Circuit Court for Anne Arundel County
Case No. C-02-FM-17-002805

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2305

September Term, 2018

TERESA GIBSON,

v.

ELMER MATTHEW GIBSON,

Friedman,
Wells,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: June 26, 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 August 1, 2018, the Circuit Court of Anne Arundel County, following a four-day hearing, granted appellant, Teresa Gibson (Teresa) and appellee, Elmer Matthew Gibson (Matthew)[1] a Judgment of Absolute Divorce. In the judgment, the court ordered Matthew to pay Teresa $948.00 per month in child support, $800.00 per month in alimony (including a retroactive sum), as well as $25,000.00 from Matthew's share of proceeds from the sale of their home, an additional $6,000.00 monetary award upon the sale of their home, and $5,000.00 towards Teresa's attorney's fees.

Soon thereafter, Teresa, filed a Motion for Reconsideration which the court granted in part and denied in part. On September 17, 2018, Teresa timely filed an appeal and raises the following questions:

> I. Whether the court was clearly erroneous in denying Ms. Gibson one-half reimbursement of all mortgage, taxes, and other assessments (so-called "Crawford credits") that she alone had paid for jointly-owned property (1) after the parties separated and Mr. Gibson had left the family home and (2) was ordered to pay after the date of divorce.
>
> II. Whether the court was clearly erroneous in denying Ms. Gibson a monetary award that included her marital share of Mr. Gibson's 401(k) profit sharing funds, in light of the facts that (1) defendant intentionally dissipated all of his retirement funds after he had received written notice that plaintiff was asserting her marital claims to his retirement funds and (2) defendant testified that, by his calculation, plaintiff deserved one-third of his retirement funds.
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> III. Whether the court abused its discretion in awarding plaintiff de minimus alimony, in light of all of the relevant statutory alimony factors.
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> IV. Whether the court abused its discretion in granting defendant relief that he never requested in any pleading filed with the court, thus depriving plaintiff of all notice of any such claim, and for which defendant was not eligible and presented no evidence at trial in support thereof.

[1] Because the parties share the same surname, for clarity and ease of reading, we shall refer to the parties by their first name. We intend no disrespect in doing so.

Because at oral argument Teresa conceded the IRS dependency claim as raised in the last question, we consider that issue resolved and will not consider it. As to the remaining issues, we hold that the circuit court's findings were not clearly erroneous. We affirm.

BACKGROUND

On September 7, 1996, Teresa Gibson (née Smith) and Matthew Gibson married. From this marriage, they had two children: a son and a daughter. The daughter was a minor at the time the parties divorced.

The year before their marriage, the parties purchased a home together in Annapolis, Maryland, where they resided and raised their family. In order to purchase the home, Teresa used $12,000.00 from her individual retirement account for a down payment on the property. Following the purchase of the marital home, Matthew paid the mortgage and taxes for approximately 20 years until the parties separated in October 2016. Since that time, Matthew had been renting and living in a townhouse, while Teresa resided in the marital home, paying the mortgage, taxes, and other housing costs totaling $30,478.72. The parties expected that they would pay off the mortgage by November 2019.

Although Teresa was not employed for most of the marriage. In June 2017, she began working as a full-time secretary at a middle school at a salary of $43,356.00 per year.

Since 2010, Matthew has been self-employed as an independent contractor. Matthew's average annual income after taxes was $83,019.00, based on Matthew's annual tax returns from 2012 to 2017.

Prior to his employment as an independent contractor, Matthew acquired two 401(k) retirements funds through his employment. One was with Hargrove, an event planning company that Matthew began working for before the marriage. Although he stopped working for Hargrove in 2000, by September 2016, his retirement account with the company was valued at $104,199.00.

The second account was with River Crest, where Matthew worked from 2006 to 2010. By June 2017 the account was valued at $21,665.00.

Of importance here, as regards Matthew's two retirement accounts, on August 14, 2017 and August 25, 2017, Teresa's counsel sent two letters to Matthew's counsel, asserting her marital rights to Matthew's retirement funds. She asked that those funds be preserved pending the parties' absolute divorce.

At the divorce hearing, Matthew admitted that he liquidated "a majority of it, that particular one [River Crest account,] went to pay taxes." Between June 2017 and December 2017, Matthew admitted he withdrew all of the money from his Hargrove retirement account. He testified that all of these funds were used for business expenses.

On July 13, 2017, Teresa filed a Complaint for Limited Divorce, and asked for *pendente lite* alimony, child support and other relief, but a magistrate denied a hearing on the matter. Despite this, Matthew voluntarily continued making monthly $1,000.00 support payments to his wife and children. On November 1, 2017, the parties signed a

Consent Order granting joint legal custody of the daughter, but primary physical custody to Teresa. The parties also agreed that Teresa would have exclusive use and possession of the marital home until their daughter graduates from high school in May of 2022, after which, the parties agreed to sell the marital home and split the proceeds evenly.

On January 15, 2018, Teresa filed an Amended Complaint for Absolute Divorce seeking alimony, child support, attorney's fees, reimbursement in the form of "Crawford Credits" on payments she made on the marital property after the parties' separation, and a monetary award because of Matthew's alleged dissipation of marital assets.

Following a four-day trial, on August 1, 2018, the court ordered Matthew to pay Teresa $948.00 per month in child support, $500.00 per month in alimony as well as an additional $300.00 per month in retroactive alimony, $25,000.00 from his share of proceeds upon the sale of their home, a $6,000.00 monetary award upon the sale of their home, and $5,000.00 in attorney's fees. However, the court determined that this was "not an appropriate case for Crawford Credits" because "[Teresa] is living there and [Matthew] is paying support to her." Additionally, the court did not find that Matthew dissipated his marital assets when he liquidated his retirement account, because he "showed that the funds were spent to keep the business going. That he paid support to plaintiff out of that business . . . . [The retirement funds] were used for legitimate various family purposes." Subsequently, Teresa filed a timely appeal.

DISCUSSION

I. The Circuit Court Did Not Abuse Its Discretion When It Denied Teresa Crawford Credits

Teresa argues that the circuit court erred in denying her request for Crawford Credits. She reasons that she is entitled to one-half contribution from Matthew for the payments she made for the home mortgage, taxes, and other house assessments both (1) after the parties separated in October 2016, and (2) from the date of their divorce, August 3, 2018, until the home is sold. Teresa contends that she is entitled to Crawford Credits because Matthew "left of his own accord," and Teresa "took no action to 'oust' him" from the marital home. Additionally, she contends that the court failed to provide any justification for declining to make the award, alleging, "[t]he Court ignored the obvious hardship that it was imposing on [Teresa] for no good reason, and yet allowed [Matthew] to reap the benefits of ownership and claim 'one-half of the proceeds' when the property is eventually sold."

Conversely, Matthew posits that the circuit court properly denied Teresa's request for Crawford Credits. He argues that Teresa used marital property – monetary support from Matthew after the parties separated, funds from her marital bank account, and her personal income – to finance the monthly mortgage payments. Matthew also refutes Teresa's contention that the circuit court did not justify why it declined to award her Crawford Credits. He cites the court finding that "it is not an appropriate case for Crawford Credits. [Teresa] is living there and [Matthew] is paying support to her. . . . So he doesn't on top of that also pay for a percent of the mortgage." We agree with Matthew and explain.

"[A]ppellate courts will accord great deference to the findings and judgments of trial judges . . . when conducting divorce proceedings." *Malin v. Mininberg*, 153 Md. App. 358,

414-15 (2003) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)). "As long as the trial court's findings of fact are not clearly erroneous, and the ultimate decision is not arbitrary, we will affirm it, even if we might have reached a different result." *Malin*, 153 Md. App. at 415.

The concept of "Crawford Credits" arose from the holding in *Crawford v. Crawford*, 293 Md. 307 (1982). There, the Court of Appeals considered the "presumption of gift" doctrine in the context of separated spouses. The Court drew from the general law of contribution between co-tenants, which states that "one co-tenant who pays the mortgage, taxes, and other carrying charges of jointly owned property is entitled to contribution from the other." *Id.* at 309 (internal citations omitted). As for spouses, "a presumption of gift usually arises as to any payment made to purchase the property [,] to improve the property [,] or to preserve the property." *Id*. at 311 (internal citations omitted). However, the Court of Appeals has held that this presumption "arises *only when* the parties are living together as husband and wife." *Id.* (emphasis added). When, as here, the parties are legally married but live apart, that presumption does not apply. *Id.* at 311-12. Thus, where the husband and wife are separated, the spouse who remains on the property jointly held by them as co-tenants and "pays encumbrances, taxes, and insurance" is entitled to contribution from the other spouse. *See id.* at 314.

An award of Crawford Credits is wholly within the court's discretion. *Woodson v. Saldana*, 165 Md. App. 480, 493 (2005). In *Caccamise v. Caccamise*, 130 Md. App. 505, 525, *cert. denied*, 359 Md. 29 (2000), we held that four exceptions preclude contribution in divorce proceedings: "(1) ouster; (2) agreements to the contrary; (3) payment from

marital property; and (4) an equitable result." There, we affirmed the circuit court's decision that Mr. Caccamise, appellant, was entitled to full contribution for the couple's condominium, but 40% for the marital home, because the trial court "had sufficient evidence before it to make the most efficient determination as to whether the appellant was deserving of contribution, and how much." *Id.* at 524-25.

Here, the circuit court plainly stated its reasons for denying Teresa's request for contribution in the form of Crawford Credits. In her oral opinion, the trial judge explained:

> So in my opinion, this is not an appropriate case for Crawford Credits. The plaintiff is actually living in the family home and has exclusive use and occupancy of it. Her mortgage payment is lower than what the defendant is paying to rent a place to live and operate his business. Also defendant has provided support to plaintiff throughout the separation and in fact, I have ordered a level of retroactive support which will also defray some of that expense.

As we see it, this passage demonstrates that the court found it equitable to deny Crawford Credits due to Matthew's personal expenses and existing contribution towards Teresa's support. As we held in *Caccamise, supra*, we also hold here that the trial court had sufficient evidence before it to make this determination. *First*, Matthew's bank statements showed that he liquidated a marital retirement fund to finance his business, i.e. the major source of income for the couple and their family. It was through this business that Matthew was able to support not only himself, but Teresa and their children. *Second*, Matthew testified that, after leaving the marital home, he slept at his workplace while giving Teresa $3,000 over the span of four months. *Third*, during the separation, he continued to make insurance payments on Teresa's vehicle and paid certain expenses for the children. *Finally*, the court found it important that Teresa's monthly mortgage payment ($1,587.66) was less

than what Matthew paid in rent. Given this evidence, where Matthew made expenditures that offset Teresa's expenditures, the court ordered Matthew to provide spousal and child support, as well as provided for Teresa and their daughter to remain in the marital home, the court had a clear and fair basis for declining to award Teresa Crawford Credits. The court did not abuse its discretion.

II. The Circuit Court Did Not Err in Finding That Matthew Did Not Dissipate Marital Assets When He Liquidated Retirement Funds

Teresa next contends that the circuit court incorrectly found that Matthew did not dissipate marital assets from his retirement account. She reasons that the court, despite Matthew's own testimony that Teresa is entitled to one-third of the retirement fund, "completely disregarded" this evidence, "the sequence of events, and the reasonable inferences to be drawn therefrom" by not allocating Teresa half of the proceeds from the Hargrove account. We disagree.

"Dissipation may be found where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown." *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 308 (1994) (internal citations omitted). The party making the allegation of dissipation has the initial burden of production as well as the burden of persuasion. *Jeffcoat*, 102 Md. App. at 311. Once the claiming party "establishes a prima facie case that monies have been dissipated, i.e. expended for the principal purpose of reducing the funds available for equitable distribution, the burden shifts to the party who spent the money to produce

evidence sufficient to show that the expenditures were appropriate." *Omayaka v. Omayaka*, 417 Md. 643, 656-57 (2011) (quoting *Jeffcoat*, 102 Md. App. at 311).

Teresa relies on our reasoning in *Jeffcoat v. Jeffcoat*, where we ruled that an otherwise fiscally responsible husband spending $300,000.00 in marital funds in one year following the parties' separation "should be sufficient to establish a prima facie case of dissipation." 102 Md. App. at 311. However, that case was remanded with instructions for the trial court "to determine whether joint funds have been spent for other than family purposes with the intention of reducing the amount of money available to the court for equitable distribution." *Id.* at 312.

In *Omayaka v. Omayaka*, 417 Md. 643 (2011), where the wife testified that she spent marital funds for family purposes, the Court of Appeals held the trial court was not clearly erroneous in finding no dissipation of marital assets. Here, as in *Omayaka*, the judge found that Matthew produced enough evidence to demonstrate that he did not dissipate marital funds.

> The Court does not find that these funds were dissipated. Defendant produced the records which showed that the funds were spent to keep the business going. That he paid support to plaintiff out of that business. He paid income taxes, bills, and insurance, et cetera. No funds were secreted in separate accounts used to pay off the loans for instance from his parents. He didn't pay a huge retainer to his attorney. He simply did not dissipate these funds. They were used for legitimate various family purposes.

It is worth noting that the judge also did not find that Teresa dissipated marital funds by liquidating $20,000.00 from her separate account also for family purposes.

As for Teresa's argument that she is entitled to a monetary award based on Matthew's testimony that she was likely entitled to one-third of the retirement funds, the

court correctly explained that it has the discretion to decide whether or not to grant a monetary award. Maryland Code, Family Law Article ("F.L.") §§ 8-205(a)(1). Since the court did not find these assets had been dissipated, it did not grant such a monetary award.

As we noted in *Bricker v. Warch*, 152 Md. App. 119, 137 (2002) and the Court of Appeals reiterated in *Omayaka*, "it is . . . almost impossible for a judge to be clearly erroneous when he [or she] is simply NOT PERSUADED of something." 417 Md. at 658-59 (emphasis in original). Here, the trial judge was not persuaded that Matthew dissipated his marital assets. Based our review, the court's factual findings were not clearly erroneous.

III. The Circuit Court Did Not Abuse Its Discretion in Reaching Its Alimony Award

Lastly, Teresa asserts that the circuit court failed to consider the factors set forth in F.L. § 11-106(b) – especially the disparity in incomes and ability to earn income going forward – when it denied her request for *pendente lite* alimony. She contends that the court should have used the standard for voluntary impoverishment under F.L. § 12-204(b) in computing Matthew's income. Based on her assessment of Matthew's earnings and the ending balances in his business account, Teresa concludes that Matthew "had more than enough money to pay [her] the $3,000 per month alimony" while still having "more than $8,000 per month to meet his own needs."

When determining alimony, "the court shall consider all the factors necessary for a fair and equitable award" as provided within F.L. § 11-106(b).[2] Still, trial courts have

[2] **Factors considered**

"broad discretion in awarding alimony." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 246, *cert. denied*, 361 Md. 232 (2000). "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." *Solomon v. Solomon*, 383 Md. 176, 196 (2004) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)).

The trial judge stated in her oral decision, "I considered all of the statutory factors" in determining alimony. We agree. The judge found that Teresa was "self-supporting" given that she was earning $45,356.00 in annual income at the time (addressing FL § 11-106(b)(1)). Moreover, the judge determined that Teresa's mortgage payments on the

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(b) In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:

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

(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;

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

(4) the duration of the marriage;

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

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

(7) the age of each party;

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

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

(10) any agreement between the parties;

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

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

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

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

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

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

family home – which she had exclusive possession and use of – would be paid off by November 2019, in part due to Matthew's prior and continued financial support. The judge acknowledged Teresa's testimony that "obtaining additional education would allow her to increase her rate of pay." (FL § 11-106(b)(2)). The judge also considered the couple's standard of living during the marriage, acknowledging that Matthew bought "toys [guns, dirt bikes, boats, et cetera] fairly regularly when the business was going well." However, the judge found "[n]one of those individually was a huge expenditure" (FL § 11-106(b)(3)). The judge also found that: the marriage lasted "approximately 22 years," the last two of which the parties lived separately (FL § 11-106(b)(4)); the marriage was a "traditional arrangement[:] [m]om being a stay at home mom and dad working 10 to 12 hours a day in the construction industry" which he used to "pay the bills each month" (FL § 11-106(b)(5)); "[t]his marriage in my opinion disintegrated largely over disagreements and arguments about finances" (FL § 11-106(b)(6)); Teresa, 53, was "in good health," while her husband, 51, "testified that he has diabetes and arthritis but that he is able to work." (FL § 11-106(b)(7-8)).

Additionally, the court found that Matthew was unable to pay alimony at the rate his wife sought because "[he] does not have a guaranteed income [and] [h]e still owes certain of his suppliers as well as his parents" (FL § 11-106(b)(9)). The court also considered the fact that "[d]ad has agreed to use and possession of the family home until [their daughter] graduates from high school which is a period in excess of what the Court could order," at which the time the parties have agreed to sell the marital home (FL § 11-106(b)(10)). As the court noted, the parties further stipulated that Matthew would pay

Teresa $25,000.00 from his share of his proceeds to account for personal property disposition. Neither party is the resident of a care facility, thus the court did not consider this factor (FL § 11-106(b)(12)).

Perhaps most importantly, the court closely examined the "financial needs and resources" of both parties (FL § 11-106(b)(11)). For instance, after providing Teresa's earnings, the court thoroughly explained how it determined Matthew's income based on the fluctuating nature of his work. In addition, the court valued the marital home at $388,000.00, with $21,900.00 left on the mortgage. Although Teresa began paying the mortgage after her husband agreed to move out, the court's alimony determination was heavily influenced by the following findings during the couple's separation: (1) Teresa had exclusive use and possession of the home and would so until May of 2022; (2) Matthew was paying more in rent than the mortgage payments; (3) He was also still providing support to Teresa; and (4) the mortgage would be paid off by November 2019, at which point "she will in essence have no mortgage payment." The court rejected Teresa's argument that Matthew's end of the month account balances, without knowledge of outstanding checks and bills, indicates that he would be able to pay $3,000.00 a month in alimony. As the court noted, Matthew "still owes" his parents $50,000.00 for a business-related loan. Furthermore, as Matthew's counsel points out, Teresa's argument ignores the fact that Matthew "was depositing funds from liquidated assets into the business account to keep the business afloat, not just income."

As for Teresa's contention that we should use the standard for voluntary impoverishment under F.L. § 12-204(b), we are not permitted to make such a finding when

the trial court did not do so. Further, we review for clear error, a far more deferential standard than de novo review. The trial judge did not find that Matthew voluntarily impoverished himself in part "because the income fluctuated from year to year." According to Matthew's testimony, his business suffered during the separation due to unfavorable reviews and bad publicity, notably from Teresa. He also testified that there were times throughout the marriage when the parties had to cash out retirement accounts or borrow money from Matthew's parents to pay the bills. This evidence supports the trial judge's decision in not finding voluntary impoverishment.

Following her consideration of the evidence, the trial judge ruled:

> [T]he Court does not find that the defendant has the ability to pay alimony at the rate that the plaintiff is seeking. The Court is going to grant the request for rehabilitative alimony through November of 2019 at which time the mortgage on the family home where [Teresa] is living will be paid in full. So she will in essence have no mortgage payment. The Court is awarding alimony of $500 retroactive from June 1, 2017 through November 30, 2019.

In addition to the $500.00 per month alimony payment, the court also ordered Matthew pay the retroactive alimony arrears of $7,000.00, at a rate of $300.00 per month to "defray some of that [mortgage] expense."

Based on this record, we conclude that as the court gave ample consideration to the financial and equitable factors of the parties before awarding alimony, the court did not abuse its discretion. We, therefore, affirm.

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDLE COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.