

Circuit Court for Montgomery County
Case No. 129556FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2926

September Term, 2018

GEORGIA DOLD

v.

GEORGE DOLD

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

JJ.

Opinion by Wright, J.

Filed: January 16, 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 appeal is the second for this divorced couple. George Dold (“Mr. Dold”) filed, in the Circuit Court for Montgomery County, a mutual Complaint for Judgment of Absolute Divorce against his wife, Georgia Dold (“Mrs. Dold”). Mrs. Dold then filed a Counter-Complaint for Absolute Divorce, seeking, among other things, a marital award and indefinite alimony. Following a trial on the merits, the circuit court entered a judgment granting the divorce and ordering Mr. Dold, appellee, to pay rehabilitative alimony to Mrs. Dold, appellant. The court, as part of that judgment, also identified, valued, and distributed certain marital property, including the marital home.

FIRST APPEAL

In the first appeal, *Dold v. Dold*, No. 2238, 2017 WL 5450751 (Md. Ct. Sp. App. 2017) (hereinafter *Dold I*), Mrs. Dold, appellant, asked: (I) whether the circuit court erred in determining the value of the marital home; (II) whether the circuit court erred in ordering that proceeds from the sale of the marital home be used to satisfy a loan in Mr. Dold’s name; (III) whether the circuit court abused its discretion in not granting Mrs. Dold a monetary award in the amount of \$8,500.00; (IV) whether the circuit court abused its discretion in denying Mrs. Dold indefinite alimony in the amount of \$2,100.00 per month and instead awarding rehabilitations alimony in the amount of \$500.00 per month for the thirty-six months; (V) and, whether the circuit court abused its discretion in denying Mrs. Dold’s request for attorneys’ fees?

After reviewing question IV, we held that the circuit court did not engage in the requisite analysis of the parties’ respective living standards before denying Mrs. Dold’s

request for indefinite alimony, and therefore, the circuit court should not have taken the next step by awarding rehabilitative alimony in the amount of \$500.00 per month for thirty-six months, and we reversed the judgment of the circuit court. Question IV was dispositive as to questions III and V, but we did answer questions I and II.

The facts in the appeal of *Dold I* were:

Mr. and Mrs. Dold first met in 1991 through mutual employment at the National Institute of Health (“NIH”) when Mr. Dold was twenty-three years old and Mrs. Dold was eight and a half years his senior. The parties began living together in 1998 and were eventually married on June 15, 2000. In 2002, the parties purchased a home in Boyds, Maryland (“the marital home”), where they remained.

Prior to the marriage, Mr. Dold attended the University of Maryland where he obtained a degree in electrical engineering. After becoming employed at NIH, Mr. Dold obtained a Master’s Degree in mechanical engineering. Upon meeting Mr. Dold at NIH in 1991, Mr. Dold was earning approximately \$45,000.00 per year and was considered to be employed as a “GS 7 or 9.” Around the same time, Mrs. Dold, a high-school graduate, was employed as a clerk typist at NIH earning approximately \$20,000.00. When the parties moved into their first home in 1998, Mrs. Dold was earning approximately \$35,000.00 to \$40,000.00 annually while Mr. Dold was earning approximately \$60,000.00.

After the birth of their child in July of 2000, the parties agreed that it “made sense” for Mrs. Dold to end her full-time employment at NIH. Mrs. Dold continued to work part-time, earning approximately \$10,000.00 to \$15,000.00 annually. Mr. Dold, on the other hand, continued his full-time employment because he was considered by both parties to be the main “bread winner” of the family. That arrangement lasted approximately four years, at which time Mrs. Dold resumed her full-time employment at NIH.

Throughout the marriage, Mr. and Mrs. Dold enjoyed a “comfortable” standard of living. The family routinely went on two-week-long vacations to destinations such as Jamaica, Mexico, and Ocean City, and they frequented “nice family restaurants.” Financially, Mr. Dold generally controlled the parties’ money and took care of the bills. While they had a joint bank account in which to pay bills, the parties also retained individual accounts for personal expenses. Ultimately, the parties’ differing opinions

about a relocation to Poolesville in 2010 lead to the demise of their marriage. The parties separated in July 2014 and filed for divorce in 2015. As part of her complaint for absolute divorce, Mrs. Dold requested, among other things, that the court grant her indefinite alimony in the amount of \$2,100.00.

At trial, Mr. Dold testified that he is employed as a “GS15” earning \$157,000.00 per year as a Section Chief of Instrumentations at NIH, where he holds two patents. Regarding his potential for further salary raises, Mr. Dold testified that “he has no expectation of further increases,” and that he is “maxed out with the government, with the exception of one more potential step increase.” In order for Mr. Dold to further increase his salary, he would have to “completely leave [his] position and move to another position.” Mr. Dold indicated that, besides his employment with NIH, he does not have any other sources of income. Pursuant to Mr. Dold’s Amended Financial Statement, he has a total monthly income of \$8,622.02 and total monthly expenses of \$10,585.67, leaving him with a monthly deficit of \$1,963.65.

Mrs. Dold testified that she has been employed with NIH for twenty-five years and earns \$67,000.00 annually. Regarding the future of her employment, Mrs. Dold testified that she will “keep trying to get promoted at NIH” and that “she aspires to a higher position there.” Mrs. Dold did not offer any testimony regarding how she plans to secure a higher position at NIH, thus potentially earning a higher salary. When asked whether her income would “dramatically increase in the next several years,” Mrs. Dold responded, “Dramatically, no, no. There’s no chance of that . . . I’m 57 years old and I have a high school diploma But I don’t, I see a change, but not a dramatic change.” When asked about when she thinks that a higher position might come available to her, Mrs. Dold responded with, “I don’t know.” Finally, when asked whether she had made any efforts recently to find that position, Mrs. Dold responded with, “Not recently.” Pursuant to Mrs. Dold’s Amended Financial Statement she has a total monthly income of \$4,197.41 and total monthly expenses of \$5,101.98, leaving her with a monthly deficit of \$813.57. Both parties testified that Mr. Dold routinely earned about twice as much as Mrs. Dold during the marriage.

Following trial, the circuit court found that, based on her income, Mrs. Dold had the ability to be self-supporting, that Mrs. Dold already had suitable and stable employment; that the parties enjoyed a “comfortable standard of living during their marriage;” which is a “standard that Mrs. Dold likely will not have to the same level following the divorce,” that the duration of the marriage was sixteen years, not an “inconsiderable period;” that both parties contributed to the well-being of the family in both monetary and non-monetary respects; that Mrs. Dold’s conduct contributed more to the ending

of the marriage by make it “difficult for the parties to get along unless she got her way;” that Mr. Dold was forty-seven years old and Mrs. Dold was fifty-eight years old; that both Mr. and Mrs. Dold were physically healthy and without mental issues; that Mr. Dold may be able to increase his income to a greater degree than Mrs. Dold, but he would be “stretched financially;” that the parties did not have any agreements between them with respect to any of these issues; and, that, according to their respective financial statements, Mr. Dold’s net monthly income was \$8,290.00 and Mrs. Dold’s net monthly income was \$4,157.00.

Ultimately, the circuit court denied Mrs. Dold’s request for indefinite alimony and instead awarded her rehabilitative alimony in the amount of \$500.00 per month for thirty-six months. The court found that Mrs. Dold “has the ability to be self-supporting although whether some period of assistance to help her make the adjustment to a new place and new life is a consideration.” Additionally, the court found that Mrs. Dold “already has suitable employment, and is in a stable position that she has been in for many years.” The court did not provide any explanation for its denial of Mrs. Dold’s claim for indefinite alimony, nor did the court provide any additional information, other than the aforementioned findings, as to why an alimony term of thirty-six months was warranted.

Mrs. Dold argued, as to questions I and II in *Dold I*, that the circuit court erred in determining the value of the marital home and in ordering that proceeds from the sale of the marital home be used to satisfy a loan in Mr. Dold’s name. According to the record, the court determined the value of the marital home to be \$620,000.00 by using the figure both parties listed and agreed upon on their Financial Statements, respectively. With respect to the valuation, the court stated, “[b]ecause the parties agree on the value, the Court will use the value of \$620,000.00.” The value of marital property is a question of fact and is subject to review under the clearly erroneous standard. *Flanagan v. Flanagan*, 181 Md. App. 495, 521 (2008). We saw no error with the \$620,000.00 valuation of the marital home since both parties agreed on the home’s valuation, and, as a result, this finding by the circuit court was not clearly erroneous.

Likewise, we held that the circuit court did not abuse its discretion by ordering that proceeds from the marital home be used to satisfy a loan in Mr. Dold's name. According to the record, the court came to a reasonable decision regarding the loan based on the facts presented. Mrs. Dold contends that the court is referencing the loan Mr. Dold took from his Thrift Saving Plan ("TSP") account in January 2016. However, as Mr. Dold clarified, the repayment is ordered for the loan he took from his TSP account in 2002 to purchase the marital home. We determined that Mrs. Dold was confusing a 2002 loan and a 2016 loan, which the court properly addressed. Based upon the above, we held that the circuit court did not abuse its discretion.

SECOND APPEAL

This Second Dold Appeal ("*Dold II*") was filed by Mrs. Dold from the judgment entered by the circuit court after remand of the case by this Court. On remand, the parties submitted briefs to the circuit court. The circuit court held a hearing. The record was not reopened to receive, rather than take presentation of, new evidence and the circuit court made its findings on the remanded issues. The circuit court denied Mrs. Dold a monetary award and alimony (both indefinite and rehabilitative). The circuit court awarded Mrs. Dold attorneys' fees of \$7,772.00 related to the First Appeal and post-remand proceedings, to which it credited the \$4,000.00 that Mr. Dold had paid to Mrs. Dold as rehabilitative alimony under the original Judgment of Divorce. Mrs. Dold presents this Court with the following five questions:

- I. Did the circuit court err in determining the value of the marital home?

- II. Did the circuit court err in ordering [Mr. Dold] to be repaid a loan from the proceeds of the marital home?
- III. Did the circuit court abuse its discretion in not granting [Mrs. Dold] a monetary award in the amount of \$8,500.00?
- IV. Did the circuit court abuse its discretion in denying [Mrs. Dold] indefinite alimony in the amount of \$2,100.00 per month and instead awarding rehabilitative alimony in the amount of \$500.00 per month for thirty-six months?
- V. Did the circuit court abuse its discretion in denying [Mrs. Dold's] request for attorneys' fees?

DISCUSSION

STANDARD OF REVIEW

Under Md. Rule 8-131(c), following a bench trial, we “review the case on both the law and the evidence.” We will not set aside the judgment of the circuit court on the evidence unless clearly erroneous, and we defer to the circuit court’s judgment on the credibility of witnesses. *Nesbit v. Gov’t Emps. Ins. Co.*, 382 Md. 65, 72 (2004) (citing Md. Rule 8-131(c)). Appellate courts, however, do not defer to the circuit court on questions of law: “When the trial court’s order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.” *Banks v. Pusey*, 393 Md. 688, 697 (2006) (quoting *Gray v. State*, 388 Md. 366, 375 (2005)).

MONETARY AWARD

In determining a monetary award, the court must first identify all marital property before it begins the process of distributing it. See Md. Code (1984, 2012 Repl. Vol.),

Family Law Article (“FL”) § 8-203(a). Next, the court must determine the economic value of all marital property, except retirement benefits. See FL § 8-204. Finally, if division of property by title is unfair, the court must use the factors under FL § 8-205(b) to adjust the equities and rights of the parties by granting a monetary award. See *Strauss v. Strauss*, 101 Md. App. 490, 501 (1994).

In making its ruling after remand, the circuit court stated:

On appeal, while vacating the monetary award determination, the [COSA] found no error in this court’s findings related to either the valuation of the Marital Home, or the treatment of the [TSP] loan. On both of these issues, the [COSA] determined that this court’s findings were supported by the evidence and not clearly erroneous. Nevertheless, the court has reviewed both issues again following the remand. As related to the Marital Home, [Mrs. Dold] suggests that the Marital Home was undervalued at \$620,000.00, arguing that a post-trial appraisal attached to [Mrs. Dold’s] Memorandum shows the value to be \$670,000.00. That post-trial appraisal, however, is not proper for consideration. [Mrs. Dold] did not seriously dispute the \$620,000.00 figure at trial, agreed that the value was “at least” that, but failed to offer any evidence of a different value. The \$620,000.00 valuation was fully supported by the evidence at trial.

The court also rejects [Mrs. Dold’s] suggestion at page 8 of her Memorandum that it “incorrectly reduced the value of the Marital Home by the balance of ‘the [TSP] loan as related to the home,’” and declines to re-open the evidence related to this issue. The court made findings related to this issue based on the evidence presented, and after judging the credibility of the testimony and evidence presented. The [COSA] found that the “court came to a reasonable decision regarding the loan based on the facts presented.” The court sees no basis for changing its prior findings with respect to this issue.

As for questions I and II, as we discussed above, we upheld in *Dold I* the circuit court’s \$620,000.00 valuation of the marital home and its order that proceeds from the marital home be used to satisfy a loan in Mr. Dold’s name. As we answered those questions in *Dold I*, Mrs. Dold may not relitigate them.

In this appeal, Mrs. Dold contends that a monetary award in her favor was warranted to equalize a purported disparity in the value of possessions taken from the house and the party's vehicles. Mr. Dold responds that Mrs. Dold did not produce any evidence to the circuit court that Mr. Dold's vehicle was worth any more than Mrs. Dold's vehicle. Further, there was no agreement between Mrs. Dold and Mr. Dold as to the respective values of their vehicles. In denying a monetary award to Mrs. Dold in the original Divorce Judgment, the circuit court referred to Mr. Dold's significant contribution to the purchase of the parties' first home, which resulted in a benefit to Mrs. Dold, and credited Mr. Dold's testimony "that the property left in the home which will belong to Mrs. Dold is greater than what was taken." There being no daylight between what was considered by the circuit court and this Court as to before and after *Dold I*, the circuit court did not err, and properly exercised its discretion by considering the evidence and testimony presented a trial, as directed by *Dold I*, and reaffirming correctly that no monetary award be granted to Mrs. Dold.

INDEFINITE ALIMONY

The circuit court did not err in denying Mrs. Dold indefinite alimony. In *Dold I*, Mrs. Dold sought review of the circuit court's denial of an award of indefinite alimony. We remanded the case to the circuit court for re-evaluation of this issue. As discussed above, the parties submitted briefs and the circuit court issued its Memorandum Opinion and Judgment, which reaffirmed its previous decision to deny Mrs. Dold an award of indefinite alimony.

On this issue, the circuit court stated:

The [COSA] reversed this court's denial of [Mrs. Dold's] request for indefinite alimony, finding that the circuit court did not engage in the requisite analysis of the parties' respective living standards before denying Mrs. Dold's request for indefinite alimony, and therefore, the circuit court should not have taken the next step in the awarding of rehabilitative alimony in the amount of \$500.00 per month for thirty-six months. The [COSA] instructed:

When alimony is requested, if the court makes the determination that an award of alimony is warranted, then it must make a determination of whether the circumstances warrant an award of indefinite alimony.

* * *

In order to determine whether or not an unconscionable disparity exists between the parties' respective standard of living, the court must evaluate and compare the parties' post-divorce standard of living as a "separate step in making its judgment" for determining indefinite alimony. *Tracey v. Tracey*, 328 Md. 380, 393 (1992). "In this context, 'standard of living' means how well the respective parties can live based on their respective financial means." *Boemio v. Boemio*, 414 Md. 118, 144 (2010). The greater the disparity, the more likely it will be found to be unconscionable. [*Ware v. Ware*, 131 Md. App. 207, 229 (2000)] (citation omitted). The spouse seeking indefinite alimony bears the burden of proving the statutory prerequisites to such an award. *Francz v. Francz*, 157 Md. App. 676, 692 (2004) (citing *Thomasian v. Thomasian*, 79 Md. App. 188, 195 (1989)). A finding of unconscionable disparity "is a question of fact, and we review it under the clearly erroneous standard contained in Md. Rule 8-131(c)." *Ware*, 131 Md. App. at 228-29 (citation omitted).

The circuit court did not engage in the requisite analysis of the parties' respective living standards before denying Mrs. Dold's request for indefinite alimony. Although the court did make a finding as to each of the statutory factors listed in [FL] § 11-106, it did not "evaluate and compare" the parties' respective post-divorce standards of living "as a separate step in making its judgment" on a claim of indefinite alimony. *Tracey*, 328 Md. at 393.

The circuit court stated further:

"[B]ecause the objective of alimony is to assist spouses in becoming self-supporting and not to provide a lifetime pension, indefinite alimony should be awarded 'only in exceptional circumstances.'" *Karmand v. Karmand*, 145

Md. App. 317, 330 (2002). As recognized above, “[t]he spouse seeking indefinite alimony bears the burden of proving the statutory prerequisites to such an award.”

In this case, [Mrs. Dold] did not meet her burden of showing circumstances warranting an award of indefinite alimony, under either [FL] § 11-106(c)(1) or (2). Because this court determined that [Mrs. Dold] already has the ability to be self-supporting, the circumstance described in [FL] § 11-106(c)(1) has not been shown. And, after reviewing the factors in [FL] § 11-106(b), *Karmand, supra*, 145 Md. App. at 330, the court likewise concludes that [Mrs. Dold] failed to show that she is entitled to indefinite alimony under [FL] § 11-106(c)(2). An “unconscionably disparate” standard of living has not been shown.

Other than the difference in earnings, [Mrs. Dold] offered no credible evidence as to how her standard of living will be inferior. [*Whittington v. Whittington*, 172 Md. App. 317, 339 (2007)]. Indeed, her only stated rationale at trial for seeking alimony was so she could live “comparable to the way [she has] been living for the last 20 years” and “above a certain [unidentified] income scale.” That, however, is not the test.

The circuit court then evaluated and compared the parties’ respective post-divorce standards of living, as instructed in *Dold I*:

From an economic perspective, [Mrs. Dold] received one-half of the equity in the Marital Home, with her share valued at approximately \$134,000.00. She received \$106,642.84 to equalize the value of the parties’ [TSP] accounts. Her claimed child support expense of \$689.00 is, within a few dollars, satisfied by the child support being paid to her by [Mr. Dold]. Unlike [Mr. Dold] who at trial projected his likely financial situation after the divorce (which showed before consideration of any alimony obligation a monthly deficit of about \$600.00), [Mrs. Dold] did not make such a projection. The financial statement [Mrs. Dold] did provide, while showing a monthly deficit of \$813.57, fails to account for any child support (court-ordered or otherwise) that [Mrs. Dold] was receiving. When the covered expenses of the parties’ child are taken into consideration, [Mrs. Dold’s] purported deficit as reflected in her financial statement is minimal (about \$135.00).

Comparing the future financial situation of the parties, it is likely to continue much as it is now, and [Mrs. Dold] failed to prove that it will be unconscionably disparate in the future. Both parties have worked virtually

their entire careers at the NIH. Both will receive federal retirement benefits. [Mrs. Dold's] government employment is stable. And while [Mr. Dold] may have a somewhat greater (albeit limited) potential to increase his income as found previously by the court, it is unlikely that there will be a dramatic change in either of the parties' incomes. Accordingly, "projecting forward in time" it is unlikely that the parties' future standards of living will be materially different from that existing at the time of trial. The burden was on [Mrs. Dold] to show otherwise, and her evidence failed in that regard. Based on the evidence in the record, the court cannot conclude that there is anything so "morally unacceptable and shocking," *Whittington*, 172 Md. App. at 339, that an award of indefinite alimony is warranted.

Mrs. Dold now argues that she only earns 43% of the salary that Mr. Dold earns, a percentage that Maryland courts have held is sufficient to satisfy a finding of "unconscionable disparity," citing *Caldwell v. Caldwell*, 103 Md. App. 452 (1995). *Caldwell* offers Mrs. Dold no support. There is no bright line for determining the propriety of an alimony award. *Caldwell*, 103 Md. App. at 464. The Court of Appeals consistently has declined to adopt "a hard and fast rule regarding any disparity" in income for purposes of awarding indefinite alimony. *Tracey v. Tracey*, 328 Md. 380, 393 (1992). Each case depends upon its own circumstances to ensure that equity be accomplished. *Alston v. Alston*, 331 Md. 496, 507 (1993).

Mrs. Dold also cites *Blake v. Blake*, 81 Md. App. 712 (1990), in support of her argument that the circuit court erred in denying indefinite alimony. *Blake*, too, fails to support Mrs. Dold's position. In *Blake*, we stated that "accommodation is made for awards [of alimony] for an indefinite period if the court finds under § 11-106(c)(1),

Due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting[.]"

Blake, 81 Md. App. at 727.

In *Blake* we stated that “[t]he trial judge thoroughly reviewed the facts before making an alimony determination as evidenced by his specific reference to the factors enumerated in [FL] § 11-106(b). He referred to Mrs. Blake’s age, 57, and “the fact that she is not self-supporting.” *Blake*, 81 Md. App. at 727. The *Blake* decision reminded the trial court not to speculate on matters (in that instance, Mrs. Blake’s potential investment income) and to rely only on actual evidence, and it admonished the parties that “the time for presenting evidence”— in that instance, the amount of income which might be generated from a marital award— “was at trial. On appeal is not the time to make up for the omission” *Id.* at 729. Mrs. Dold attempts to take this exact tack.

Mrs. Dold made several assertions on appeal not supported by the record. There is nothing in the record below indicating that: (1) “she had to downsize from the four-bedroom marital home to a significantly smaller apartment because she could not afford to buy another property at this time, and is unlikely to be able any time soon;” (2) “she also can no longer afford to take vacations like the family used to do, nor can she afford to eat out as much;” and (3) “this disparity will only worsen over time, as [Mr. Dold] is in a position to earn significantly more than [Mrs. Dold] in the future.” In determining that there was no “unconscionable disparity” between the parties’ respective standards of living, both presently and projected, the circuit court relied upon evidence in the record and did not err when it denied an award of indefinite alimony.

REHABILITATIVE ALIMONY

In *Dold I*, we reversed the judgment of the circuit court awarding Mrs. Dold’s rehabilitative alimony in the amount of \$500.00 per month for thirty-six months and

remanded the case to the circuit court for re-evaluation of the amounts and duration of alimony.

In ruling on this issue, the circuit court stated:

In analyzing the alimony factors initially, and in making the alimony award for a limited term, this court (contrary to the [COSA's] suggestion [in *Dold I*]) did *not* conclude that [Mrs. Dold's] income of \$67,679.00 per year from her federal government position “[f]ell short of her necessary post-divorce expenditures.” Rather, this court’s finding was that “[b]ased on her income now, Mrs. Dold has the ability to be *self-supporting although whether some period of assistance to help her make the adjustment to a new place and new life is a consideration.*” [R.E. p. 263: 1-4] (Emphasis added). After analyzing and considering all of the [FL] § 11-106(b) factors, it was this “adjustment” consideration that led this court to determine that some limited alimony was appropriate as part of the “transitional” function of rehabilitative alimony – *i.e.*, an award of alimony for a term to assist in easing the transition from being a married couple to being single. *See Turrisi v. Sanzaro*, 308 Md. 515, 524-25 (1987) (“As a consequence, ‘in the ordinary case,’ alimony would be awarded for a definite time, to promote the transitional or rehabilitative function.”)[; *see also Solomon v. Solomon*, 383 Md. 176, 195 (2004), quoting *Tracey*, 328 Md. at 391 (citing the 1980 Governor’s Commission Report indicating that the “purpose of alimony is not to provide a lifetime pension but where practicable to ease the transition for the parties from the joint married state to their new status as single people living apart and independently”).

Nevertheless, the court is bound by the directives of the [COSA] with respect to the law to be applied on remand, and in particular the [COSA's] admonishment:

“an 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 v. Karmand*, 145 Md. App. 317, 328 (2002) (citation omitted)[]. That factor, which is codified in [FL] § 11-106(B)(2), “goes to the heart of Maryland’s alimony scheme, which is based on rehabilitation.” *Long v. Long*, 129 Md. App. 554, 582 (2000). Therefore, a court may not grant rehabilitative alimony for a specific duration without the requisite findings and predictions. In order to qualify for an award of rehabilitative alimony, Mrs. Dold

would have had to offer some testimony or evidence indicating that she is able and intending to improve her employability. []

The circuit court then recited our examination of the record in this case relating to the rehabilitative alimony question:

As the record reflects, throughout the trial Mrs. Dold consistently testified that she, in fact, does not anticipate earning a higher position or salary at NIH. Even if she “aspires to a higher position there,” as Mrs. Dold put it, there is no evidence or indication that she will indeed obtain the position. When specifically asked about her potential for a promotion or increased salary in the next few years, Mrs. Dold responded with, “there is no chance of that.” This testimony is directly opposite of what would be required in support of the finding that Mrs. Dold would be able to rehabilitate herself within the next three years to a greater degree of self-sufficiency.

Based on the information and evidence presented to the circuit court during trial, the record does not answer any of the critical questions concerning (1) how long it would take for Mrs. Dold to presumably move to a higher degree of self-sufficiency, and (2) how much further in her career she could be expected to progress. Mrs. Dold cites her age of fifty-seven years old to support her contention that she will not be able to either advance in her career much further, or even expect to work for much longer.

On the question of rehabilitative alimony, the circuit court concluded as follows:

This court has again thoroughly reviewed the record, including this court’s findings and the [FL] § 11-106(b) factors. The [COSA’s] description of [Mrs. Dold’s] evidence as related to temporary alimony is in fact, under the law as the [COSA] describes it and which this court is bound to follow and apply, “directly opposite of what would be required” to support a rehabilitative alimony award.[] There is simply insufficient evidence to answer in [Mrs. Dold’s] favor the critical questions posed by the [COSA] opinion. Accordingly, because [Mrs. Dold] has failed to satisfy her burden of showing entitlement to rehabilitative alimony, her claim for that alimony must also be denied.

The circuit court’s decision was in accord with Maryland law on rehabilitative alimony. The circuit court corrected itself and did not attempt to alleviate any perceived post-divorce inequity by awarding indefinite alimony to Mrs. Dold for a definite period of

time in the form of rehabilitative alimony. There is little more to be said, as the circuit court on remand engaged in the required analysis and did not err or abuse its discretion in denying rehabilitative alimony.

ATTORNEYS' FEES

In this appeal, Mrs. Dold seeks review of the circuit court's denial of an award of attorneys' fees incurred during the divorce proceedings. The circuit court did award Mrs. Dold \$7,772.00 in attorneys' fees, less a \$4,000.00 credit to which Mr. Dold was entitled, for a net attorneys' fee award of \$3,772.00 for pursuing the appeal and remand briefing.

FL § 11-110(c) sets forth the following considerations regarding the award of attorneys' fees:

Required considerations. – Before ordering the payment, the court shall consider:

- (1) the financial resources and financial needs of both parties; and
- (2) whether there was substantial justification for prosecuting or defending the proceeding.

In the instant case, the circuit court having carefully considered the evidence presented at trial, and the required considerations of FL § 11-110(c), an award of attorneys' fees to Mrs. Dold with respect to the merits trial was properly denied. Mr. Dold submitted an affidavit to the circuit court verifying the payment by Mr. Dold to Mrs. Dold of eight months of rehabilitative alimony, in the amount of \$500.00 per month, prior to the CSA's issuance of *Dold I*, which reversed the rehabilitative alimony award. The circuit court credited \$4,000.00, which was the total of the payments against the attorneys' fees award.

Mrs. Dold contends that “[a]dditionally, the trial court failed to provide any explanation at all for how it ended up at the amount of \$3,772.00 in attorneys’ fees[,]” and that “[e]ach side submitted briefing on the matter, but there was no explanation for why credits were given to [Mr. Dold] and not to [Mrs. Dold].” She contends “[t]his also constitutes an abuse of discretion.”

The court awarded attorneys’ fees for the post-remand briefing to Mrs. Dold, explaining:

Finally, with respect to the issue of attorneys’ fees, at the conclusion of the trial, the court considered [Mrs. Dold’s] request for attorneys’ fees in light of the factors found at [FL] § 11-110 (which factors are the same as those found at [FL] § 8-214(c)). Those factors are:

- (1) The financial resources and financial needs of both parties; and
- (2) Whether there was substantial justification for prosecuting or defending the proceedings.

The court in its discretion determined at the time that an award of fees was not appropriate. Both parties incurred substantial attorneys’ fees. Both parties were substantially justified in prosecuting or defending the action; and, each was deemed capable based on their respective financial needs and resources to pay their own attorneys’ fees. The court has reviewed its prior decision and finds no basis for changing that decision. Accordingly, [Mrs. Dold’s] request for attorneys’ fees through the trial of the case will be denied.

With respect to the fees incurred by [Mrs. Dold] in pursuing the appeal and the fees incurred on remand, based upon the ruling obtained by [Mrs. Dold] from the [COSA], there was substantial justification for [Mrs. Dold] to pursue the appeal and to pursue her claims on remand. At the same time, there was substantial justification on the part of [Mr. Dold] in resisting [Mrs. Dold’s] efforts. Ultimately, [Mrs. Dold’s] efforts may leave her in a position less desirable than that from which she started. Nevertheless, in the exercise of the court’s discretion, and after consideration of the statutory factors, the court deems it appropriate to award [Mrs. Dold] attorneys’ fees in the amount of \$5,372.00, in addition to the reasonable attorneys’ fees incurred in connection with the post-remand briefing ordered by this court.

The circuit court cited FL § 8-214 in its analysis of whether to award attorneys' fees. It noted that both parties incurred substantial attorneys' fees and both parties were substantially justified in prosecuting or defending the action. Each was capable based on their respective financial needs and resources to pay attorneys' fees. The court reviewed its prior decision and found no basis for changing that decision and denied Mrs. Dold's request for attorneys' fees through the trial of the case. The court did find that there was substantial justification for Mrs. Dold to pursue the appeal and her claim on remand even though she may be in a less desirable position than that which she stated. The circuit court's reasoning was sound in awarding attorneys' fees in the amount that it did, and in crediting Mr. Dold with \$4,000.00 against those fees for the rehabilitative alimony payments he made to Mrs. Dold prior to the reversal of the award of rehabilitative alimony. We uphold the judgment as to attorneys' fees.

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