

Circuit Court for Prince George's County
Case No. CAD15-24524

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2426

September Term, 2016

MOHAMMAD BHUIYAN

v.

FARHANNA BHUIYAN

Meredith,
Graeff,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 17, 2018

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.

The Circuit Court for Prince George’s County granted an absolute divorce to Mohammad Bhuiyan, the appellant, and Farhanna Bhuiyan, the appellee.¹ The court also awarded Farhanna, *inter alia*, use and possession of the parties’ home, indefinite alimony, a monetary award, and child support. As rephrased by us, Mohammad presents the following questions for our review:

1. Did the trial court err by awarding use and possession of a property purchased prior to the marriage?
2. Did the trial court consider the mandatory statutory factors before awarding indefinite alimony and was the court’s ruling on the issue of alimony clearly erroneous?
3. Did the trial court consider the mandatory statutory factors before awarding a marital award and was the court’s ruling on the [marital award] clearly erroneous?

For the reasons set forth below, we shall affirm the judgment in part; vacate the judgment in part, and remand for further proceedings not inconsistent with this opinion.

BACKGROUND

Mohammad and Farhanna were married on November 28, 2005 in Bangladesh. At that time, Mohammad resided at 8005 Greenfield Drive, Lanham in Prince George’s County (“Greenfield Property”), a property owned by him. Farhanna resided in Bangladesh. Following their marriage, Farhanna immigrated to the United States and moved into the Greenfield Property with Mohammad. During their marriage, the parties had three children together: E., born in 2010; A., born in 2011; and W., born in 2014. The

¹ We shall use the parties’ first names for ease of discussion.

parties and their children resided together at the Greenfield Property until the parties' separation on April 20, 2015. The parties amicably resolved the issue of custody, agreeing that Farhanna would have primary custody of the children. A Consent Custody Order was entered on October 27, 2016.

At the time of trial, Mohammad was 46 years old and Farhanna was 34 years old. The Bhuiyans were married for 11 years. During their marriage, Mohammad was employed by the Maryland-National Capital Park and Planning Commission, earning an annual salary of \$80,851.26. He also received \$9,165.24 per year in rental payments. Farhanna had a history of limited employment. At the time of trial, she had last worked in 2013, for two months, for a local 7-11 store, at an hourly rate of approximately \$7.15 per hour. At the time of trial, Farhanna was unemployed and was receiving food stamps and public assistance.

The parties owned multiple properties. They agreed that the property located at 8701 Greenbelt Road, Greenbelt ("Greenbelt Property") was marital property. The parties disagreed as to whether the following properties were marital or non-marital: the Greenfield Property; 7921 Mandan Road, #11, Greenbelt, ("Mandan Property"); and 7718 Hanover Parkway, #303, Greenbelt, ("Hanover Property"). Mohammad argued that the Greenfield Property was non-marital because it was purchased by him in 2004, prior to the marriage. Mohammad borrowed \$40,000 from his sister for the down payment on the Greenfield Property and obtained a mortgage for the remainder of the purchase price. He also obtained two Home Equity Lines of Credit ("HELOC") on that property during the marriage. Mohammad contended that the Mandan and Hanover Properties were non-

marital because he purchased both properties in 2011, with funds that were directly traceable to the non-marital Greenfield Property.

After a three-day trial, the trial court issued an Opinion and Order granting the judgment of absolute divorce. The court found that it was in the best interest of the three minor children to remain living in the Greenfield Property and awarded Farhanna exclusive use and possession of that property for a period of three (3) years, allocating financial responsibility for the mortgage and utility bills during that period to Mohammed. The court also entered a monetary award in favor of Farhanna in the amount of \$129,039.50; awarded her indefinite alimony in the monthly amount of \$600.00 during the use and possession period, and upon expiration of that period, in the monthly amount of \$2,400.00; and awarded her child support in the monthly amount of \$835.00.

The court ordered that the Greenbelt property, valued at a net equity of \$50,000, be sold and the proceeds divided equally. The court found that the Mandan Property, valued at \$125,000.00, and the Hanover property, valued at \$124,000.00, were marital properties because “the funds used to purchase those properties were marital and any accessions in value occurred during the marriage.” The Greenfield Property was valued at \$180,000 with an outstanding debt of \$236,000, resulting in a negative net worth of \$-46,287.00. Although the court did not expressly state whether the Greenfield property was marital or non-marital, it found that from the date of the marriage to the present, marital funds were used to pay the debt and mortgages, and that there was a negative equity in the home.

DISCUSSION

I.

Use and Possession

Mohammad contends that the circuit court erred in granting Farhanna use and possession of the Greenfield Property. He argues that because he purchased the Greenfield Property prior to the marriage, that property is non-marital, and, therefore, excluded from the definition of “family home” pursuant to Md. Code (1984, 2012 Repl. Vol., 2017 Supp.), section 8-208(a)(1)(ii) of the Family Law Article (“F.L.”). Farhanna does not dispute that Mohammad purchased the Greenfield Property prior to their marriage, but she contends that, because marital funds were used to pay the debt and mortgage on the Greenfield Property, it was converted to marital property, which is included within the definition of “family home.”

To resolve this issue, we must first interpret the statute, a question of law. We review the trial court’s determination of questions of law under a “de novo” standard of review. *Shenk v. Shenk*, 159 Md. App. 548, 554 (2004). Pursuant to F.L. § 8-208(a)(1)(i), a court granting an absolute divorce may award use and possession of the family home to one of the parties. “Family home” is defined under F.L. § 8-201(c)(1) as property that “(i) was used as the principal residence of the parties when they lived together; (ii) is owned or leased by 1 or both of the parties at the time of the proceeding; and (iii) is being used or will be used as a principal residence by 1 or both of the parties and a child.” The statute further provides, however, that “[f]amily home” does not include, “property: (i) *acquired* before the marriage[.]” (emphasis added). F.L. § 8-201(c)(2)(i).

The issue of whether property, which was titled in the name of one spouse prior to marriage, but not paid in its entirety, is “acquired” within the meaning of F.L. § 8-201(c)(2)(i) was squarely addressed in *Hughes v. Hughes*, 80 Md. App. 216 (1989), a case not cited by the parties. In *Hughes*, the husband purchased an unimproved parcel of land prior to the marriage with a cash down payment, and financed the remainder of the purchase price with a mortgage. *Id.* at 221. He made monthly payments throughout the marriage. *Id.* During the marriage, a home was constructed on the land which was financed, in part, by a loan from husband’s mother. *Id.* Payments on that loan were also made throughout the marriage, although husband’s mother forgave a portion of the principal. *Id.*

Both the land and home were titled in husband’s name alone, and the parties and their children occupied the home until the parties separated. *Id.* In the divorce decree, the trial court awarded to the wife and children use and possession of the home. *Id.* at 219. Husband argued on appeal that, pursuant to F.L. § 8-201(c)(2)(i), the property was excluded from the definition of “family home” because he had “acquired” the property prior to the marriage. *Id.* at 222.

In reviewing the legislative intent of F.L. §§ 8-201 to 8-210, this Court determined that the legislature’s primary concern in enacting the statutes was the welfare of the parties and the children, which are not always compatible interests. *Id.* at 225. Using the legislative intent as a guide, this Court considered three possible interpretations of “acquired” as the term is used in F.L. § 8-201(c). *Id.* at 226. The first two theories, as suggested by the parties, were the “inception of title theory” and the “on-going process of making payment for the property” theory. *Id.* We rejected the first two suggested

interpretations as “highly technical,” favoring instead the more common or dictionary definition of “acquired,” meaning “attained by the individual by or as if by his [or her] own efforts.” *Id.* at 226. Applied in the context of use and possession, we determined:

a person “acquires” property by his or her “own efforts” when 100 per cent of the funds used to purchase that property are provided by that person alone from premarital funds; a home that has been purchased in part since the date of the marriage, then, has not been “acquired before the marriage” for the exclusionary purposes of § 8-201(c)(2)(i).

Id.

Explaining further how the common usage of “acquired” effectuated the legislative intent of §§ 8-201 *et seq.* we stated:

The common definition of “acquired” is particularly suitable in the context of § 8-201(c) because it protects the interests of the children as well as the interests of both parents. Unlike either of the other definitions considered, it protects the interests of the children and the custodial parent by allowing for their use and possession of a home which came into being, at least in part, through the labors of the custodial parent with the common understanding that such efforts would benefit the parties and their children. On the other hand, this definition of acquired, when considered within the context of §§ 8-201 thru 8-210, also protects the interests of the non-custodial parent, even under circumstances where 99 percent of the funds used to purchase the family home were provided by the non-custodial parent before the marriage. A non-custodial parent who has provided such premarital funds is protected by the statute itself which provides that: a use and possession order is limited in duration to three years, § 8-210(a); a use and possession order terminates upon the remarriage of the custodial parent, § 8-210(b); no use and possession order will lie in the case where the non-custodial parent acquired 100 per cent of the home before the marriage, § 8-201(c)(2)(i); and, finally, under § 8-208(b) & (c), in awarding use and possession of the family home the courts must [consider each of the factors set forth therein].

Id. at 226-27. In *Hughes*, we concluded that because over one-quarter of the payments on the home were paid from marital funds, in addition to \$4,000.00 from wife’s funds, and

improvements she had contributed to the property, husband had not “acquired” the property within the definition of F.L. § 8-201(c). *Id.* at 228.

With respect to the Greenfield Property, the trial court found the following. The Greenfield Property was purchased in 2004 in Mohammad’s name and used as the marital home. Mohammad borrowed \$40,000 from his sister for the down payment on the Property and obtained a mortgage for the remainder of the purchase price. “From the date of the marriage to the present, marital funds were used to pay the debt and the mortgages.” Applying the *Hughes* definition of “acquired” to these facts, we conclude that the Greenfield Property is not excluded from the definition of “family home,” and the trial court did not err in awarding Farhanna use and possession of that property.

II.

Indefinite Alimony

Mohammad next contends that the trial court erred in awarding Farhanna indefinite alimony. He argues that the trial court failed to address each of the factors outlined in F.L. § 11-106(b), and it provided “no hints” as to how it arrived at the interim monthly alimony award of \$600 or how it calculated the future increase in alimony to \$2,400 per month following the expiration of the use and possession period. Farhanna asserts that the trial court adequately addressed the mandatory factors outlined in F.L. § 11-106(b), and because the parties’ standards of living would remain unconscionably disparate post-divorce, the trial court did not err in awarding her indefinite alimony.

Farhanna requested indefinite alimony in the monthly amount of \$600.00 during the use and possession period, with an increase at the expiration of that period to \$2,400.00

per month. Her alimony request, however, did not include any calculation as to how she arrived at those amounts. Farhanna argued that she did not have the ability to be wholly self-supporting, and that due to her “significant childcare responsibilities, poor English, and very limited skills outside the home,” that she “is not going to be enjoying the same career success as [Mohammad].” She did not address whether she would find suitable employment and become wholly or partly self-supporting with education or training. Farhanna also argued that Mohammad had the ability and financial resources to meet her requested monthly alimony payments. She further claimed that Mohammad was not forthcoming about his financial circumstances, and that there was a discrepancy between Mohammad’s reported income and his testimony at trial regarding his income and assets.

Mohammad contended that Farhanna was not entitled to alimony based on his calculation of her current expenses, and the combined income that she received from her family, child support, public assistance, and the potential salary that she could receive from part-time employment. Mohammad also claimed that Farhanna had misstated her living expenses; although her financial statement identified her monthly expenses as \$6,756.86, he claimed that Farhanna’s testimony at trial established that her monthly expenses actually amounted to \$1,695.00. Mohammad also argued that Farhanna had the ability to become employed at a minimum hourly rate of \$7.50 for 20 hours per week. According to Mohammad, Farhanna “presented no credible evidence why she was not employed or had not sought employment,” and “[t]he evidence suggests that [she] made no efforts to find employment.” Mohammad argued that his monthly expenses exceeded his monthly income, resulting in a monthly deficit of \$1,119.00.

In reviewing an award of alimony, we will not disturb the judgment unless we conclude that “the trial court abused its discretion or rendered a judgment that is clearly wrong.” *Brewer v. Brewer*, 156 Md. App. 77, 98 (2004) (citation and internal quotation marks omitted).

Pursuant to F.L. § 11-106(b), a trial court must consider the following factors prior to making an award of alimony:

- (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.

While no formal checklist is required to be used, the trial court must demonstrate that it has considered all necessary factors. *Simonds v. Simonds*, 165 Md. App. 591, 604-05 (2005) (citing *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999)). When it is unclear whether the trial court has considered the factors, we may examine the record as a whole to determine whether the court’s findings were based on the statutory factors. *Brewer*, 156 Md. App. at 98-99 (citations omitted).

With respect to the alimony award, the court explained:

The Court has considered the factors set out in § 11-606(b) of the Maryland Family Law Article and finds that an award of alimony is fair and equitable under the circumstances. The Court adopts its findings *supra*. Based on the testimony and evidence presented, the Court does not believe that [Farhanna] currently has the ability to be wholly or partly self-supporting. [Farhanna’s] difficulty attending classes to learn English due to having to care for three minor children is unlikely to change any time over the next several years. It is unlikely that [Farhanna] will be able to gain sufficient education or training to enable her to find suitable employment over the next several years. There was testimony that she had attended college prior to coming to Maryland but the evidence did not show that the education would help her with employment. The Court considered the standard of living of the parties prior to separation. Although there was no affirmative agreement of the parties, the parties’ lifestyle was consistent with [Farhanna] coming to Maryland to work inside the household.

The Court has considered [Mohammad’s] financial resources and his ability to pay alimony. Regarding the duration of the alimony award, the Court has considered § 11-106(c) of the Maryland Family Law Code, and

finds that an indefinite award of alimony is appropriate. The Court believes that any reasonably expected progress [Farhanna] makes towards becoming self-supporting will not stop the parties' respective standards of living from being unconscionably disparate.

Contrary to appellant's first assertion, the court addressed the relevant factors set forth in F.L. § 11-106(b). The court considered the length of the marriage (F.L. § 11-606(b)(4)), the ages of the parties (F.L. § 11-606(b)(7)), and found that "the parties became estranged over time which resulted in the separation." (F.L. § 11-606(b)(6)). The court addressed the parties' monetary contributions to the marriage, and recognized Farhanna's nonmonetary contributions to the marriage as the primary caretaker of the children and the home. (F.L. § 11-606(b)(5)). Although there was evidence that Farhanna suffered from diabetes, which she manages with medication, the parties had no other health concerns (F.L. § 11-606(b)(8)). With respect to the parties' standard of living, (F.L. § 11-606(b)(3)), the court stated that it found that "the parties' lifestyle was consistent with [Farhanna] coming to Maryland to work inside the household."

After consideration of the factors set forth in subsection (b), a court may only make an award of indefinite alimony if it finds that one of the two following tests are met:

- (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.

F.L. §11-106(c).

Generally, Maryland favors the provision of rehabilitative alimony for a definite period of time in order to assist the dependent spouse in becoming self-supporting. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184-85 (2016) (citations omitted). “An alimony award should reflect the desirability of each spouse becoming self-supporting and the undesirability of alimony as a lifetime pension.” *Roginsky*, 129 Md. App. at 142. Indefinite alimony should be reserved for exceptional circumstances, *i.e.* “if the standard of living of one spouse will be so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court.” *Whittington v. Whittington*, 172 Md. App. 317, 339 (2007) (internal quotations and citation omitted).

In determining whether there will be a “post-divorce unconscionable disparity” in the parties’ standards of living, a trial court typically begins by examining their respective earning capacities. *Id.* at 338. The court must compare the parties’ relative standards of living at the point in time “when the requesting spouse will have made maximum financial progress.” *Id.* However, “[i]n cases where it is either impractical for the dependent spouse to become self-supporting, or in cases where the dependent spouse will be self-supporting but still a gross inequity will exist, a court may award alimony for an indefinite period.” *Roginsky*, 129 Md. App. at 141. “The spouse seeking indefinite alimony bears the burden of proof as to the existence of the prerequisites to entitlement to such an award.” *Francz v. Francz*, 157 Md. App. 676, 692 (2004).

In this case, the court’s findings are insufficient to permit meaningful appellate review. “To make an award of indefinite alimony under section 11-106(c)(2), the court must make a ‘projection [of the dependent spouse’s future income] to the point where

maximum progress can reasonably be expected.” *Allison v. Allison*, 160 Md. App. 331, 341 (2004)(remanding an award of indefinite alimony where it was unclear from the trial court’s opinion whether the dependent spouse could be gainfully employed, and the trial court failed to project, what, if any, income that spouse would earn); (quoting *Roginsky*, 129 Md. App. at 146). After projecting the dependent spouse’s future income, “[a] trial court must evaluate and compare the parties’ respective post-divorce standards of living as a separate step in making its judgment on a claim for indefinite alimony.” *St. Cyr*, 228 Md. App. at 189 (citations and internal quotation marks omitted). The court must make an express finding, supported by the record, that a party is either not self-supporting (F.L. § 11-106(c)(1)) or that there would be an unconscionable disparity (F.L. § 11-106(c)(2)). *Roginsky*, 129 Md. App. at 146.

Here, it is unclear whether the trial court’s award of indefinite alimony was made pursuant to F.L. § 11-106(c)(1) or (2). The trial court indicated that it did not believe that Farhanna had the ability to be wholly or partly self-supporting, the standard set forth in F.L. § 11-106(c)(1). It is unclear, however, whether the court believed that Farhanna could become employed in the future, and whether there would be an unconscionable disparity at that time pursuant to F.L. § 11-106(c)(2). The court’s statements that it was unlikely that Farhanna would gain sufficient education or training to enable her to find suitable employment “over the next several years,” and that “any reasonably expected progress [she] makes toward becoming self-sufficient will not stop the parties’ respective standards of living from being unconscionably disparate,” seem to indicate that the court was referring to her future standard of living. Nevertheless, the court’s opinion failed to provide

an analysis of Farhanna’s future income and the parties’ projected future standards of living, as required for an award of indefinite alimony under F.L. § 11-106(c)(2).

When a trial court fails to make a projection and comparison of the parties’ incomes and standards of living at the point when the dependent spouse would have made maximum financial progress, the alimony award must be vacated and remanded for reconsideration. *St. Cyr*, 228 Md. App. at 190. *See also, Brewer*, 156 Md. App. at 101 (remanding an award of indefinite alimony where “the trial court failed to make any finding as to Mrs. Brewer’s current income, or as to when she might become self-supporting, or, as to whether, once that occurred, there would be an unconscionable disparity in living standards”).

The parties disputed their financial resources and Mohammad’s ability to pay alimony and to meet Farhanna’s financial needs. The court did not address the parties’ conflicting positions about one another’s financial statements, and failed to provide any explanation as to how it resolved the disputed evidence in determining the parties’ monthly income and expenses. Thus, in addition to the above, we are unable to determine how the court calculated the amount of the alimony award.

Accordingly, we will vacate the alimony award and remand the case to the trial court to determine whether an alimony award is appropriate for a fixed term under F.L. §11-106(b) or for an indefinite term under F.L. §11-106(c)(1) or (2), to make the necessary factual findings, and to explain its conclusion.

III.

Monetary Award

A remand for re-evaluation of the amount and duration of alimony typically requires that the interrelated orders regarding the monetary award and child support must also be vacated and remanded for re-evaluation. *St. Cyr*, 228 Md. App. at 198 (noting that “Maryland’s child support statute requires a court to account for alimony transfers between parents before calculating the parents’ child support obligations” under F.L. §§ 12-204(a)(2) and 12-201(b)(3)(xv)).

Pending resolution of the issues on remand, the existing orders for alimony, monetary award, and child support will remain in effect as a *pendente lite* award. *See id.* (Citation omitted).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY AFFIRMED IN PART AND VACATED IN PART. JUDGMENT WITH RESPECT TO ALIMONY, MONETARY AWARD AND CHILD SUPPORT VACATED; ALIMONY, MONETARY AWARD, AND CHILD SUPPORT PROVISIONS TO REMAIN IN FORCE AND EFFECT AS PENDENTE LITE ORDERS PENDING FURTHER ORDERS OF THE CIRCUIT COURT; JUDGMENT OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. APPELLANT TO PAY ONE HALF OF COSTS AND APPELLEE TO PAY ONE HALF OF COSTS.