.

On appeal, appellant presents multiple questions for this Court's review, which we have consolidated and rephrased, as follows:

1. Did the circuit court abuse its discretion in awarding indefinite alimony of $3,000 per month to Ms. Sundquist?
2. Did the court abuse its discretion in awarding Ms. Sundquist a monetary award based upon a dissipation finding?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Baughman and Ms. Sundquist met in 1997 and began a romantic relationship in 2001. When the relationship started, both parties were married to other individuals. The parties eventually divorced their respective spouses, and their relationship continued intermittently for years.[2] Ms. Sundquist suffers from numerous chronic health conditions

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[1] As part of the Judgment of Divorce, Lisa Baughman's name was changed back to her maiden name, Lisa Marie Sundquist. Accordingly, we shall refer to her as "Ms. Sundquist."

[2] Ms. Sundquist testified that their relationship was steady for three years after their divorces, then off and on again for the following three years, then off for "several years,"

and has received Social Security Disability Insurance ("SSDI") payments because of her health issues since the early 1990s.

Ms. Sundquist was awarded $2,167 per month in indefinite alimony in the divorce from her first husband. In 2011, however, Ms. Sundquist's first husband filed a motion to modify alimony, and the parties subsequently reached a settlement, in which she received an alimony buyout of $40,000 in two lump sums. Ms. Sundquist testified that she was nervous about taking the buyout because, aside from her SSDI payments and the proceeds from the sale of the former marital home, alimony was her only income. Mr. Baughman, however, told her that he would take care of her financially, which made her "more comfortable" with the decision to accept the terms of the buyout.

Mr. Baughman and Ms. Sundquist were married on July 28, 2012. No children resulted from the marriage, but the parties both have adult children from their first marriages.

Ms. Sundquist testified that she put all her money into their joint bank accounts for their day-to-day expenses. Throughout their five-year marriage, the parties acquired numerous marital assets, including a home owned as tenants by the entirety, various bank accounts, and a vehicle.

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then back on in 2011. There was also a six-month period in 2011 when Ms. Sundquist lived in Atlanta, but the parties remained in a relationship during this time. They initially discussed Mr. Baughman moving to Atlanta, but because he would lose his pension if he left his job, Ms. Sundquist moved back to Maryland.

In 2015, during the marriage, Ms. Sundquist obtained an associate degree in Paralegal Studies at Montgomery College and completed a course in mediation training. She worked part-time as a paralegal for a local attorney and long-time friend, Karen Robbins.[3] The court determined that the income available to Ms. Sundquist, including her SSDI payments and the part-time income as a paralegal, was $26,662, or $2,221.83 per month.[4]

In 2014, the parties took out a $40,000 home equity line of credit to pay for numerous expenses, including to renovate an office space for Ms. Sundquist's start-up mediation business, "Creekside Mediation." Creekside Mediation is located on the first floor of the office building in which Ms. Sundquist was employed as a paralegal. She entered into an agreement with Karen Robbins to rent and improve the space. Ms. Sundquist testified, however, that she performed only one mediation a month, and the business had not made "a dime" in profit.

Mr. Baughman had been a physical education teacher for Montgomery County Public Schools for 28 years at the time of trial. He had gross income of $9,075 per month at the time of trial, or approximately $6,360 after deductions.

[3] Ms. Robbins testified that Ms. Sundquist has worked for her for five years, but they had known each other for 17 years.

[4] The court initially calculated Ms. Sundquist's income as $2,453 per month, but after finding that any profit from the mediation business was "illusory," calculated Ms. Sundquist's income based only on her SSDI and part-time income as a paralegal. Ms. Sundquist had calculated her monthly income, after taxes, as $1,903.

In late 2015, the parties' relationship began to dissolve. In mid-February 2016, the parties separated after Ms. Sundquist obtained a protective order against Mr. Baughman. The protective order required Mr. Baughman, among other things, to pay Ms. Sundquist $1,500 per month in emergency family maintenance. On February 25, 2016, Ms. Sundquist filed a Complaint for Limited Divorce in the Circuit Court for Montgomery County.

On May 20, 2016, the parties entered a consent agreement for interim support. Mr. Baughman agreed to pay $1,000 per month toward the mortgage on the marital home in exchange for withdrawal of the protective order. On September 1, 2016, a *pendente lite* consent order was entered, which required Mr. Baughman to pay Ms. Sundquist $1,250 per month in *pendente lite* alimony and to maintain her on his health insurance.

On February 21, 2017, Ms. Sundquist filed an Amended Complaint for Divorce, requesting an absolute divorce based on the parties living apart for one year. In the complaint, she asked for "indefinite alimony or, alternatively, rehabilitative alimony . . . made retroactive to the date of filing of this Complaint." She also asked the court, among other things, for a determination of property ownership, to authorize earnings withholdings from Mr. Baughman's income, to award her attorney's fees, and to award her "a monetary award . . . after adjusting the parties' rights and equities in the marital property."

The court held a three-day hearing from August 7–9, 2017. The parties presented evidence regarding their financial circumstances, marital and non-marital property, ability to work, health issues, and more. Additional facts regarding these issues will be discussed, as relevant, in the discussion that follows.

On December 6, 2017, the circuit court issued its ruling. The circuit court ordered Mr. Baughman to pay Ms. Sundquist $3,000 per month in indefinite alimony based on its finding that Ms. Sundquist was not self-supporting, and it was "highly unlikely that she will become self-supporting," due to her chronic health issues. The court stated that, even if she were to become self-supporting, the parties' respective standards of living would be "unconscionably disparate" without an award of indefinite alimony. In that regard, the court considered Mr. Baughman's capacity to increase his income by taking additional classes, which would enable him to move into a higher salary lane within the Montgomery County Public Schools, in relation to Ms. Sundquist's limited physical ability to work or increase her current income. The court also considered additional sources of income available to Mr. Baughman.

The court found that Ms. Sundquist was entitled to a monetary award of $4,333.50 based, in part, on Mr. Baughman's dissipation of marital assets. It found that Mr. Baughman had dissipated marital assets by transferring $2,000 from a BB&T bank account containing marital funds into his deceased father's estate account without Ms. Sundquist's consent. The court also found that dissipation had occurred because Mr. Baughman was paying rent for his live-in girlfriend, Gloria Rivas. The court stated that, because he was "living with another adult capable [of] and, in fact, earning income," Mr. Baughman could not "rely on his full payment of his expenses, which [were] essentially gifts to that person,

to reduce his income available for the payment of alimony." The court found that, over a period of seven months, Mr. Baughman had dissipated $5,250 on rent for Ms. Rivas.[5]

The Judgment of Absolute Divorce, memorializing these terms, was entered on December 14, 2017. This appeal followed.

DISCUSSION

I.

Alimony

Mr. Baughman contends that the circuit court abused its discretion in awarding indefinite alimony to Ms. Sundquist in the amount of $3,000 per month. He makes several contentions in this regard. First, he challenges the amount of alimony the court awarded, asserting that the court erred in its factual findings regarding the parties' expenses and abused its discretion in awarding alimony in an amount exceeding Ms. Sundquist's request. Second, he contends that the court erred in awarding indefinite alimony.

Ms. Sundquist contends that the circuit court properly exercised its discretion in awarding her $3,000 per month in indefinite alimony. She argues that the court properly considered the requisite factors under Md. Code (2012 Repl. Vol.) § 11-106(b) of the Family Law Article ("FL") in formulating the award, that there was ample evidence to

[5] Ms. Rivas and Mr. Baughman both signed a lease that was introduced at trial. The lease began on December 20, 2016, and showed a monthly rent of $1,500. Because trial took place in early August 2017, the court determined that Ms. Rivas and Mr. Baughman had lived together for seven months. The court then multiplied half the monthly rent, or $750 to account for Ms. Rivas' share, by the seven months they had lived together, and determined that Mr. Baughman had paid $5,250 for Ms. Rivas in rent. Mr. Baughman does not challenge this total on appeal, only its status as dissipated funds.

support the court's findings regarding the parties' expenses, and that the amount of alimony award was within the court's broad discretion. She also asserts that an indefinite alimony award was appropriate because there was substantial evidence to support a finding that she had made as much progress as could be expected towards becoming self-supporting, and that the parties' respective standards of living would be unconscionably disparate.

The determination of alimony is a matter within the trial court's discretion. *Reynolds v. Reynolds*, 216 Md. App. 205, 222 (2014). We review an award of alimony under an abuse of discretion standard and uphold any factual findings of the trial court unless clearly erroneous. *Solomon v. Solomon*, 383 Md. 176, 196 (2004). On review, "'we may not substitute our judgment for that of the fact finder, even if we might have reached a different result,' absent an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000)).

A.

Amount of Alimony

When faced with a request for alimony, the trial court must consider "all of the factors necessary for a fair and equitable award." *Solomon*, 383 Md. at 195. These factors are set forth in FL § 11-106(b) as follows:

> (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;
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> (3) the standard of living that the parties established during their marriage;
>
> (4) the duration of the marriage;

(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

(6) the circumstances that contributed to the estrangement of the parties;

(7) the age of each party;

(8) the physical and mental condition of each party;

(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;

(10) any agreement between the parties;

(11) the financial needs and financial resources of each party, including:

(i) all income and assets, including property that does not produce income;

(ii) any award made under §§ 8-205 and 8-208 of this article;

(iii) the nature and amount of the financial obligations of each party; and

(iv) the right of each party to receive retirement benefits; and

(12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

"[T]he law does not make any of the factors listed in section 11-106(b) determinative or mandate that they be given special weight" because the "decision whether to award alimony and, if so, for what period of time, is fact-intensive and not subject to a formulaic resolution." *Whittington v. Whittington*, 172 Md. App. 317, 341 (2007). "Generally speaking, alimony awards, though authorized by statute, are founded upon notions of equity, equity requires sensitivity to the merits of each individual case without

the imposition of bright-line tests." *Boemio v. Boemio*, 414 Md. 118, 141 (2010) (quoting *Tracey v. Tracey*, 328 Md. 380, 393 (1992)).

Here, the circuit court reviewed each factor in its oral ruling issued on December 6, 2017. The court determined that the parties established a "middle class standard of living" during their five-year marriage, during which they traveled, purchased assets, dined out frequently, and took out various debts to pay for their expenses. FL § 11-106(b)(3)–(4). It noted that both parties had made contributions to the marriage, including the down payment on the house, income from their respective jobs, pre-marital assets transferred to joint accounts, and household labor. FL § 11-106(b)(5). With regard to the circumstances that contributed to the estrangement of the parties, the court discussed a protective order obtained by Ms. Sundquist against Mr. Baughman in early 2016, the tension leading up to it, and the parties' subsequent actions in removing money from accounts. FL § 11-106(b)(6). The court found that, at the time of trial, Mr. Baughman was 58 years old and Ms. Sundquist was 51 years old. FL § 11-106(b)(7).

With respect to the financial needs and resources of each party under FL § 11-106(b)(11), the circuit court calculated that Ms. Sundquist's expected gross annual income from her work for Ms. Robbins and her SSDI payments was approximately $26,662, or $2,222 per month before taxes.[6] The court determined that Ms. Sundquist's reasonable

[6] As indicated, the court found that any profit from Creekside Mediation was illusory because it was operating at a loss. With respect to her SSDI payments, she received a monthly SSDI check for $1,511.20 during 2017.

expenses totaled approximately $4,108 per month, after adjustments made by the court.[7] This left her with a monthly deficit of approximately $1,886.

The court determined that Mr. Baughman's gross income from his job was $9,075, with a net income of $6,360 a month. Adding $192 a month from trust income and $122 a month that he received as an IRA beneficiary, the court concluded that Mr. Baughman had a net income of $6,674 per month, and he had the ability to increase his income by taking additional classes to move into a higher salary lane with the Montgomery County Public Schools.

The court then addressed Mr. Baughman's expenses. It determined that he had monthly expenses of $2,743, leaving him a monthly surplus of $3,931.

With this background, we will address Mr. Baughman's specific claims of error.

1.

Expense Calculations

Mr. Baughman contends that the court erred in reducing his monthly expenses from $5,176.88, as estimated on his Amended Financial Statement, to $2,743. He makes several arguments in this regard.

Before addressing the individual arguments, however, we note that the court is not required to explain each adjustment to expenses. *Allison v. Allison*, 160 Md. App. 331, 345 (2004) (When calculating monthly expenses to determine financial need, the circuit

[7] The court reduced Ms. Sundquist's monthly expenses from her initial calculation of $6,007.49, deducting expenses for, among other things, legal fees and expenses relating to her son.

court is "not required to set forth its exact thought process in arriving at conclusions" because financial statements submitted by the parties may be exaggerated.). Moreover, the reduction of such expenses to determine the ultimate alimony amount is a matter within the trial court's discretion. *See Reynolds*, 216 Md. App. at 226, 234; *Corby v. McCarthy*, 154 Md. App. 446, 499 n.7 (2003).

Mr. Baughman first challenges the court's reduction of expenses for his primary residence, from $1,757 to $924. The court stated that it reduced these costs by 50%, except for his cell phone bill ($90), because Mr. Baughman was "living with another adult capable and, in fact, earning income," and he could not "rely on his full payment of his expenses, which [were] essentially gifts to that person, to reduce his income available for the payment of alimony." Similarly, the court reduced Mr. Baughman's expenses for household necessities from $630 to $455, and his expenses for entertainment from $802 to $460, because Ms. Rivas could pay half of those expenses. We perceive no abuse of discretion in the circuit court's determination to attribute half of the household expenses to a working adult that Ms. Baughman had no legal obligation to support.

Mr. Baughman asserts that the court made additional errors. He states that "the [c]ourt noted that Mr. Baughman had no Category E [school] expenses," but he listed $70 a month on his Amended Financial Statement. Mr. Baughman testified, however, that his continuing education costs were almost exclusively reimbursed to him. Mr. Baughman's Category D medical expenses were reduced, from his estimation of $345.63 to $137, based on the court's finding that his health insurance costs would go down because he was not

providing health insurance for Ms. Sundquist any longer. We find no abuse of discretion in these reductions.

The Court reduced expenses for Category H gifts from $135 to $100 and Category L miscellaneous from $452.25 to $92. Although Mr. Baughman asserts that the court erroneously "provided no basis" for these two reductions, the court was not required to do so.[8] *Allison*, 160 Md. App. at 345.

In addition, Mr. Baughman argues that the court erroneously calculated Ms. Sundquist's expenses and attributed to her greater need than was appropriate. He contends that, "despite the Court not finding any basis for the expenses, the Court used the figures contained on the aspirational Financial Statement in its determination of Ms. Sundquist's reasonable and necessary expenses." This assertion is not supported by the record. Ms. Sundquist submitted an initial Financial Statement listing her monthly expenses as $6,007.49. She submitted another statement reflecting anticipated future income and expenses, after the marital home was sold. In that statement, she listed her income as $1,903.05 and her expenses as $5,781.31, for a monthly deficit of $3,878.26. The Court did not simply use the figures provided by Ms. Sundquist. Rather, it reduced her expenses to $4,108 per month. More specifically, the Court reduced her Category A household expenses from $2,321.60 to $2,196, the Category C household items from $508.55 to $400,

[8] Mr. Baughman does not challenge on appeal the reduction in his expenses for transportation from $870 to $330, given the evidence that Mr. Baughman had only 2 months left on his car payment.

Category D medical expenses from $696.87 to $332, Category I clothing from $250 to $195, and other minor reductions to other categories.

With respect to her Category G transportation expenses, Ms. Sundquist included $291.57 as transportation expenses in her list of anticipated future expenses, as opposed to $237.18, the amount listed as a current expense. Mr. Baughman argues that the court's attribution of $290 for these expenses was erroneous, stating that "the Court noted that it found no basis for Ms. Sundquist's aspirational expenses, but then included such expenses in its finding as to Category G[.]" What the court said was that Ms. Sundquist's expenses "needed some adjustment," but it did not state that *all* categories had to be reduced. We perceive no abuse of discretion in this regard.

Mr. Baughman also argues that the expense calculations are erroneous because Ms. Sundquist was afforded $4,108 in monthly expenses, whereas he was permitted only $2,743. Mr. Baughman cites no precedent, and we have located none, for the proposition that expense calculations for divorcing couples must match, even though the circumstances of each party differ.

Mr. Baughman next argues that the court erred because the alimony award results in Ms. Sundquist receiving a $1,400 surplus, whereas he ends up with a monthly deficit of $1,032.55. This calculation, however, uses Mr. Baughman's asserted expenses, not the expenses found by the court. This contention is devoid of merit.

Mr. Baughman is correct, however, in his assertion that the circuit court made a mathematical error in arriving at Mr. Baughman's total expenses. The court found

expenses totaling $2,743, but adding the expenses for each category results in a total of $2,613 in expenses. The court's error in this regard, however, giving him $130 more in monthly expenses, does not constitute reversible error because Mr. Baughman was not prejudiced by it, and it arguably provided him a benefit in the ultimate calculation of alimony. *See Flanagan v. Flanagan*, 181 Md. App. 492, 515 (2008) (The burden is on the complaining party to show prejudice resulting from an error.); *Goldberg v. Goldberg*, 96 Md. App. 771, 783 (Court's erroneous calculation of the value of marital assets did not prejudice husband and he "arguably benefitted" from this error.), *cert. denied*, 332 Md. 381 (1993).

2.

Amount Exceeds Request & Need

Mr. Baughman next contends that the alimony award of $3,000 per month was improper because Ms. Sundquist requested only $2,000 per month and the court had calculated her need/monthly deficit at $1,886. He argues that the court abused its discretion in awarding alimony exceeding Ms. Sundquist's "need and request."

Ms. Sundquist acknowledges that her counsel, in closing argument, requested alimony of $2,000 per month. She argues, however, that she did not limit the amount of her request in the complaint, and the court is not limited in its award by closing argument. With respect to need, Ms. Sundquist contends that the court had discretion to grant an award that included "more than the bare minimum."

The circuit court has "broad discretion in determining an appropriate award" under FL § 11-106. *Innerbichler*, 132 Md. App. at 248 (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 146–47 (1999)). Appellant cites no case for the proposition that the court's discretion is restricted by the dependent spouse's counsel's request during closing argument, and the court may not deviate from it when appropriate. We decline to hold that the court is so restricted.

With respect to Mr. Baughman's assertion that the court abused its discretion by fashioning an award that exceeded Ms. Sundquist's monthly deficit, the Court of Appeals has explicitly rejected this argument. In *Boemio*, 414 Md. at 131, the Court held that the "circuit court acted within its discretion in declining to limit its award to the monthly expenses it found [the wife] needed based on her current financial statement."

Here, the circuit court was well within its discretion when it found that Ms. Sundquist required more than the bare minimum in order to sustain her standard of living in light of her health issues and financial contributions to the marriage. We will not disturb that finding on appeal.

3.

Consideration of Awards & Assets

Mr. Baughman argues that, when calculating the alimony award, the court failed to consider the impact of the monetary award, property distribution proceeds, attorneys' fees, *Crawford* credits,[9] and other post-divorce assets. This contention is belied by the record.

The court clearly considered all these assets and awards together in arriving at the alimony award figure. In its oral opinion, the court stated the following:

> The financial circumstances of the parties -- their resources, their obligations, their assets -- are detailed not only on the monetary award sheet but in my review of their financial statements, and they have been considered, particularly with respect to their resources and their availability to make payments and also their liabilities.

There is no basis to conclude that the court failed to take these figures into consideration when arriving at the $3,000 alimony award.

B.

Indefinite Alimony

Mr. Baughman contends that the circuit court abused its discretion in awarding Ms. Sundquist indefinite alimony. He asserts that the court erred in finding that: (1) Ms. Sundquist was not self-supporting; and (2) there was an unconscionable disparity in the parties' standards of living absent alimony.

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[9] "*Crawford* credits" may apply when one co-tenant spouse pays the mortgage, taxes, or other carrying charges on jointly held property. It refers to an award of contribution from the other co-tenant spouse. *Abdullahi v. Zanini*, 241 Md. App. 372, 423–24 (2019); *Crawford v. Crawford*, 293 Md. 307 (1982). Mr. Baughman was ordered to pay Ms. Sundquist $3,488.50 in *Crawford* credits. He does not challenge this award on appeal.

Ms. Sundquist contends that the circuit court properly exercised its discretion in awarding her indefinite alimony award. She asserts that there was substantial evidence to support the findings that: (1) she cannot be self-supporting due to her chronic health conditions that limit her employment options; and (2) there would be an unconscionable disparity in post-divorce standards of living absent alimony, where her net income was 36.7% of Mr. Baughman's net income, Mr. Baughman's income had the potential to increase, and Mr. Baughman had other financial resources.

It is well settled law in Maryland that the "'statutory scheme [governing alimony] generally favors fixed-term or so-called rehabilitative alimony,' rather than indefinite alimony." *Solomon*, 383 Md. at 194 (quoting *Tracey*, 328 Md. at 391). The preference for rehabilitative alimony exists because "the purpose of alimony is not to provide a lifetime pension, but where practicable to ease the transition for the parties from the joint married state to their new status as single people living apart and independently." *Id.* at 195.

An indefinite award of alimony, however, may be appropriate when one of the two exceptions is met. *Karmand v. Karmand*, 145 Md. App. 317, 328–29 (2002). FL § 11-106(c) provides:

> (c) The court may award alimony for an indefinite period, if the court finds that:
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> > (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.

The decision to grant indefinite alimony is reviewed under an abuse of discretion standard. *Bryant v. Bryant*, 220 Md. App. 145, 168 (2014); *St. Cyr v. St. Cyr*, 228 Md. App. 163, 196–97 (2016) ("[T]here is no single test" for determining indefinite alimony, but the trial court must consider the factors under FL § 11-106(b) and "exercise its discretion based on the individual facts of the case."). The determination whether the respective standards of living will be unconscionably disparate, however, is "a finding of fact, reviewed under a clearly erroneous standard." *Solomon*, 383 Md. at 196; *Bryant*, 220 Md. App. at 168.

We will begin by addressing the first prong, whether, due to illness, Ms. Sundquist could not reasonably be expected to make substantial progress towards becoming self-supporting. FL § 11-106(c)(1). This Court has described "self-supporting" in the context of FL § 11-106(c)(1) as follows:

> A spouse is not necessarily "self-supporting" under the alimony statute merely because the spouse has enough income "to hold body and soul together." *Tracey*, 328 Md. at 392, 614 A.2d 590. In general, a party is self-supporting if the party's income exceeds the party's "reasonable" expenses, as determined by the court. *See id.* at 390, 614 A.2d 590; *Reynolds*, 216 Md. App. at 221–22, 85 A.3d 350; *Lee v. Lee*, 148 Md. App. 432, 448, 812 A.2d 1089 (2002); *Reuter [v. Reuter*], 102 Md. App. [212,] 223, 649 A.2d 24[, 29 (1994)]. The court determines the appropriate level of reasonable need based on all of the statutory alimony factors [under FL § 11-106(b)], including the standard of living established during the marriage. *See Reynolds*, 216 Md. App. at 226, 85 A.3d 350.

St. Cyr, 228 Md. App. at 186. The trial court has "equitable discretion to determine *how much* progress toward becoming self-supporting" can "*reasonably* be expected" of a dependent spouse. *Reynolds*, 216 Md. App. at 222.

Here, the circuit court found that, with an income of $2,222 per month and reasonable expenses of $4,108, Ms. Sundquist was not self-supporting. This finding was not clearly erroneous. *See St. Cyr*, 228 Md. App. at 186 ("[A] party is self-supporting if the party's income exceeds the party's 'reasonable' expenses, as determined by the court."). And this finding was not, as Mr. Baughman contends, inconsistent with the court's finding that Ms. Sundquist previously had been self-supporting while she lived in Atlanta. At that time, she was receiving alimony payments from her previous husband and had $108,000 from the sale of her prior home; that money was no longer available to her.

The question with respect to indefinite alimony is whether, due to illness or disability, the party "cannot reasonably be expected to make substantial progress towards becoming self-supporting." FL § 11-106(c)(1). The circuit court found that Ms. Sundquist had chronic medical conditions that were not expected to improve, and as a result of those conditions, she could not work full-time or become self-supporting. The record supports the court's findings in this regard.

Ms. Sundquist testified that she has "good days," in which she can go about her daily activities, but she is sore and her energy level fluctuates throughout the day. On these days, she can sustain work for "three to four hours, as long as [she] take[s] breaks liberally in between." On a "bad day," she suffers from lack of sleep from the pain, has great

difficulty getting out of bed, and cannot cook for herself. She testified that "at least half [her] days are bad days."

Additionally, a 2017 medical assessment indicated that, on any given day, she can only stand/walk for two hours during an 8-hour work day and only for 15 minutes without interruption. The report also noted that she "can not sit for sustained period[s]," "must take breaks at will," and suffers from a "lack of focus" due to fatigue. The assessment stated that these conditions would not improve and advised her to limit stress and maximize rest to avoid flare ups.

At work, Ms. Sundquist requires numerous accommodations. She has an arrangement with her boss, Karen Robbins, whereby Ms. Sundquist selects one weekday to come into the office, and she works from home the other days. All of her hours are flexible, with no set schedule. Ms. Robbins testified that she does not give Ms. Sundquist time-sensitive projects.

In addition to the unpredictability of her schedule, Ms. Sundquist stated that she must have a limited workload because the stress negatively affects her health. She stated that she currently works for Ms. Robbins approximately 10 hours per week and she would be unable to increase her hours without detriment to her health. Ms. Robbins recounted that, approximately four or five years ago, she had Ms. Sundquist accompany her in court for a three-day hearing, and Ms. Sundquist was "obviously struggling" to make it through the hearing. Afterwards, she was so exhausted that she could not come into work for two

weeks. Ms. Robbins stated that she "would not feel comfortable recommending" Ms. Sundquist to other employers unless they could provide similar accommodations.

Lianne Friedman, a vocational rehabilitation expert, testified that, after reviewing Ms. Sundquist's medical conditions, records, and work history, it was her expert opinion that Ms. Sundquist was "working as much as she can physically and mentally work, and earning what she can earn." She stated that none of Ms. Sundquist's doctors have said that she can work full-time, and in reality, no employer was going to be able to provide the accommodations she would need to work more hours than she already was working.[10]

We conclude that the circuit court did not abuse its discretion by awarding alimony indefinitely. The court carefully examined, among other things, the future financial needs and resources of both parties, as required under FL § 11-106(b), and determined that Ms. Sundquist had a deficit, whereas Mr. Baughman had a surplus. Next, the court considered the testimony regarding Ms. Sundquist's health and physical condition and stated:

> The Court will also make the finding that due to that plaintiff's chronic health problems as listed in this opinion, that she will not be able to become self-supporting. She has a limited capacity to be employed by an employer and a limited capacity to run a business that will earn any income from it. In fact, the pursuit of that business, which is admirable, may in fact just cause additional stress that could further exacerbate her symptoms. So the Court finds, due to her illness, that she is not expected to make substantial progress towards become self-supporting.

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[10] Although Mr. Baughman called a vocational rehabilitation expert, Kathy Stone, who testified that she did not believe that Ms. Sundquist was maximizing her efforts to increase her employment, evaluating this witness' credibility was within the sound discretion of the trial court. *Walker v. Grow*, 170 Md. App. 255, 275 ("Even if a witness is qualified as an expert, the fact finder need not accept the expert's opinion."), *cert. denied*, 396 Md. 13 (2006).

Based on the evidence, the court did not err in finding that Ms. Sundquist was not self-supporting and could not reasonably be expected to become self-supporting. Accordingly, the circuit court did not abuse its discretion in awarding indefinite alimony.[11]

II.

Monetary Award

The circuit court ordered that Ms. Baughman pay Ms. Sundquist $4,333.50 as a monetary award. Part of the monetary award was based on the court's finding that Mr. Baughman dissipated marital funds in two ways: (1) an unauthorized post-separation transfer of $2,000 from a BB&T bank account containing marital funds to an estate account for Mr. Baughman's deceased father, for which he was the personal representative; and (2) Mr. Baughman paid the full rent on his apartment for seven months even though his live-in girlfriend, Ms. Rivas, had the ability to pay her share of the rent. Mr. Baughman contends that the court erred in finding dissipation in this regard.

Dissipation of marital assets generally "occurs when one spouse uses marital property for his or her own benefit for purposes unrelated to the marriage, at a time when the marriage is undergoing an irreconcilable breakdown."[12] *Hiltz v. Hiltz*, 213 Md. App.

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[11] FL § 11-106(c) permits an award of indefinite alimony based on only one of the two exceptions, so we need not address the "unconscionable disparity" exception. We note, however, that if we were to consider it, we would be inclined to conclude that the court was not clearly erroneous in its finding in this regard.

[12] Marital property is defined in Md. Code (2012 Repl. Vol.) § 8-201(e)(1) of the Family Law Article as "property, however titled, acquired by 1 or both parties during the

317, 349 (2013). The Court of Appeals has noted, however, that "dissipation may occur on occasions in which (1) the marriage is *not* undergoing an irreconcilable breakdown, and/or (2) the dissipating spouse's *principal purpose* was a purpose other than the purpose 'of reducing the amount of funds that would be available for equitable distribution at the time of the divorce.'" *Omayaka v. Omayaka*, 417 Md. 643, 652 (2011) (quoting *Welsh v. Welsh*, 135 Md. App. 29, 51 (2000)). "Dissipation occurs when 'marital assets [are] taken by one spouse without agreement by the other spouse.'" *Id.* (quoting John F. Fader, II & Richard J. Gilbert, *Maryland Family Law*, § 15–10 (4th ed. 2006)). *Accord Sharp v. Sharp*, 58 Md. App. 386, 401 ("Dissipation may be found where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage[.]"), *cert denied*, 300 Md. 795 (1984).

"[T]he burden of persuasion and the initial burden of production for demonstrating an act of wrongful dissipation are on the party making the allegation." *Hiltz*, 213 Md. App. at 349. Once the moving party shows that assets have been dissipated, "the burden shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate." *Id.*

The circuit court's judgment regarding whether dissipation has occurred is a factual one, and therefore, it is "reviewed under a clearly erroneous standard." *Solomon*, 383 Md. at 202. *Accord Hiltz*, 213 Md. App. at 350 (Dissipation is a "clear question of fact."). "If

marriage." Marital property does not include property acquired before the marriage or by inheritance or gift, property that is excluded by valid agreement, or property directly traceable of any of these sources. FL § 8-201(e)(3).

there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Solomon*, 383 Md. at 202 (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)).

Mr. Baughman argues that the court "erred in finding dissipation and abused its discretion in granting Ms. Sundquist a monetary award [that] included such funds classified as dissipation." With respect to the $2,000, Ms. Sundquist presented evidence that Mr. Baughman transferred funds from a marital account to the estate account at a time when the marriage was breaking down, i.e., after the parties separated. Accordingly, Ms. Sundquist met her burden to establish a prima facie case for dissipation of these funds. *Abdullahi v. Zanini*, 241 Md. App. 372, 417 (2019) (Husband's sizable withdrawal from bank account established prima facie case for dissipation.).

Consequently, the burden shifted to Mr. Baughman to show that the expenditures were appropriate. *Id.* at 418. Mr. Baughman, however, provided no evidence to show that the transferred funds were used for marital purposes or for reasonable and necessary living expenses. In fact, counsel noted at trial that Mr. Baughman would be reimbursed in full by the estate when it was eventually settled, but the funds would then be non-marital property. Thus, this transfer, made during the breakdown of their marriage, essentially allowed Mr. Baughman to convert marital property into non-marital property. Accordingly, the court did not err in finding dissipation of $2,000.

Mr. Baughman next challenges the finding of dissipation of $5,250. This finding was based on one half of seven months of rent payments, which the court construed as

support for Mr. Baughman's "paramour," his post-separation live-in girlfriend, Ms. Rivas. In *Omayaka*, the Court of Appeals stated in a footnote that other state appellate courts have held that "improper expenditures on a paramour . . . constitutes dissipation even though the guilty spouse had no intention to reduce the amount of funds that would be available for equitable distribution at the time of the divorce." 417 Md. at 652 n.3. *See*, *e.g.*, *Brosick v. Brosick*, 974 S.W.2d 498, 500–03 (Ky. Ct. App. 1998) (Husband dissipated marital funds on mistress by, among other things, transferring money into a joint checking account for her.); *Larsen-Ball v. Ball*, 301 S.W.3d 228, 236 (Tenn. 2010) (Expenditures on items such as rent money paid to paramours "clearly constitutes dissipation."); *In Re Marriage of Awan*, 388 Ill. App. 3d 204, 215–17 (2009) (Trial court did not err in determining that husband dissipated marital assets by financially supporting his girlfriend.).

Here, the circuit court found that Mr. Baughman's payments for a portion of the rent for his girlfriend constituted dissipation of marital assets. We cannot conclude that the court's finding in this regard was clearly erroneous.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.