

Circuit Court for Baltimore County  
Case No. 03C16001777

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2895

September Term, 2018

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CARTER THORPE

v.

CHARON D. DAVIS-THORPE

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Meredith,  
Wells,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Wright, J.

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Filed: March 18, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a divorce case where the sole issue before the court is the award of alimony to appellee, Charon D. Davis-Thorpe (“Wife”), former wife of appellant, Carter Thorpe (“Husband”). Prior to the divorce proceedings, the parties entered into a consent agreement whereby Wife was awarded sole physical and legal custody of the parties’ minor child with Husband granted liberal visitation rights. On October 2018, the case was heard in the Circuit Court of Baltimore County on the limited issues of child support and alimony. The lower court calculated child support at \$224.00 per month.<sup>1</sup>

The circuit court judge granted Wife alimony in the amount \$300.00 per month for a period of three years. Husband appeals from this award of rehabilitative alimony asking:

Whether the circuit court erred in its determination that Wife is entitled to alimony from Husband?

For the following reasons, we hold that the circuit court did not engage in the requisite analysis in awarding Wife three years of rehabilitative alimony in the amount of \$300.00 per month, and we vacate the judgment of the circuit court.

### **BACKGROUND**

Husband and Wife were married for eight years prior to their separation in February of 2016. The parties agreed that Wife should have physical and legal custody of their minor child with Husband having liberal visitation rights.

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<sup>1</sup> The final order listed child support as \$270.00 per month. This figure is consistent with the Maryland Child Support Guidelines and is not an issue in this appeal.

Wife currently works at Starbucks Corporation as a manager making \$60,000.00 per year. She holds a master's degree in negotiation and conflict but does not utilize the degree in her current position and does plans to pursue a Doctorate degree once her daughter graduates high school. Wife testified that during six years of the marriage, while she was earning her master's degree, Husband paid the mortgage while she paid the smaller bills and cared for their child. Wife purchased the home, which they resided in, prior to the marriage and continued paying the mortgage following the separation. Wife testified that the home was left with unfinished construction in the basement, and that she remains responsible for finishing the work as the homeowner. Wife also testified that she "live[s] paycheck to paycheck[,]" but is able to pay her monthly bills. Wife had a medical procedure in November of 2017 and has been diabetic for thirty-three years but testified she is otherwise in good health.

Husband currently works as a dispatcher for CC Industries for an annual salary of approximately \$20,800.00. He currently lives with his mother. In 2016, Husband was self-employed as a dump truck operator, owning two dump trucks, but reported earnings of only \$1,200.00. Husband testified that one of his dump trucks had been repossessed, and that the other was inoperable. He has the equivalent of a tenth-grade education. Husband was diagnosed with cancer shortly after Wife's hysterectomy but had surgery and is otherwise in good health.

Wife filed a complaint for judgment of limited divorce against Husband on February 26, 2016. Husband then filed a countercomplaint, and a complaint for Judgment for Absolute Divorce was filed thereafter by Wife. Prior to the divorce proceeding, the parties

entered into a consent agreement regarding the custody of their child. The Circuit Court for Baltimore County heard the case for Absolute Divorce on the limited issues of child support and alimony. The court determined that Husband will pay \$270.00 per month in child support and awarded alimony to Wife in the amount of \$300.00 per month for three years. Father timely appealed.

### **DISCUSSION**

It is settled law that the Court of Special Appeals will not disturb an alimony determination “unless the trial court’s judgment is clearly wrong or an arbitrary use of discretion.” *Ridgeway v. Ridgeway*, 171 Md. App. 373, 384 (2006) (quoting *Blaine v. Blaine*, 97 Md. App. 689, 698 (1993)); see *Solomon v. Solomon*, 383 Md. 176, 196 (2004) (holding that an alimony award is reviewed under an abuse of discretion standard). An abuse of discretion exists where a decision is deemed “to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994).

The purpose of alimony has changed since the adoption of the Maryland Alimony Act in 1980 (“Act”). *Whittington v. Whittington*, 172 Md. App. 317, 335 (2007). After passage of the Act, the principal function of alimony is the rehabilitation of the economically dependent spouse. *Solomon*, 383 Md. at 335 (citing *Karmand v. Karmand*, 145 Md. App. 317, 327 (2002)). The statutory scheme regarding alimony favors fixed-term alimony because the purpose is to “ease the transition for the parties from the joint marriage to their new status as single people living apart and independently.” *Tracey v. Tracey*, 328 Md. 380, 391 (1992). Because the sole purpose of temporary or fixed-term

alimony is rehabilitation of the recipient spouse, any award of temporary alimony “must be grounded in a finding that the recipient spouse is not self-supporting and needs training, education, or other steps to help that spouse achieve financial self-reliance.” *Karmand*, 145 Md. App. at 328.

Md. Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”) § 11-106(b) assigns twelve factors for the court to consider when determining a fair and equitable award.<sup>2</sup> “In its determination of whether an award of alimony is appropriate, the trial court must

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<sup>2</sup> The twelve factors are:

- (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.

consider all of the factors necessary for a fair and equitable award set forth in statute governing awards of alimony.” *Solomon*, 383 Md. at 195. *See* FL § 11-106(b).

In deciding alimony, the circuit court judge stated:

I have considered all of the factors contained in the Family Law Article Subtitle 8. There is a series of 11 factors which I must consider when considering alimony. I’m going to read you the factors . . . The factors include: the ability of the Plaintiff to be self-reliant, the age of the parties, the length of the marriage of the parties, the ability of the individual from whom alimony is sought as the ability to be self-sufficient, the parties respective health, the reasons for the separation of the parties, there are other matters that are not particularly app [sic] here including federal benefits that the parties are awarded and whether or not this award would have any effect on them.

The judge further stated:

Taking into account all of the factors that this court must take into account when making an award of alimony upon the separation of the parties which in this court’s mind clearly lays at the feet of [Husband] and the unfortunate demise of the marriage, while I heard from [Husband] that [Wife] was somewhat difficult to live with I believe the reasons for the divorce probably lied in some extracurricular activities conduct by [Husband]. It’s one of 11 factors that I consider, not the determinative factor.

The fact that the parties enjoyed a standard of living somewhat greater than what they are now enjoying after the separation and the fact that the home was left in a less than perfect condition and [Wife’s] limited resources in taking care of that, taking into account [Husband’s] reduced income, although he does appear to have expenses that are either overstated or certainly not nearly as what, much as what [Wife] has in that she has the mortgage, she has the other responsibilities and [Husband] is residing at home, I am going to make an award of alimony but not what [Wife] wants and probably more than what [Husband] wants to pay. Beginning for the month of October the court is awarding alimony in the amount of three hundred dollars per month for three years.

So here’s how the payments are going to work. Beginning this month, October 1, beginning today [Husband] will pay three hundred dollars a month for alimony, two hundred and twenty-four dollars a month for child support and on top of that, on top of the eight thousand three hundred and

seventy dollar arrearage he will pay one hundred dollars a month. Once the alimony is finished in three years he will then pay four hundred dollars a month until the arrearage is paid.

Divorce is granted. I will issue a decree and have it to you by the end of the week.

Although the circuit court judge did not discuss the factors with any specificity, we will now consider the factors together with the relevant facts elicited through the parties' testimony.<sup>3</sup>

The first factor is "the ability of the party seeking alimony to be wholly or partly self-supporting," as correctly stated by the circuit court. FL § 11-106(b)(1). Generally, a party is self-supporting if the party's income exceeds the party's expenses. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 186 (2016) (citing *Tracey*, 328 Md. at 392). In the present case, Wife has a master's degree and works as a manager at Starbucks for \$60,000.00 per year. Wife testified that she is financially able to pay her bills each month but lives paycheck-to-paycheck.

The second factor is "the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment[.]" FL §

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<sup>3</sup> "It is a well-established principle that trial judges are presumed to know the law and apply it properly." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (internal quotation omitted). "It is equally well-settled that there is a strong presumption that judges properly perform their duties, and that trial judges are not obliged to spell out in words every thought and step of logic." *Id.* (internal quotations omitted); *see also Kirsner v. Edelmann*, 65 Md. App. 185, 196 n.9 (1985) ("[A] judge is presumed to know that law, and thus is not required to set out in intimate detail each and every step in his or her thought process."). Thus, "[a]bsent an indication from the record that the trial judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003).

11-106(b)(2). Here, Wife has already completed her master's degree and could continue in her position as a manager at Starbucks. While she had a desire to get her Doctorate, it was established that she had sufficient education to maintain suitable employment.

The third factor is “the standard of living that the parties established during their marriage[.]” FL § 11-106(b)(3). When comparing standards of living, the court is to analyze “how well the respective parties *can* live based on their respective financial means” and should project those living standards for the future. *Boemio v. Boemio*, 414 Md. 118, 144 (2010) (emphasis in original). In this case, Wife continues to live in the marital home and while she testified to living paycheck-to-paycheck, she was able to maintain the general standard of living established during the marriage. Husband, as a result of his financial situation, now lives with his mother in order to meet his financial obligations. The trial court reasoned that because both parties “enjoyed a standard of living somewhat greater than what they are now enjoying . . .” prior to the divorce, and “the home was left in a less than perfect condition[.]” Wife should be awarded alimony. While Wife's standard of living may have decreased slightly, as compared to before the separation, Husband's standard of living has also decreased, and to such an extent that he was not self-sustaining.

The fourth factor is “the duration of the marriage.” FL § 11-106(b)(4). Both parties testified they had been married for ten years and separated two years prior to the divorce.

The fifth factor is “the contributions, monetary and non-monetary, of each party to the well-being of the family.” FL § 11-106(b)(5). Both parties contributed to the family in monetary and non-monetary ways. While Wife was in school, Husband paid major expenses. Wife contributed non-monetarily by child-rearing and maintaining the home and



monetarily by paying “smaller bills” while she was in graduate school. Thus, both parties were relatively equal in terms of monetary support for the family.

The sixth factor concerns “the circumstances that contributed to the estrangement of the parties.” FL § 11-106(b)(6). The court stated as to this factor that the “separation of the parties . . . clearly lays at the feet of [Husband]” and placed blame on Husband for his “extracurricular activities”.

The seventh factor simply considers the age of each party. FL § 11-106(b)(7). Here, Wife is 44 years of age and Husband is 47 years of age.

The eighth factor is “the physical and mental condition of each party.” FL § 11-106(b)(8). Wife had been diabetic for approximately 33 years but is able to function normally. Wife also had a medical procedure during the period of separation. Husband had cancer but had been successful with his treatment. There were no other significant physical health issues for the parties.

The ninth factor is “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.” FL § 11-106(b)(9). Husband makes roughly \$400.00 per week for a total of \$1,600.00 per month. The final Order of the Court stated that he was to pay child support in the amount of \$270.00 per month and to pay child support arrears at the rate of \$100.00 per month. Taking only child support responsibilities into account, that leaves \$1,230.00 in monthly discretionary income. Husband also stated that he had a car note of \$568.00 per month extending from the period before the separation. After the trial court’s \$300.00 per month award of alimony, Husband would have \$362.00 per month for other expenses such as food

and rent. While the possibility of Husband increasing his income could be considered, he has not completed high school, so a significant increase in earning capacity is unlikely, and no evidence was presented that would lead the circuit court to such a conclusion.

The tenth factor is “any agreement between the parties.” FL § 11-106(b)(10). There is no record of any agreement for alimony or other compensation between Husband and Wife.

The eleventh factor considers the “financial needs and financial resources of each party[.]” FL § 11-106(b)(11). In assessing the financial needs and resources, the court can consider: “(i) all income and assets, including property that does not produce income; (ii) awards 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.” FL § 11-106(b)(11)(i)-(iv). Similar to the ninth factor, Husband has demonstrated that he does not have the financial resources to pay \$300.00 per month in alimony with an income of only \$1,600.00 per month.

The twelfth factor regarding eligibility of medical assistance is not a factor in this case.<sup>4</sup>

Although testimony was presented to support the conclusion that several factors were taken into consideration, it is difficult to ascertain the basis for the circuit court’s

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<sup>4</sup> The twelfth factor is “whether the award would cause a spouse who is a resident of a relation institution as defined in § 19-301 of the Heath-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.” FL § 11-106(b)(12).

award of rehabilitative alimony. Although it is required for this type of award, the court failed to indicate why it thought Wife could be self-supporting at the end of three years when the facts supported a conclusion that she was already self-supporting. It is pellucid that indefinite alimony should only be granted to aid and provide an incentive for rehabilitation. *Roginsky v. Blake-Roginsky*, 12 Md. App. 132, 148 (1999). Therefore, the circuit court's decision to award rehabilitative alimony was contrary to Maryland law.<sup>5</sup>

For the reasons stated above, the court's award of rehabilitative alimony to Wife in the amount of \$300.00 per month for three years was an abuse of discretion and clearly erroneous. Thus, the case is remanded so that the court may engage in the required analysis and, if necessary, make a new alimony award consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY GRANTING  
ALIMONY VACATED. CASE REMANDED  
FOR FURTHER PROCEEDINGS  
CONSISTENT WITH THIS OPINION.  
COSTS TO BE PAID BY APPELLEE.**

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<sup>5</sup> One supposition is that the circuit court, in making the award of rehabilitative alimony, improperly considered that there was unfinished construction in the home and should not have factored that into the amount of the award for alimony. In so doing, the court appears to accept the fact that Wife would need more money to pay for these discretionary expenses, as her income was insufficient for that purpose. It would be error for the court to attempt to alleviate this deficit by awarding indefinite alimony to Wife for a definite period in the form of rehabilitative alimony.