

Circuit Court for Prince George's County
Case No. CAD15-24722

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2666

September Term, 2016

CHERYL L. ZIEGLER RAGLAND

v.

EDWARD A. RAGLAND, JR.

Eyler, Deborah S.,
Graeff,
Nazarian,

JJ.

Opinion by Graeff, J.

Filed: June 5, 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.

On August 14, 2015, Edward Ragland, Jr., appellee (“Husband”), filed a Complaint in the Circuit Court for Prince George’s County seeking an Absolute Divorce from Cheryl Ziegler Ragland, appellant (“Wife”). On February 10, 2017, the circuit court issued a Judgment of Absolute Divorce, granting Husband an absolute divorce, awarding him a monetary award in the amount of \$53,500, and resolving other disputes, including the division of marital property.

On appeal, Wife objects to the monetary award and presents three questions for this Court’s review, which we have consolidated and rephrased,¹ as follows:

1. Did the trial court abuse its discretion in characterizing the funds in Wife’s American Express account as marital property?
2. Did the trial court abuse its discretion in awarding Husband a monetary award in the amount of \$53,500?

For the reasons set forth below, we answer the first question in the negative, but we answer the second question in the affirmative. Accordingly, we shall vacate the judgment of the circuit court and remand for further findings related to the court’s valuation of the marital property and the monetary award.

¹ The Wife presented the following questions on appeal:

1. Did the trial court abuse its discretion by issuing a \$53,500 monetary award in favor of Edward?
2. Did the trial court abuse its discretion by characterizing the funds in [] Cheryl’s American Express account as marital property?
3. Did the trial court abuse its discretion by not placing value on Edward’s camera equipment and failing to include the value in determining the monetary award?

FACTUAL AND PROCEDURAL BACKGROUND

On November 20, 2004, Husband and Wife were married in Bowie, Prince George's County, Maryland. No children were born as a result of the marriage.

In 2011, the parties separated. Husband left the marital home until 2012, when the parties reconciled. In January 2014, after an alleged domestic violence incident, Wife moved out of the marital home, and the parties remained separated.

Beginning on August 25, 2016, the circuit court held a three-day hearing on Husband's Complaint for Absolute Divorce. At the time of the divorce proceedings, Husband was 59 years old, and Wife was 55.

Prior to the marriage, the parties each owned separate property. In 2000, Husband purchased property located at 13102 Venango Road in Fort Washington (the "Venango Property"). He retained this property during the marriage and rented it out until the parties' separation. Wife owned property at 12220 Quintette Lane in Bowie (the "Quintette Property").² Wife rented the property during the marriage for \$600 per month. In November 2004, shortly after the parties' marriage,³ Wife purchased an investment property located at 217 Post Oak Way in Hyattsville (the "Post Oak Property").⁴ She

² There is a difference in the spelling of Quintette Lane between the transcript and the parties' joint statement; we will adopt the parties' spelling of the street.

³ Wife explained that her initial goal was to go to closing on the Post Oak Property before her marriage to Husband, however, because "the seller had issues," the closing occurred "about a week after the wedding."

⁴ Wife testified that the house was located either in Hyattsville or Landover, Maryland. Husband testified that the house was in Hyattsville.

testified that the property was purchased with money she had before marrying Husband. The Post Oak Property was rented out for approximately two and one-half years, until Wife sold it in 2007 for a profit of approximately \$60,000, which Wife testified was deposited into a separate savings account. Some of the profit from this transaction was used after the parties' separation to purchase property at 4501 Harwich Terrace in Upper Marlboro (the "Harwich Terrace Property"). In 2008, the parties purchased a separate home located at 7420 Quail Ridge Lane in Bowie (the "Quail Ridge Property") to serve as their marital residence.

The parties agreed that, given Wife's higher salary, she would contribute two-thirds of the household expenses and Husband would contribute the remaining one-third. The monies were to be contributed to a joint checking account with PNC Bank, which covered "all of the household expenses, the utilities, the mortgage, food," as well as the parties' auto insurance. The parties further agreed that, in addition to paying the the household bills, they "would fully fund [their] retirement account[s]" and "do whatever [they] wanted" with the "remaining money [they] had."

After the parties' separation in January 2014, they agreed to equally share in paying the mortgage. Wife continued to pay her share of the mortgage, even though she moved out in 2014. In May 2015, Husband moved out of the Quail Ridge Property and back into his Venango Property because it had "a lower overhead" cost.

Husband testified that he had a Bachelor's degree in agricultural business and economics, as well as a Master's degree in economics. He had been employed with the

federal government in the U.S. Department of Agriculture since 1998 and earned an annual salary of \$107,000. In addition to his salary, Husband received income from other sources including: (1) \$6,000 annually in rental income from inherited property (“Poplar Inn Automotive”); (2) approximately \$33,000 from the sale of timberland; and (3) commissions from insurance employment.⁵ When the parties purchased their home in July 2008, Husband took out a residential loan from his federal thrift savings plan (“TSP”) for approximately \$38,000. The loan was used to “pay off [his] credit card, to pay off a car loan and to put \$5,000 down on the mortgage and have \$5,000 set aside to buy . . . new appliances for the home.” Wife, as his spouse, had to sign for the loan. The credit card debt and car loan were all acquired during the marriage. In 2013, Husband took out an additional “general purpose loan,” in the amount of \$18,800, to pay off credit card debt incurred during the marriage. Husband testified that, at the time of trial, approximately \$20,000 and \$7,000, respectively, remained on those loans. In addition to those debts, Husband had an auto loan, \$36,000 in credit card debt, and his mortgage for the Venango Property.

With respect to Wife’s purchase of the Post Oak Property, Husband testified that, at the time, he “encourag[ed] her use her good credit to buy some property that she could

⁵ Husband subsequently testified that he was a joint owner of the timber property, and informed the court that, because timber “grows very slowly,” it is harvested only every 15 years. During this time, there are costs associated with upkeep and taxes.

make some money” from, and based on this advice, she bought the Post Oak Property. He believed that Wife made a \$50,000 profit when she sold Post Oak.

In discussing marital property, Husband was asked his opinion on the value of items purchased during the marriage. He opined that the dinette set was worth \$500; the dressers and nightstand (the “master bedroom furniture”), \$250; the lawn mower and power washer, “a couple hundred” dollars; the washer and dryer, approximately \$300; a 55” television, approximately \$500; and a freezer, “a couple hundred” dollars. He had removed those items out of the marital home without Wife’s permission, and they were presently in his possession.

Husband testified that scuba diving and photography were two of his hobbies, and after retirement, he was planning to make photography his new profession. He had taken classes and purchased camera equipment worth approximately \$14,000 during the marriage, which included the purchase of a digital camera that cost approximately \$2,000.⁶

Wife testified that she had her Bachelor’s degree from Johns Hopkins University, and she received her law degree from the University of Michigan. She was employed with the U.S. Department of Health and Human Services, where she earned a salary of \$187,000. In addition to her salary, Wife received additional income of \$600 per month from renting

⁶ Counsel for Wife moved to introduce receipts for the purchase of photography equipment. Counsel for the Husband objected, arguing that, although it was marital property, because it was purchased during the marriage, the receipts did not reflect the current value of the property, noting that in the joint property statement Husband said the value was unknown. The receipts showed a total value of \$14,302.77. Wife listed the value of the photography and scuba equipment as \$15,000 in the parties’ joint statement.

the Quintette Property. On January 8, 2014, she moved out of the martial home and lived with a friend. In September 2014, she purchased the Harwich Terrace Property with the proceeds from the sale of the Post Oak Property. She explained:

I bought a piece of investment property in 2004 with money I had before we got married and I rented that out for two, two and a half years. I sold it in 2007 and I made a profit of more than \$60,000 on it and I kept that money in a separate account. And so when I wanted to purchase the Harwich property, I just used some of that money.

Wife testified that she deposited the proceeds from the sale of the Post Oak Property in a “money market account” with TD Ameritrade. She moved the money to an internet savings account and “ultimately . . . to an American Express savings account.” Wife spent some of the money on two pieces of artwork, made contributions to her individual retirement accounts (“IRA”), and used \$12,000 for the Harwich Property to cover the down payment and closing costs.⁷ Approximately \$30,000 - \$35,000 of the funds remained in the American Express account. Wife testified that she always kept the proceeds separate and did not commingle those funds with any other funds.

The parties had an agreement concerning the Quail Ridge Property expenses, and although Wife’s income was not double what her Husband made, because “he had debt,” she “wanted to make sure he had enough money to fully fund his retirement account, and so [she contributed] double.” She explained that this agreement lasted until “about five

⁷ Prior to the closing, wife received a document stating that she was required to bring \$7,174.28 to closing, and that was the amount she brought to the closing.

months after [she] left him” in January 2014, and at that point, she reduced her contribution to half of the mortgage and homeowners’ association fees.

With respect to the loans that her Husband obtained, she signed them because, at the time, she was his spouse. With respect to the \$38,000 loan in July 2008, Husband used \$25,000 to pay his half of expenses for the purchase of the Quail Ridge Property, an \$11,000 investment in an ATM, and a scuba diving trip. When asked whether Husband used the proceeds from those loans to pay off any marital or joint expenses, Wife testified that he did not, stating that “[t]he joint expenses were all paid out of the joint account,” and “[h]e never contributed any additional money to [the] joint account to pay for household expenses.” She testified that Husband had “[m]ore than \$50,000 in debt,” which included \$26,000 in credit cards, a \$26,000 home equity loan, and his mortgage for the Venango Property. In contrast, Wife testified that she entered the marriage with only \$5,000 in credit card debt, as well as her mortgage for the Quintette Property.

With respect to the marital property in Husband’s possession, Wife opined as to the valuation each item, as follows: (1) for the 55” television, \$1,750; (2) the freezer, \$700-\$750; (3) the washer and dryer, \$1,650; (4) the power washer and lawn mower, \$500-\$550; (4) the dinette set, \$2,500; (5) the master-bedroom furniture, \$1,000; and (6) a sofa bed, \$270. In addition to producing receipts reflecting the original purchase price for some of the items, Wife testified that she researched the replacement value of each item by comparing them to new and used items for sale. Regarding the camera and scuba diving

equipment, she testified that none of the equipment was in her possession, and she opined that her husband had spent approximately \$2,500 to purchase the scuba equipment.⁸

On cross-examination, Husband's counsel suggested that Wife had commingled money from her marital funds to her non-marital funds, i.e., the account holding her profits from the Post Oak Property sale. Wife explained how she allocated her salary, stating that approximately \$700 went to her joint checking account that paid the expenses for the Quail Ridge Property, and some funds went to her account where she pays her "current mortgage and living expenses." She explained: "\$1,400 goes to another PNC account. And out of that account I pay my living expenses, utilities, mortgage, [and] insurance. I pay my living expenses. The third PNC account is \$200 and then the fourth allotment is \$100 on a prepaid debit card."⁹

Wife testified that, following the sale of the Post Oak Property, she deposited the proceeds into a "TD Ameritrade Money Market account that [she] no longer had." When asked whether she had any documentation to prove her deposit, Wife answered that "[she] was never asked for it," but explained:

I don't know where I deposited it[.] I deposited it into a separate account, at one point it was at TD Ameritrade, at another point it was at NBL, it may have been at a different bank, depending on what kind of return I could get, and then ultimately it is currently in an AmEx [American Express]

⁸ Although Wife testified to her perceived valuation of Husband's scuba equipment, she did not testify as to the total value of Husband's camera equipment.

⁹ Wife testified that the three accounts with PNC Bank were as follows: (1) a shared joint account with Husband; (2) a sole personal account; and (3) a joint account between her and her mother. She testified that her "check [is] deposited in four or five different accounts."

savings account which I'm probably getting ready to transfer because they're not giving me any interest on it."

When counsel inquired about what she did with the money since 2007, she stated:

Some of that money I used to buy two pieces of artwork as a gift to myself, based upon the sale of the property. Some of that money I put into my IRA. Some of the money I used to purchase the Harwich property. The remainder is sitting in a separate savings account, an AmEx savings account.

Although Wife had transferred money into the American Express account, she disagreed that she commingled funds within the account, stating that she previously had "transferred non-marital money into that account from the [Quintette] rental." Counsel asked if she had any proof other than "simply believ[ing] [her]," and Wife responded that she was not "asked to bring any documents."

On January 10, 2017, court reconvened and cross-examination of Wife continued. Husband's counsel inquired about the proceeds from the Post Oak sale, asking where the money was deposited. Wife responded:

In 2007 I am not sure, I deposited into a separate account but I've had many accounts that I've transferred it to, so I don't know what the original account was. It could have been TD Ameritrade money market account, it could have been an ING account, it could have been an FNBO account. So I've had several accounts, I don't know which one at the time in 2007 the money went into first.

Wife stated that the \$30,000 in her American Express account reflected money from the sale of Post Oak in 2007. She acknowledged, however, that she made a deposit of \$7,474.59 on December 19, 2013, and she transferred \$14,000 into the account on April 4, 2014, among other deposits.

On re-direct examination, Wife denied that she had any funds coming out of her salary going into the American Express savings account. In addressing the transfers into and out of the American Express account, Wife explained:

[I]t's an internet savings account. So the only way you can access the money is to transfer it to a checking account so in order to use the money[,] so when I wanted to buy the Harwich property, I had to transfer the money to a checking account, so that I could get the money to bring to closing. And so when I transferred money, for example, one of the things he asked me about in February of 2014[,] was I found a house that I was going to purchase. We got all the way up to the day before closing, I was told how much money to bring, I transferred the money out of the account, I got the check for settlement and then the seller wasn't able to close. So I transferred the money back into the account, into the savings, the checking account that I got it from and then transferred the money back into the American Express account. So every time I want[ed] to make a purchase I ha[d] to transfer that money into a checking account and then I [could] write a check and then I have to, if . . . for some reason that purchase doesn't go through I have to transfer the money back because it is not a checking account. You can't access the money other than to transfer it to another account.

The court then asked some questions regarding the \$35,000 that was in Wife's account.¹⁰ The following transpired:

THE COURT: If you don't know where the \$61,000 started, then how do you know where the \$35,000 came from?

[Wife]: Because I have transferred it from account to account, so --

THE COURT: What I'm saying is, if you can't say the \$35,000, where it started from, then how can you say where it ended? If you can say where it ended, then why can't you simply trace it all the way back to where it originally went?

¹⁰ Wife testified that the account had approximately \$30,000 to \$35,000 in the account.

[Wife]: Because I don't have the statements [t]o the original account[,] I know that I had at least three different accounts that I transferred the money, I don't know which one was the first account. I believe the first account was a TD Ameritrade money market account. I know that I have subsequently transferred, I've closed that account and moved the money to either ING, . . . , and so what happens is normally when I open it up, they offered me some interest rate that's decent and over time it goes down to nothing and so then I look for a new account and then I transfer all of the money to a new account. And so[,] I have transferred that money from account to account. In fact[,] the American Express account is down to almost nothing, so I'm looking for a new account to transfer all the money and I will close the American Express account. . . .

THE COURT: Have you ever had more than one savings account at a given time?

[Wife]: Yes, I have one, a Justice [Federal Credit Union] one for \$5 that I have to keep open in order to be a member of the credit union. But no money has been in that account in 20 years, other than \$5.¹¹

Wife did not know in which account she deposited the proceeds from the sale of the Post Oak Property. She stated that, with respect to the \$61,000 proceeds, she spent \$12,000 for closing costs, \$10,000 for IRA contributions, \$1,700 for artwork, and approximately \$20,000 to \$25,000 for improvements for Harwich. The court stated that, given those expenditures and that \$35,000 remained in the account, her "math doesn't add up." Wife noted that, since 2007, she was receiving interest on her deposit, which at one point was between "5 to 7 percent," netting \$1,000 a year.

In closing argument, Husband's counsel argued that, with respect to the Post Oak Property proceeds, Wife's testimony was confusing, noting that "she seemed to be so

¹¹ On cross-examination, Wife testified that she had opened a savings account at the Justice Federal Credit Union between 1991 and 1992, but only \$5 was in this account.

certain about questions” such as “where [she] got the money,” but “when the [c]ourt [] ask[ed] her questions, the numbers [were] not adding up whatsoever.” Counsel argued that he was able to demonstrate that “there [were] transfers that went into that account prior to the purchase of the [Harwich Terrace] property [in] May of 2014.” For example, he noted the transfer in the amount of \$7,474.59, as well as additional deposits from other sources in the amount of \$19,400. Counsel concluded: “There’s been com[m]ingling into that account. It should have all been segregated, that’s not what she’s done over here.” He requested that, because the funds were commingled, the court should include Harwich Terrace as marital property, as well as the remaining money contained within the American Express account, which, based on Wife’s testimony, was \$35,000.

Wife’s counsel disagreed. She argued that the evidence made clear that Wife netted \$61,000 from the sale of the Post Oak Property, and that this amount was always in a savings account. Although Wife could not recall the account in which the funds were originally deposited, she was clear that the funds were held in a savings account. It was undisputed that those funds were contained within the American Express account, and they were segregated and not commingled. Counsel concluded that the American Express account should “be awarded solely to the wife as it is non-marital.” She also argued that the Harwich Terrace Property was non-marital because it was purchased with non-marital funds from the sale of her property in 2007.

On January 10, 2017, the circuit court granted Husband’s request for Absolute Divorce based upon the parties’ one-year separation. The court noted that “the division of

property” was the contested issue between the parties, and the court’s role was to “make an equitable distribution of the marital property.”

The court began by discussing the “marital property that is not in dispute.” It stated:

[T]here is the marital home at 7420 Quail Ridge Lane. The husband gives it value of \$428,000, the wife or the defendant gives it value of \$370,000 and it has liens against it approximately for \$370,000. The defendant has a 2006 Lexus valued at approximately or a net value at approximately \$7,500, the husband has a 2015 truck that has no value. The wife has a TSP that has value of \$366,000; the husband’s TSP is valued at \$294,000. The husband is claiming [] a lien against that value based upon loans that were taken out from this TSP.

Based upon the testimony in this case, his testimony is that the loans were taken out with [Wife’s] consent in order to reduce his credit card debt, the majority of the reasons to get a better rate when they closed on or acquired the [marital] home and that there was a \$5,000 portion that was attributed directly to the home and/or appliances.

Based upon the testimony, an[d] evidence[,] the [c]ourt is not satisfied that that value is a marital debt and therefore will not account for that in the value of his TSP value. . . . [T]he wife and husband each own pensions.

The court then addressed the funds contained within the American Express account, noting that Wife attributed the funds to “the sale of an agreed upon non-marital property,” but Husband argued that the source of these funds were commingled, and therefore, it was marital property. The court stated that this “was a difficult question,” attributing some of the difficulty to the absence of the account statements related to the funds. The court stated:

Because the American Express account was not the original account of which the funds were placed and both parties know the source of [the] funds we’re talking about was a \$61,000 net from a sale of a non-marital real property contract.

The question or the concern is not as much as the transfers out . . . but the transfers that were coming back in. The testimony was[,] or the argument

was[,] that these were taken out for reasons related to another property that was in dispute or Harwich Terrace and that the money that was transferred back in was not ever used, as far as the use or repairs on Harwich Terrace. However, due to the frequency and the inconsistent amounts[,] [] the [c]ourt is not convinced that [Wife] has satisfied the burden to show that all these transfers out were going to a non-marital debt and as a result the [c]ourt finds that the balance as of today, and again the [c]ourt's notes reflect that the value testified today was \$35,000, upon inquiry [Wife] said it was \$30,000. [The court's] notes reflect \$35,000, [and] I'll give it that value.

The court then addressed the Harwich Terrace Property. It found that, because it was titled only in Wife's name and "acquired in part with a \$12,000 deposit, . . . that [it] was non-marital property." The court then stated that, with respect to "numerous other articles of personal property that are listed in the joint statement, testimony was given and values were made, however, that property has already been distributed by the parties."

After determining what items were marital property, the court then addressed the factors to be considered in determining the amount of the monetary award.¹² In this regard, it stated, as follows:

¹² Md. Code (2012 Repl. Vol.) § 8-205(b) of the Family Law Article ("FL") provides:

The court shall determine the amount and the method of payment of a monetary award, or the terms of the transfer of the interest in property described in subsection (a)(2) of this section, or both, after considering each of the following factors:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;
- (3) the economic circumstances of each party at the time the award is to be made;

So the contributions monetary and nonmonetary of each party both testified as to contributions of the marriage. The [Husband] says that they shared the housework, but again he noted that he did the yardwork. The [Wife], who has a higher income, paid a larger share of the household expenses[.] The [Husband] testified that he still made financial and nonfinancial contributions to maintaining the household in this case. The [c]ourt has already spoke[n] as to the value interest of each party. The economic circumstances made at the time this award is made, neither party is a person that is destitute. Both individuals are successful, they've always been employed and they each have maintained real property that has substantial value in it.

However, the [Wife] does have a higher value of non-marital as well as marital property debt that is in her name. There is no request for alimony. And as far as any other factor the [c]ourt considers for an appropriate award in this case, both parties again, well, as to each vehicle, each vehicle will be granted to the person who now possesses that vehicle. So the [Wife] will maintain the 2006 Lexus and that will be granted to her only as well as the [Husband's] 2015 truck.

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- (4) the circumstances that contributed to the estrangement of the parties;
 - (5) the duration of the marriage;
 - (6) the age of each party;
 - (7) the physical and mental condition of each party;
 - (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
 - (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
 - (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
 - (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

As to their pensions, each person will receive their marital share pursuant to [*Bangs*],¹³ on as if [and] when basis.

The court continued:

Taking all the factors in consideration, as to what led to the estrangement of the parties, that's somewhat in dispute, the grounds for divorce were granted on the separation, however, there was testimony, some implication or allegations also that there was an incident of domestic abuse. A protective order was filed, however, no final protective order was ever granted.

There was also testimony from the [Wife] regarding the [Husband's] use of funds with regard to his scuba hobby and the duration and the amount of value that that incurred upon the marriage. So the court taking all the factors in consideration is going to make a marital award. Let me go back. The marital home is going to be sold, I'm going to give the parties 60 days to find an agreed upon realtor and have the home listed. If not, then the [c]ourt will appoint a trustee to sell the home. As both counsel know, you know, appointing a trustee is just going to cost the parties money. So I would strongly suggest that you get together and find a real estate agent.

The court then stated that it was going to make a marital award, "based upon all the factors that I believe is equitable" in the amount of \$55,000 to Husband.

Wife's counsel then asked the court to explain "the basis of the \$55,000 marital award," i.e., "[h]ow the [c]ourt derived the \$55,000 figure." The court stated that it "listed all the values of the marital property on each side and [it] found that that was an equitable distribution." When the court asked if there was any marital property for which it did not list a value for, Wife's counsel asked whether the court had included the \$14,000 camera and scuba equipment, as well as other property in Husband's possession. The court responded that it "took into consideration all of the marital property that . . . each side [had]

¹³ *Bangs v. Bangs*, 59 Md. App. 350 (1984).

already voluntar[ily] agreed how to distribute.” Counsel stated that, based upon discussions at a bench conference, she thought that the wife would be entitled to her marital share of the value of the camera equipment in Husband’s possession, which counsel suggested was \$7,000. Husband also possessed “the dinette set, the bedroom furniture, the lawnmower, power washer, sofa bed, washer/dryer, television, the freezer,” for which counsel had “asked for a set off of \$8,370.”

The court then discussed the personal property listed in the joint statement and the values each party assessed for each item. The court found as follows: (1) the dinette furniture had a value of \$300; (2) the master bedroom furniture had a value of \$250; (3) the lawnmower had a value of \$200; (4) the scuba and photography equipment, although it was purchased for \$14 - \$15,000, the court “ha[d] no idea what that value is [as] of today” and was “unable to put a value on it”; (5) the sofa bed had a value of \$300; (6) the washer and dryer had a value of \$300; (7) the 55” television had a value of \$500; and (8) the freezer had a value of \$400. The court explained that Wife “gave a lot of values of what items were acquired for,” but she did not meet her burden because there was no testimony of present value. The court explained, therefore, that it was using its “own personal experience with regard to some of the[] items.”

The court then stated that, taking that into consideration, it would adjust the marital award from \$55,000 to \$53,500. It stated that this took “into account all items of the marital property.”¹⁴

On February 10, 2017, the circuit court issued its Judgment of Absolute Divorce, granting Husband an absolute divorce and restoring Wife’s use of her maiden name. The court’s order included a marital award, pursuant to Md. Code (2012 Repl. Vol.) § 8-205 of the Family Law Article (“FL”), in the amount of \$53,500 to Husband. The court deferred the entry of judgment and gave the parties 60 days “to come up with a proposal to satisfy the monetary award granted.” On February 21, 2017, Wife noted her appeal.

DISCUSSION

In a divorce proceeding, if the circuit court seeks to grant a monetary award the court is required to engage in a three-step process:

First, for each disputed item of property, the court must determine whether it is marital or nonmarital. F.L. §§ 8-201(e)(1), 8-203, 8-205(a)(1); *Flanagan [v. Flanagan]*, 181 Md. App. [492,] 519 [(2008)]. Second, the court must determine the value of all *marital* property. F.L. §§ 8-204, 8-205(a)(1); *Flanagan*, 181 Md. App. at 519. Third, the court must decide *if the division of marital property* according to title would be unfair. If so, the [court] may make a monetary award to rectify any inequity “created by the way in which property acquired during the marriage happened to be titled.” *Id.* at 520 (quoting *Doser v. Doser*, 106 Md. App. 329, 349 (1995); see F.L. § 8-205(a); *Long [v. Long]*, 129 Md. App. [554,] 578-79 [(2000)].

Brown v. Brown, 195 Md. App. 72, 109-110 (2010).

¹⁴ We note that, although the total value given by the court for the items listed and retained by Husband equaled \$2,250, the court reduced the marital award by \$1,500. There was no explanation how the court arrived at this \$1,500 amount.

This Court has set forth the standard of review of a court's decision regarding a marital award, as follows:

Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property. Findings 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. *Noffsinger* [*v. Noffsinger*, 95 Md. App. 265, 285 (1993)]; *Hollander v. Hollander* 89 Md. App. 156, 175 (1991). Md Rule 8-131(c) states:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

See Oliver v. Hays, 121 Md. App. 292, 305-06 (1998); *Nicholson Air Servs., Inc. v. Bd. of Cty. Comm'rs*, 120 Md. App. 47, 66-67 (1998). When the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous. *Ryan v. Thurston*, 276 Md. 390, 392 (1975); *Sea Watch Stores Ltd. Liab. Co. v. Council of Unit Owners of Sea Watch Condo.*, 115 Md. App. 5, 31, *cert. dismissed*, 347 Md. 622 (1997).

With respect to the ultimate decision regarding whether to grant a monetary award and the amount of such an award, a discretionary standard of review applies. *Alston v. Alston*, 331 Md. 496, 504 (1993); *Ware* [*v. Ware*,] 131 Md. App. [207, 214 (2000)]; *Gallagher v. Gallagher*, 118 Md. App. 567, 576 (1997); *Doser* [*v. Doser*,] 106 Md. App. [329, 350 (1995)]. This means that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.

Innerbichler v. Innerbichler, 132 Md. App. 207, 229-230, *cert. denied*, 361 Md. 232 (2000).

With that background in mind, we address Wife's contentions.

I.

AMERICAN EXPRESS ACCOUNT

Wife contends that the circuit court abused its discretion by characterizing the funds in the American Express account as marital property. She argues that her testimony reflected that the funds within the account were “directly traceable to the sale of the Post Oak Property and certain rents that she received from the rental of the Quintette Property,” and no evidence was submitted to contradict her testimony regarding the source of funds in the account.

Husband disagrees. He contends that the court’s determination was “based on a careful analysis of the source of funds for the account,” and the factual finding that the account was marital property was not clearly erroneous. He asserts that the “court elicited direct testimony from [Wife] by asking a series of its own questions to clarify the source of all the funds in and out of the American Express account,” and that the “court clearly weigh[ed] the credibility of [her] responses” in making its determination.

Pursuant to FL § 8-201(e)(1)-(2), marital property is defined as “property, however titled, acquired by 1 or both parties during the marriage,” which includes “any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.” Marital property does not include property: “(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources.” FL § 8-201(e)(3).

“The party who claims a marital interest in property has the burden of proof as to that claim.” *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003) (citations omitted). In contrast, “a party seeking to demonstrate the nonmarital nature of a particular property must ‘trace the property to a nonmarital source.’” *Id.* (quoting *Noffsinger*, 95 Md. App. at 282).

Here, Wife contends that the money in the account was nonmarital because it came from proceeds from the sale of property acquired before the marriage. In *Dave v. Steinmuller*, 157 Md. App. 653, 664, *cert. denied*, 383 Md. 570 (2004), this Court explained that “[a] spouse who owns nonmarital property is permitted to preserve its nonmarital status even if it changes in character or form during the marriage, as long as the spouse can trace the asset acquired during marriage directly to a nonmarital source.”

Here, the court was not persuaded that Wife met her burden to trace the funds in the account to the proceeds from the sale of the Wife’s nonmarital Post Oak Property. The court expressed concerns with the “frequency and the inconsistent amounts” of money transferred into this account, and it noted that Wife’s testimony changed in response to questioning and that her “math doesn’t add up.”

Based on the record here, we cannot conclude that the circuit court’s finding, that the funds in the account qualified as marital property, was clearly erroneous. We turn next to the court’s ultimate monetary award.

II.

Monetary Award

Wife contends that the court erred in issuing a \$53,500 monetary award in favor of Husband. In support, she argues: (1) the amount of the monetary award exceeds the value of the marital property to which the monetary award pertains; and (2) the court erred by failing to include the value of the camera equipment in its calculation.¹⁵

The function of a monetary award ““is to provide a means for the adjustment of inequities that may result from distribution of certain property in accordance with the dictates of title.”” *Alston*, 331 Md. at 506 (quoting *Herget v. Herget*, 319 Md. 466, 471 (1990)). Although a trial court’s decision to grant a monetary award is a matter within the court’s sound discretion, “a trial court must exercise its discretion in accordance with correct legal standards.” *Id.* at 504.

Here, it is not clear from the record how the circuit court determined that a \$53,500 monetary award was equitable. With respect to marital property that was not being divided equally between the parties,¹⁶ the court made the following findings of value:

¹⁵ Wife also contends that the circuit court erred by including the value of the funds in the American Express account in the monetary award. We have already rejected that contention.

¹⁶ The court found that, with respect to the TSP accounts, each party was to get their marital share, and with respect to the marital home, it would be sold, with any proceeds or debts to be split equally. When asked, the court specifically stated that the TSP accounts were not a factor in the marital award.

Property Description	Party in Possession	Court's Valuation
2006 Lexus	Wife	\$7,500
2015 F-150 Truck	Husband	\$0
Dinette Set	Husband	\$300
Master Bedroom Furniture	Husband	\$250
Lawn mower	Husband	\$200
Scuba & Photography Equipment	Husband	No value provided
Sofa Bed	Husband	\$300
Washer and Dryer	Husband	\$300
55" Television	Husband	\$500
Freezer	Husband	\$400
American Express Account	Wife	\$35,000

Thus, the court valued Wife's marital possessions at \$7,500 for the 2006 Lexus and \$35,000 for American Express account, for a total of \$42,500. The marital property from the Quail Ridge Property in the Husband's possession was valued at \$2,250, for a total value of marital property of \$44,750.

Accordingly, we agree with Wife that the \$53,500 marital award exceeds the court's factual findings regarding the total value of the marital property that was not otherwise distributed. Based on the record here, we cannot ascertain how the court arrived at its \$53,500 figure for the monetary award, and therefore, we cannot determine whether the court abused its discretion in making that monetary award. Accordingly, we vacate the marital award and remand for further proceedings.¹⁷

¹⁷ On remand, the court shall reassess and explain its findings regarding the marital award, including providing a value for the Husband's scuba and photography equipment. *See Randolph v. Randolph*, 67 Md. App. 577, 585 (1986) (The trial court is "to *determine*, not consider, the value of all marital property," and "[w]here the statute requires the court to determine an issue, that determination must appear in the record.").

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
VACATED. REMANDED FOR FINDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID 50% BY APPELLANT
AND 50% BY APPELLEE.**