Circuit Court for Anne Arundel County
Case No.: C-02-FM-22-003765

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2446

September Term, 2023

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MICHAEL WOLF

v.

REBECCA UEBERSAX

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Friedman,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: June 16, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellee, Rebecca Uebersax ("Wife"), filed a complaint for absolute divorce from appellant, Michael Wolf ("Husband"), in the Circuit Court for Anne Arundel County. Husband filed a counter-complaint for absolute divorce but failed to participate in discovery or appear at trial. The court granted Wife's request for an absolute divorce and granted her a monetary award, alimony, a portion of Husband's pension, and an award of attorney's fees. Husband noted the instant appeal, where he raises four questions, which we have consolidated and rephrased into three[1]:

1. Did the court err in determining the parties' marital property?

2. Did the court err in concluding that Husband had dissipated marital funds?

3. Did the court err in awarding Wife a portion of Husband's pension and retirement benefits?

[1] The questions presented in Husband's brief are:

1. Did the Circuit Court for Anne Arundel County make a clearly erroneous ruling by including non-marital property when calculating [Wife's] monetary award?

2. Did the Circuit Court for Anne Arundel County abuse its discretion by granting [Wife] a monetary award based upon clearly erroneous calculations of marital property?

3. Did the Circuit Court for Anne Arundel County make a clearly erroneous ruling by finding that [Husband] had dissipated funds, despite a lack of competent evidence?

4. Did the Circuit Court for Anne Arundel County make a clearly erroneous ruling by granting [Wife] a portion of [Husband's] pension without any evidence presented regarding the valuation of the pension?

As we discuss, we answer each question in the negative, and we shall affirm the judgment of the circuit court.

## BACKGROUND

In 2004, Husband and Wife married, and Wife gave birth to their only child. Together they lived in Wife's home in Arnold, Maryland, until "late 2008 or 2009[,]" when Husband began staying at a home he owned in Columbia, Maryland, more frequently. As Wife explained at trial:

> We were living at my house, and [Husband] wanted to live closer to where he worked, which was in the Silver Spring/Laurel area. And he just -- he didn't want to do the drive, and he started not coming home. And that -- that was his excuse. That was his reasoning for why; he -- he just -- he didn't want to drive from Arnold to Laurel, because he drives all day for UPS.

Thereafter, Husband lived in Columbia, and Wife and their child lived in Arnold.

In November of 2022, Wife filed a complaint for divorce. In December of 2022, Father filed a counter-complaint for divorce. In January of 2023, Husband filed a long form financial statement, which listed that his assets totaled $209,983, including $22,321 in an IRA and $182,662 in a savings account. In a footnote, he asserted that the savings account "[i]ncludes $67,000 in pre-marital inheritance and $2,140 in a joint account with his son."

Wife sought discovery from Husband and, in February of 2023, after Husband failed to respond, Wife filed a motion to compel his discovery responses. On March 13, 2023, the court entered an order granting Wife's motion and ordering Husband's discovery responses within ten days. On March 27, 2023, Wife filed a motion for sanctions, noting that Husband still had "provided no discovery responses." The court granted Wife's motion

for sanctions and ordered that Husband provide "full and complete discovery by April 24, 2023[.]" Nonetheless, Husband failed to respond to discovery.

On May 1, 2023, the court held a pre-trial conference, but Husband failed to appear. The court issued a show-cause order ordering that Husband appear for a show cause hearing on January 25, 2024 – the date of the parties' divorce trial. Nonetheless, on January 25, 2024, Husband failed to appear. Husband's counsel appeared, but requested that the court strike his appearance:

> [W]e've been trying very hard through text, e-mail and phone call. [Husband] did not respond to discovery, and at the last pre-trial, he did not show and was held in default.
>
> And then, since that time, I've been trying to get him to prepare for trial. He has come to my office a long time ago, but I haven't seen him, and I have lots of paperwork if you'd like to see, if that evidences the efforts we've made. I just don't think that it's reasonable, and quite frankly, I think it puts me in a very difficult position to try to represent his side of the case without having discovery, without having information, and I don't think it's appropriate. So I would ask the Court to strike my appearance and allow the case to go forward on a default basis.

The court noted Husband's counsel's "extensive attempts" to contact Husband and granted counsel's request. Wife requested that the court strike Husband's counter-complaint, which the court granted and thereafter proceeded with trial.

At trial, Wife testified that Husband's employer, the United Parcel Service ("UPS") had not yet responded to her subpoena request, but that she believed that Husband was making over $100,000 per year because she knew that UPS "has been giving [him] raises over the years." She introduced subpoenaed bank statements from Husband's bank, Tower Federal Credit Union, which included paycheck deposits from May of 2020 to November

of 2023. She testified that recently, Husband had not been depositing paychecks into the Tower Federal Credit Union account and that she believed he was banking elsewhere.

Further, Wife noted that since July of 2020, Husband had been regularly withdrawing several thousand dollars from the Tower Federal Credit Union account, sometimes several times a month, but that she had "no idea where that might be going[.]" She introduced evidence of a $99,000 withdrawal in June of 2023, as well as several large wire transfers to his girlfriend, Zorina Crooks. Further, she noted a $50,000 payment to Husband's counsel in November of 2022. In total, Wife asserted that since 2020, Husband had dissipated over $295,000 in marital funds.

Finally, Wife introduced evidence showing that Husband had over $123,000 in an unclaimed fund account held by the Comptroller of Maryland following the foreclosure of his home in 2019. Wife explained that Husband had allowed his home to go to foreclosure "even though he had hundreds of thousands in the bank and was getting regular paychecks[,]" adding that "[h]e just would not pay his mortgage and it went to foreclosure."

At the conclusion of the hearing, the court granted Wife an absolute divorce from Husband based upon the parties over twelve-month separation. The court found that Husband's income was what he noted on his financial statement and credited Wife's testimony that Husband "likely has other bank accounts into which he is currently disbursing his paychecks[.]" Additionally, the court concluded that Husband had dissipated marital funds, but excluded Husband's payment to counsel and expenditures that were not in "round amounts[,]" in Husband's bank statements, finding that those were "likely

payment of some specific obligation." The court concluded that Husband had dissipated $237,713 in marital funds.

Finally, the court found that the total value of marital property was $449,471.43. The court concluded that division of marital funds based on title would be inequitable and awarded Wife a monetary award of $224,735.71. Further, the court granted Wife a portion of Husband's pension based upon the formula set forth in *Bangs v. Bangs*, 59 Md. App. 350 (1984), ordered that any funds "refundable to [Husband] as a result of [Husband's counsel's] representation be released to [Wife,]" and awarded Wife alimony and attorney's fees. Husband noted the instant appeal. Additional facts will be supplied as necessary.

## STANDARD OF REVIEW

"Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). Accordingly, "[f]indings of this type are subject to review under the clearly erroneous standard embodied by Md. Rule 8-131(c); we will not disturb a factual finding unless it is clearly erroneous." *Id*. Similarly, "[a] trial court's judgment regarding dissipation is a factual one and, therefore, is reviewed under a clearly erroneous standard." *Omayaka v. Omayaka*, 417 Md. 643, 652 (2011) (cleaned up).

"Under the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Instead, our role is to review the record, in the light most favorable to the prevailing party, for "the presence of sufficient material evidence to support the [court's] findings." *Id*. To that end, "[i]f there is any competent evidence to

support the factual findings below, those findings cannot be held to be clearly erroneous." *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002).

Moreover, "'[t]he court has broad discretion in evaluating pensions and retirement benefits, and in determining the manner in which those benefits are to be distributed.'" *Woodson v. Saldana*, 165 Md. App. 480, 489 (2005) (quoting *Welsh v. Welsh*, 135 Md. App. 29, 54 (2000), *cert. denied*, 363 Md. 207 (2001)). Further, "the ultimate decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of discretion." *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). "An abuse of discretion occurs where 'no reasonable person would take the view adopted by the [trial] court' or the trial court 'acts without any guiding rules or principles.'" *Li v. Lee*, 210 Md. App. 73, 96 (2013) (quoting *Das v. Das*, 133 Md. App. 1, 15-16 (2000)), *aff'd*, 437 Md. 47 (2014).

In sum, "'appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.'" *Malin v. Mininberg*, 153 Md. App. 358, 415 (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." *Id.*

## DISCUSSION

### I. The court did not err in calculating the parties' marital property.

#### a. Parties' Contentions

Husband contends that the court committed clear error by failing to exclude non-marital property, namely, inherited funds from his mother and unclaimed funds from the foreclosure of his home, in its calculation of marital property. Wife responds that there was no testimony or evidence at trial supporting Husband's claims of non-marital property, and thus, the court properly determined the parties' marital property. We agree with Wife.

#### b. Legal Framework

The purpose of a monetary award is "to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage, strictly in accordance with its title." *Ward v. Ward*, 52 Md. App. 336, 339 (1982). Accordingly, "when deciding whether to make an award, the court has broad discretion to reach an equitable result." *Hart v. Hart*, 169 Md. App. 151, 160-61 (2006). In exercising that discretion, "the trial court must follow a three-step procedure." *Malin*, 153 Md. App. at 428. As stated in *Innerbichler*:

> First, for each disputed item of property, the court must determine whether it is marital or nonmarital. Second, the court must determine the value of all marital property. Third, the court must decide if the division of marital property according to title will be unfair; if so, the court may make a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled.

132 Md. App. at 228 (cleaned up).

As set forth in Md. Code Ann., Family Law ("FL") § 8-201(e)(1), marital property "means the property, however titled, acquired by 1 or both parties during the marriage." Generally, it does not include property that is either acquired by or "directly traceable" to an inheritance or funds acquired before the marriage. FL § 8-201(e)(3). However, "[p]roperty that is initially non-marital can become marital[.]" *Innerbichler*, 132 Md. App. at 227. Indeed, "the party who asserts a marital interest in property bears the burden of producing evidence as to the identity of the property." *Id*. "Conversely, '[t]he party seeking to demonstrate that particular property acquired during the marriage is nonmarital must trace the property to a nonmarital source.'" *Id*. (quoting *Noffsinger v. Noffsinger*, 95 Md. App. 265, 283 (1993)).

**c. Analysis**

Husband challenges only the first step of the three-step analysis in granting a monetary award: the determination of marital property. Specifically, he asserts that the court erred in concluding that the following were marital property: (1) unclaimed funds from the foreclosure of his home, and (2) his Tower Federal Credit Union bank account. In support, he contends that the unclaimed funds were from a foreclosure of a house titled solely in his name, and that the Tower Federal Credit Union bank account included inherited funds from his deceased mother's estate. However, Husband failed to produce any evidence in support of either of his contentions. He failed to participate in discovery, despite two court orders ordering him to do so, failed to appear at trial, and failed to provide any evidence supporting his assertions that either the unclaimed funds or the Tower Federal Credit Union account were non-marital property.

Instead, he contends that the court erred in failing to consider his long form financial statement, filed a year prior to trial, where he included a footnote asserting that the Tower Federal Credit Union account was partially inherited funds. In support, he relies upon *Beck v. Beck*, 112 Md. App. 197 (1996), however, *Beck* is inapplicable to the facts before us. In *Beck*, we held that an adverse party's admissions in a financial statement filed prior to trial "constitute judicial admissions" and thus, they "may be considered as evidence by trial courts without the necessity of a formal introduction of such statements at trial." *Id*. at 205, 208. *Beck* does not stand for the proposition that a party's *own* assertions in a long form financial statement must be considered as evidence when that party fails to appear at trial and fails to provide any evidence in support of his or her claims. *Id*.

Regarding the unclaimed funds, Husband points to a stipulation filed by Wife following the parties' divorce, and contends that therein, Wife "already stipulated, on the record, that [Husband's] unclaimed funds should never have been listed as marital property[.]" Husband misreads the stipulation. Wife acknowledged therein that the unclaimed funds, held by the Comptroller of Maryland in her official capacity, were not subject to garnishment – not that they are not marital property.[2] In sum, and in the absence of any evidence or testimony to the contrary, the court did not err in concluding that the unclaimed funds and the Tower Federal Credit Union account were marital property.

[2] *See Ridge Lumber Co. v. Overmont Dev.*, 34 Md. App. 14, 15 (1976) ("[G]overnmental officers and subdivisions of the State are exempt from attachment proceedings where the money sought to be attached is held by the garnishee in its official capacity.").

Accordingly, we are unpersuaded that the court abused its discretion in granting Wife a monetary award.

## II. The court did not err in finding that Husband had dissipated marital funds.

### a. Parties' Contentions

Husband asserts that Wife "failed to meet the burden of proof for dissipation" and that there was "zero proof as to the differentiation between living expenses and any alleged dissipation." Wife responds that she met the prima facie burden showing that Husband had dissipated marital funds and that Husband failed to provide "any documentation to support his long form financial statement" or any "proof that [he] used the funds for the purpose of benefitting the parties' marriage[.]" We agree with Wife.

### b. Legal Framework

"Dissipation occurs when one party 'spen[ds] or otherwise deplete[s] marital funds or property with the principal purpose of reducing the amount of funds that would be available for equitable distribution at the time of the divorce.'" *Goicochea v. Goicochea*, 256 Md. App. 329, 339-40 (2022) (quoting *Omayaka*, 417 Md. at 653). At trial, "'[t]he burden of persuasion and the initial burden of production in showing dissipation is on the party making the allegation.'" *Omayaka*, 417 Md. at 656 (quoting *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 311 (1994)). However, "after that 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." *Id*. at 656-57

(cleaned up). Finally, "[p]roof that a spouse made sizable withdrawals from bank accounts under his or her control is sufficient to support the finding that the spouse had dissipated the withdrawn funds." *Id*. at 657.

**c. Analysis**

At trial, Wife asserted that Husband had dissipated over $295,000 in marital funds. In support, she introduced Husband's Tower Federal Credit Union bank statements showing that Husband made several large transfers, payments, and withdraws from July of 2020 to December of 2023. These included the following:

- July 2020 – deposited $7,000 into his IRA;
- January 2021 – withdrew $2,500;
- February 2021 – withdrew $2,500;
- March 2021 – withdrew $2,500 three times;
- April 2021 – withdrew $2,500 three times;
- June 2021 – withdrew $2,500 two times;
- July 2021 –withdrew $2,500 two times;
- August 2021 – withdrew $2,500 five times;
- September 2021 – withdrew $2,500 five times;
- October 2021 – withdrew $2,500 four times;
- November 2021 – withdrew $2,500;
- December 2021 – withdrew $2,500;
- February 2022 – withdrew $2,500 three times;

- April 2022 – withdrew $2,500 two times;
- May 2022 – withdrew $2,500;
- June 2022 – withdrew $3,500;
- July 2022 – withdrew $2,500 and $3,556.89;
- August 2022 – withdrew $2,500 and $1,401.04;
- September 2022 – withdrew $1,761.43;
- October 2022 – withdrew $2,500;
- November 2022 – withdrew $2,500 three times, withdrew $2,863.78, paid counsel $50,000;
- December 2022 – withdrew $2,500 two times and withdrew $1,482.17;
- January 2023 – withdrew $2,003.50;
- June 2023 – withdrew $99,000 and wired $16,900 to Ms. Crooks;
- September 2023 – withdrew $2,000;
- November 2023 – wired $6,000 to Ms. Crooks;
- December 2023 – wired $5,135 to Ms. Crooks.

On appeal, Husband does not dispute that he made the withdrawals, payments, or wire transfers, nor does he contend (apart from the payment to counsel, which we address *infra*) that they were for a legitimate purpose. Instead, he asserts that the court erred because Wife "was unable to prove the existence of 'another' bank account, [his] employment status, and [his] current monthly income." He adds that Wife "had no evidence to support what sum of money was going towards [his] day to day living expenses as opposed to his alleged dissipation" and that "[t]here was no claim that [his] bank statements

revealed any sort of direct deposits or automatic bill payments as evidence of dissipation[.]" Relying upon his financial statement, he asserts the following in his appellate brief:

> Appellant's Long Form Financial Statement included the following information:
>
> > 1. That Appellant's total monthly expenses at the time of filing totaled to $4912.93.
> >
> > 2. That Appellant's total monthly income at time of filing was $5,694.00.
> >
> > 3. That the money contained in Appellant's Tower Federal bank accounts included $67,000 in pre-marital inheritance and $2,140 in a joint account with Appellant's son.
> >
> > 4. That Appellant planned on retiring in May 2023, at which point his pension would be his sole source of income.
>
> Thus, Appellant produced evidence sufficient to show that expenditures were appropriate.

(Record citations omitted.)

As discussed *supra*, the court was not required to consider Husband's financial statement as evidence at trial. Nevertheless, it is unclear how Husband's financial statement, submitted a year prior to trial and several months prior to several of the challenged withdrawals and transfers, "show that [the] expenditures were appropriate" as he contends. The financial statement does not address any of the expenditures or provide any basis for finding that they were for appropriate purposes.[3] Further, Husband's assertion

[3] We further note that at least one of Husband's contentions therein – that his pension would be his sole source of income after his planned retirement in May of 2023 – was expressly contradicted by the evidence at trial, which included paychecks dated as late as November of 2023.

that Wife was required to prove the existence of his other bank accounts or day to day living expenses after he failed to appear at trial is mistaken. Wife produced evidence demonstrating that Husband "made sizable withdrawals from bank accounts under his . . . control" which the Supreme Court of Maryland has expressly noted "is sufficient to support the finding that the spouse had dissipated the withdrawn funds." *Omayaka*, 417 Md. at 657.

Finally, Husband maintains that the court erroneously considered his $50,000 payment to counsel in its dissipation analysis. However, Father's contention is plainly contradicted by the record. The court expressly noted that, in assessing the amount of dissipated funds, it "did not consider . . . the Fifty Thousand Dollars in attorneys fees that was paid to [Husband's counsel]."[4] Accordingly, and because Husband fails to point to any evidence in the record showing that the withdrawals or expenditures were for legitimate purposes, we disagree that the court's dissipation findings were clearly erroneous.

## III. The court did not err in finding that Wife was entitled to a marital share of Husband's pension.

### a. Parties' Contentions

Husband asserts that the court erred in awarding Wife a portion of his pension with UPS, explaining that Wife "did not provide any testimony or competent evidence regarding whether [he] was still employed at UPS, when he started working at UPS, whether the

[4] Neither party challenges whether the court properly ordered that legal fees refundable to Husband shall be paid to Wife towards her monetary and/or fee award(s). Accordingly, we do not address that issue in this appeal. *See Health Servs. Cost Rev. Comm'n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984) ("This Court has consistently held that a question not presented or argued in an appellant's brief is waived or abandoned and is, therefore, not properly preserved for review.").

pension had vested at the time of the marriage, or what amount [he] had contributed towards said pension during the marriage." Wife responds that no exact value was needed to award Wife a portion of Husband's pension. Once again, we agree with Wife.

**b. Legal Framework**

As noted in *Bangs*, the court may divide a pension by awarding a "future sum or sums of money equal to a portion of the pension payable in the future if, as and when the pension is received[.]" 59 Md. App. at 368. Under this "if, as, and when" approach, an exact value is not needed for the court to grant a marital share of a pension. FL § 8-204(b)(1) ("The court need not determine the value of a pension, retirement, profit sharing, or deferred compensation plan, unless a party has given notice in accordance with paragraph (2) of this subsection that the party objects to a distribution of retirement benefits on an 'if, as, and when' basis."); *see also Deering v. Deering*, 292 Md. 115, 131 (1981) (noting that under the "if, as, and when" approach, "it is unnecessary to determine the value of the pension fund at all"). Instead, if a party objects to the distribution of retirement benefits on an "if, as, and when" basis, that party is required to give "written notice at least 60 days before the date the joint statement of the parties concerning marital and nonmarital property is required to be filed under the Maryland Rules." FL § 8-204(b)(2). However, if no such notice is given, "any objection to a distribution on an 'if, as, and when' basis shall be deemed to be waived unless good cause is shown." *Id*.

**c. Analysis**

As Husband's counsel conceded at oral argument, Husband failed to object to the distribution of his pension on an "if, as, and when" basis at any point prior to trial. Nor has

he provided good cause for failing to timely file any such objection. Accordingly, Husband's objections to the distribution of his pension on an "if, as, and when" basis have been waived. *See Caccamise v. Caccamise*, 130 Md. App. 505, 523 (2000).

Even had, *arguendo*, Husband properly given notice objecting to the distribution of his pension on an "if, as, and when" basis, we see no abuse of discretion based upon these facts. The court determined that Wife was entitled to a percentage of Husband's pension based upon the formula provided in *Bangs*. Specifically, the court noted that Wife's marital share was "to be computed by multiplying 50% times a fraction, the numerator of which is 240 months of marriage during [Husband's] creditable United Parcel Service, Inc., service, divided by [Husband's] total number of months of creditable United Parcel Service, Inc., service." Based upon the facts before us, including Husband's failure to produce any discovery and failure to appear at trial, we cannot say that this was an abuse of the court's broad discretion. *Deering*, 292 Md. at 131 (noting that with the "if, as, and when" approach, "[t]he court need do no more than determine the appropriate percentage to which the non-employee spouse is entitled").

**JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**