

Circuit Court for Anne Arundel County
Case No.: C-02-FM-16-002561

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3197

September Term, 2018

CHRISTINE J. SOMMER

v.

ERIC C. GRANNON

Graeff,
Arthur,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: October 21, 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.

Christine Sommer (“Wife”), Appellant, seeks review of a judgment and order of the Circuit Court of Anne Arundel County, granting Eric Grannon, (“Husband”), Appellee, an absolute divorce and, *inter alia*, valuing the marital property, as well as awarding Wife a one million dollar monetary award, and granting Wife \$108,000.00 in attorneys’ fees from Husband. Wife asserts that Judge Ronald A. Silkworth, the trial judge, erred, because his valuation of marital property relied on “stale” evidence and the monetary award failed to include the value of an end-of-year distribution for 2017 that Husband was to receive in January of 2018. Wife also asserts that her attorneys’ fee award was insufficient, because Judge Silkworth failed to consider the sources of funds with which Husband and Wife paid their respective legal bills, to her detriment. Wife presents this Court with three questions, which we have renumbered, as follows:

1. Did the Circuit Court err by rendering its memorandum opinion and judgment of absolute divorce on December 31, 2018, without considering all marital assets?
2. Did the Circuit Court err by determining \$1,000,000.00 was the proper monetary award?
3. Did the Circuit Court err by determining that \$108,000.00 was the proper award of counsel fees?

Husband, in turn, urges us to dismiss Wife’s challenges to the marital property valuation and monetary award because, he argues, Wife failed to raise her allegations of error with the Circuit Court. Husband, however, also urges us to affirm the award of attorneys’ fees.

BACKGROUND

Husband and Wife were married in 2006 and separated in 2016. Husband filed for a limited divorce, followed by Wife filing for an absolute divorce, after which Husband amended his complaint to one for absolute divorce. Both parties sought custody of their two children and child support. Both parties also asked the Circuit Court to determine and value marital property and grant them a monetary award. Wife also requested indefinite alimony, or in the alternative, rehabilitative alimony. Husband and Wife each requested that their attorneys' fees be paid by the other party.

On September 1, 2017, Husband and Wife submitted to the Circuit Court a "Joint Statement of Parties Concerning Marital and Non-Marital Property," ("Joint Statement") on which they identified items as marital or non-marital property and, for each item, provided separate estimates of value.¹ A trial, before Judge Ronald A. Silkworth, began

¹ Husband and Wife were required to provide the Circuit Court with a list of marital and non-marital property, which included each party's estimate of the fair market value of those items, pursuant to Rule 9-207, which provides:

(a) **When required.** When a monetary award or other relief pursuant to Code, Family Law Article, § 8-205 is an issue, the parties shall file a joint statement listing all property owned by one or both of them;

(b) **Form of property statement.** The joint statement shall be in substantially the following form: . . .

(1) The parties agree that the following property is "marital property" as defined by Maryland Annotated Code, Family Law Article, § 8-201: . . .

(2) The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has

(continued . . .)

on November 13, 2017, and continued over a total of thirteen, non-consecutive days, until January 5, 2018, the final day of testimony. That day, Husband and Wife submitted an updated Joint Statement to the Circuit Court.

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been excluded by valid agreement, or (d) is directly traceable to any of those sources: . . .

(3) The parties are not in agreement as to whether the following property is marital or non-marital: . . .

(c) **Time for filing; procedure.** The joint statement shall be filed at least ten days before the scheduled trial date or by an earlier date fixed by the court. At least 30 days before the joint statement is due to be filed, each party shall prepare and serve on the other party a proposed statement in the form set forth in section (b) of the Rule. At least 15 days before the joint statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed joint statement that fairly reflects the positions of the parties. The defendant shall timely file the joint statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) **Sanctions.** If a party fails to comply with this Rule, the court, on motion or on its own initiative, may enter any orders in regard to the noncompliance that are just, including:

(1) an order that property shall be classified as marital or non-marital in accordance with the statement filed by the complying party;

(2) an order refusing to allow the noncomplying party to oppose designated assertions on the complying party's statement filed pursuant to this Rule, or prohibiting the noncomplying party from introducing designated matters in evidence.

Instead of or in addition to any order, the court, after opportunity for hearing, shall require the noncomplying party or the attorney advising the noncompliance or both of them to pay the reasonable expenses, including attorney's fees, caused by the noncompliance, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

On February 8, 2018, following closing arguments regarding financial issues on January 12, 2018 and a custody proceeding, on January 19, 2018, Judge Silkworth issued a Custody Order, which granted Husband and Wife joint legal custody and physical custody of their two minor children. Twelve days later, Wife asked Judge Silkworth to alter or amend the Custody Order, pursuant to Rule 2-534.² After a hearing on April 25, 2018, Judge Silkworth granted the motion and issued an Amended Custody Order the following day, which is not an issue in this appeal.

On the last day of 2018, Judge Silkworth issued a Judgment of Absolute Divorce, accompanied by a 61-page Memorandum Opinion and Order that addressed financial issues related to the divorce. The Memorandum Opinion documented Judge Silkworth's determinations regarding marital property, valued at \$4,407,733.69, as well as his bases for granting Wife (1) a one million monetary award; (2) \$7,600.00 per month in rehabilitative alimony for three years; (3) \$9,000.00 monthly in child support; and (4)

² Rule 2-534, which addresses circumstances in which a trial court may alter or amend a judgment, provides:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

\$108,000.00 in attorneys' fees, to be paid by Husband. Wife timely filed a notice of appeal with this Court.

MOTION TO DISMISS

Husband asks us to dismiss Wife's requests for review of the Circuit Court's marital property valuation and monetary award, pursuant to Rule 8-603(c).³ According to Husband, Wife failed to bring any of the issues underlying her challenges to the marital property valuation and monetary award to Judge Silkworth's attention, so that, under Rule 8-131(a),⁴ she is not entitled to review of those claims of error before us, pursuant to Rule 8-602(b)(1).⁵

³ Husband moves to dismiss portions of Wife's appeal within his Appellee's Brief, pursuant to Rule 8-603(c), which states, in relevant part: "A motion to dismiss based on [Rule 8-602(b)(1)] may be included in the appellee's brief."

⁴ Rule 8-131(a), which delineates the scope of review by appellate courts, provides:

The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

⁵ Rule 8-602 identifies circumstances in which an appellate court may properly dismiss an appeal of a trial court's judgment. The Rule states, in relevant part:

(a) **On Motion or Court's Initiative.** The court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(continued . . .)

Dismissal of Wife’s claims before us, however, is not the appropriate remedy, because Rule 8-131(a) violations are not grounds for dismissal of an appeal, pursuant to Rule 8-602(b)(1). *Lockett v. Blue Ocean Bristol, LLC.*, 446 Md. 397, 416 (2016) (explaining that “failing to meet the requirements of Rule 8-131 is not grounds for dismissing an appeal under Rule 8-602.”). This Court, however, ordinarily will not consider an issue that is raised for the first time on appeal, because to do so would defeat “[t]he animating policy behind Rule 8-131(a)[, which] is to ensure fairness for the parties involved and to promote orderly judicial administration.” *McDonell v. Harford Cty. Housing Agency*, 462 Md. 586, 602 (2019) (quoting *Jones v. State*, 379 Md. 704, 714 (2004)). Rule 8-131 ensures fairness by requiring a party to raise issues with “the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.” *Davis v. DiPino*, 337 Md. 642, 647 (1995) (quoting *Clayman v. Prince George’s Cty.*, 266 Md. 409, 426 (1972)). We, therefore, must initially determine whether Wife adequately preserved her marital property valuation and monetary award concerns.

Wife’s argument that Judge Silkworth’s valuation of marital property relied on “stale” evidence is premised on the fact that he valued the marital property as of January

(. . . continued)

- (b) **When Mandatory.** The Court shall dismiss an appeal if:
- (1) the appeal is not allowed by these Rules or other law; or
 - (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.

5, 2018, but did not issue his judgment and order until December 31, 2018. According to Wife, the delay resulted in erroneous marital property valuations, especially with respect to various investments titled in Husband’s name, which, Wife asserts, could have increased in value after January 5, 2018.⁶

The record, however, confirms that at no time between January 5, 2018 and December 31, 2018, did Wife bring to Judge Silkworth’s attention her concern that information reported on the Joint Statement was becoming “stale,” nor did she proffer any increase in value of Husband’s investments. Wife also failed to avail herself of the Circuit Court’s “general and broad revisory power over the judgment[,]” by asking Judge Silkworth to alter, amend, or revise his judgment, pursuant to either Rule 2-534⁷ or Rule

⁶ Wife argues that our opinion in *Green v. Green*, 64 Md. App. 122 (1985), supports her notion of “stale evidence” mandating reconsideration of the value of marital property. In *Green*, in dicta, we observed that the value of some marital property may be “distorted” by “delays between the close of evidence and the rendering of the judgment” in divorce cases. *Green v. Green*, 64 Md. App. at 141. This commentary, however, albeit a truism, cannot be construed as a *per se* requirement that judgments must be entered within a defined period of time after the conclusion of evidence, and Wife does not support her argument with any references to statute, Rule, or other case law.

⁷ See *supra* note 2. Although Wife, before us, insists that it is speculative to ask whether Judge Silkworth would have granted any relief in response to a Rule 2-534 motion, we note that Wife had previously relied on Rule 2-534 when she asked Judge Silkworth to alter or amend a custody order, which he filed on February 8, 2018, and, despite Husband’s opposition, Judge Silkworth had granted Wife’s motion and issued an amended custody order on April 26, 2018.

2-535(a).⁸ See *Wells v. Wells*, 168 Md. App. 382, 393-94 (2006).

Had Wife raised the “specific contention” of staleness, either before or after the Judgment and Order were issued on December 31, 2018, Husband would have had an opportunity to respond and Judge Silkworth would have had the ability to make findings of fact and conclusions of law. See *Hiltz v. Hiltz*, 213 Md. App. 317, 330-39 (2013). We, as a result, are left with an inadequate record with which to test Wife’s assertion of “staleness” and thus, exercise our discretion not to address the issue.

Wife, then, argues that Judge Silkworth’s decision to grant her only a one million dollar monetary award was in error, because he failed to consider the full amount of compensation Husband earned in 2017, which, she argues included an end-of-year distribution receivable in 2018 that she alleges was marital property. Wife bases her argument on the fact that, on the last day of testimony, Husband testified that a portion of his annual compensation came to him as an end-of-year distribution, which he generally received in January of the following year; Husband also testified that he did not know the

⁸ Rule 2-535(a), which addresses circumstances in which a trial court may revise a judgment, provides:

(a) **Generally.** On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

amount of end-of-year distribution, which he was to receive in January 2018, as part of his 2017 compensation.

As the party asserting that Husband’s 2017 end-of-year distribution was marital property, Wife, however, had “the burden of proof as to the classification of [that] property as marital or non-marital[.]” *Murray v. Murray*, 190 Md. App. 553, 570 (2010); *Potts v Potts*, 142 Md. App. 448, 468 (2002). Wife, though, failed to list Husband’s 2017 end-of-year distribution as a marital asset, on either the Joint Statement that she and Husband filed on September 1, 2017, or on an updated Joint Statement, filed on January 5, 2018.

Wife also had the responsibility to produce evidence of the value of Husband’s end-of-year distribution, were it to have been determined to be marital property. *Abdullahi v. Zanini*, 241 Md. App. 372, 412-413 (2019); *Newborn v. Newborn*, 133 Md. App. 64, 94 (2000). Although the trial ended without any evidence of the amount of 2017 end-of-year distribution, Wife could have asked Judge Silkworth to exercise his discretion to keep the case open in order to entertain additional evidence.⁹ *See Cooper v. Sacco*, 357 Md. 622, 637-40 (2000) (summarizing a trial court’s discretionary authority to reopen a case to allow a party to submit additional evidence). Wife also failed to ask

⁹ We note that Wife, on December 20, 2017, had moved to re-open evidence, “to admit certain limited pieces of evidence[.]” pertaining to the Circuit Court’s determination of child custody. Over Husband’s opposition, the Circuit Court granted Wife’s motion on January 16, 2018. Wife argues that the outcome of a second motion to re-open would be speculative, although Wife’s argument fails because she failed to preserve it.

Judge Silkworth to alter, amend, or revise his judgment, pursuant to Rules 2-534 or 2-535(a), as heretofore discussed, in order to consider any additional evidence of the amount of Husband’s 2017 end-of-year distribution. As a result, we decline to address Wife’s allegation of error that Judge Silkworth omitted not only of the identity of the end-of-year distribution as marital property, but also of its value, to her detriment, because Wife, as the proponent of the evidence, failed to preserve the issue for appeal.

ATTORNEYS’ FEES

Wife, finally, challenges Judge Silkworth’s order that Husband pay only \$108,000.00 of the \$450,000.00 in attorneys’ fees that she requested. Wife does not assert that Judge Silkworth failed to perform the requisite statutory analysis, but instead argues that he “ignor[ed] the economic disparity between the Parties” by “fail[ing] to entirely address the *source* of payment for the Parties’ fees[.]” (emphasis in original). As a result, Wife argues, the amount of attorneys’ fees she received “[wa]s an economic (and equitable) disparity which should be rectified[.]” Husband, in contrast, argues that the attorneys’ fee award was based on the requisite statutory analysis and urges us to affirm.

Attorneys’ fees may shift between parties in divorce cases, as well as proceedings pertaining to marital property disposition, alimony, and child custody and support. The award of attorneys’ fees and costs in divorce proceedings is controlled by Section 7-107 of the Family Law Article, which provides:

(a) “*Reasonable and necessary expense*” defined. — In this section, “reasonable and necessary expense” includes:

(1) suit money;

(2) counsel fees; and

(3) costs.

(b) *Award authorized.* — At any point under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *Considerations by court.* — Before ordering the payment, the court shall consider:

(1) the financial resources and financial needs of both parties; and

(2) whether there was a substantial justification for prosecuting or defending the proceeding.

(d) *Lack of substantial justification and good cause.* — Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) *Reimbursement.* — The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees.* — As to any amount awarded for counsel fees, the court may:

(1) order that the amount awarded be paid directly to the lawyer; and

(2) enter judgment in favor of the lawyer.

Maryland Code (1984, 2012 Repl. Vol., 2016 Suppl.). The fee-shifting scheme contained in Section 7-107 is replicated in fee-shifting statutes related to marital property disposition and alimony. *Compare* Section 7-107, *with* Maryland Code (1984, 2012 Repl. Vol.), Section 8-214 of the Family Law Article¹⁰ (allowing fee-shifting in marital

¹⁰ Section 8-214 of the Family Law Article, which authorizes fee-shifting in proceedings related to marital property disposition, provides:

(a) *“Reasonable and necessary expense” defined.* — In this section, “reasonable and necessary expense” includes:

(1) suit money;

(2) counsel fees; and

(3) costs.

(continued . . .)

property disposition proceedings), *with* Maryland Code (1984, 2012 Repl. Vol., 2016 Suppl.), Section 11-110 of the Family Law Article¹¹ (allowing fee-shifting in alimony proceedings).

(. . . continued)

(b) *Award authorized.* — At any point in a proceeding under this subtitle, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *Considerations by court.* — Before ordering the payment, the court shall consider:

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

(d) *Lack of substantial justification and good cause.* — Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) *Reimbursement.* — The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees.* — As to any amount awarded for counsel fees, the court may:

- (1) order that the amount awarded be paid directly to the lawyer; and
- (2) enter judgment in favor of the lawyer.

Md. Code (1984, 2012 Repl. Vol.).

¹¹ Section 11-110 of the Family Law Article, which authorizes fee-shifting in proceedings related to alimony, provides:

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) “Proceeding” includes a proceeding for:

- (i) alimony;
- (ii) alimony pendente lite;

(continued . . .)

A similar fee-shifting scheme applies to proceedings related to child custody and support, pursuant to Section 12-103 of the Family Law Article, which provides:

(a) *In general.* — The court may award to either party the costs and counsel fees that are just and proper under all the circumstances

(b) *Required considerations.* — Before a court may award costs and

(. . . continued)

(iii) modification of an award of alimony; and

(iv) enforcement of an award of alimony.

(3) “Reasonable and necessary expense” includes:

(i) suit money;

(ii) counsel fees; and

(iii) costs.

(b) *Authority of court.* — At any point in a proceeding under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *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 a substantial justification for prosecuting or defending the proceeding.

(d) *Absence of substantial justification.* — Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) *Expenses paid previously.* — The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees.* — As to any amount awarded for counsel fees, the court may:

(1) order that the amount awarded be paid directly to the lawyer; and

(2) enter judgment in favor of the lawyer.

Md. Code (1984, 2012 Repl. Vol., 2016 Suppl.).

counsel fees under this section, the court shall consider:

- (1) the financial status of each party;
- (2) the needs of each party; and
- (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

(c) *Absence of substantial justification.* — Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

Maryland Code (1984, 2012 Repl. Vol., 2016 Suppl.). Section 12-103 does not contain the language “reasonable and necessary expenses,” as in Sections 7-107, 8-214, and 11-110, but speaks to “costs and counsel fees that are just and proper under all the circumstances[.]” Nevertheless, Sections 7-107, 8-214, 11-110, and 12-103 “comprise one family law scheme[.]” which governs fee-shifting in divorce and related proceedings, and they have been interpreted to have the same meaning. *Henriquez v. Henriquez*, 413 Md. 287, 305 (2010).

Subsequent to the application of the three factors of financial status of the parties, needs of the parties, and substantial justification, a judge also must evaluate the reasonableness and necessity of the legal expenses incurred, based upon “numerous external factors bearing on the litigation as a whole.” *Monmouth Meadows Homeowners Ass’n., Inc. v. Hamilton*, 416 Md. 325, 333 (2010). Rule 2-703(f) provides such standards for evaluating reasonableness:

- (f) **Determination of Award.** (1) If No Award Permitted. . . .
(2) If Award Permitted or Required. If, under applicable law, the verdict of the jury or the findings of the court on the underlying cause of action permit but do not require an award of attorneys' fees, the court shall

determine whether an award should be made. If the court determines that a permitted award should be made or that under applicable law an award is required, the court shall apply the standards set forth in subsection (f)(3) of this Rule and determine the amount of the award.

(3) Factors to be considered. In making its determinations under subsection (f)(2) of this Rule, the court shall consider, with respect to the claims for which fee-shifting is permissible:

- (A) the time and labor required;
 - (B) the novelty and difficulty of the questions;
 - (C) the skill required to perform the legal service properly;
 - (D) whether acceptance of the case precluded other employment by the attorney;
 - (E) the customary fee for similar legal services;
 - (F) whether the fee is fixed or contingent;
 - (G) any time limitations imposed by the client or the circumstances;
 - (H) the amount involved and the results obtained;
 - (I) the experience, reputation, and ability of the attorneys;
 - (J) the undesirability of the case;
 - (K) the nature and length of the professional relationship with the client;
- and
- (L) awards in similar cases.

In determining whether a trial judge erred with respect to counsel fees, we review to determine “whether the trial judge abused his discretion in making or denying the award.” *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002). “To determine whether a court abused its discretion, we examine the court's application of the statutory factors to the unique facts of the case.” *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017). Under this standard, we will accept a trial court’s factual findings, unless they are clearly erroneous. *Simonds v. Simonds*, 165 Md. App. 591, 616 (2005).

Judge Silkworth, in his Memorandum Opinion, made the following findings, utilizing the indicated headings:

The financial status of each party.

- Husband’s annual income was approximately \$1.3 million per year; Wife’s annual income was \$137,382 per year.
- Wife had the capacity to earn “at least \$230,000.00 [per year.]”
- Husband’s possession of approximately 75% of the Parties’ marital property, which had a total value of \$4,407,733.69, justified a monetary award to Wife of \$1 million.
- Wife was entitled to a portion of Husband’s pension plan, to be awarded on an “if, as, and when basis[;]” Wife was not entitled to survivor benefits from this asset, because “[she] did not request an award of survivor benefits, and that the Joint Statement did not contemplate survivor benefits.”
- Wife was awarded rehabilitative alimony in the amount of \$7,600.00 per month for three years.
- Husband had no debt; Wife’s debts included a \$22,161.00 loan against her 401(k) account, \$32,814.00 in credit card debt, \$130,126.00 in student loans, and \$684,000.00 in personal loans.
- As of December 14, 2017, Husband’s legal fees were \$419,177.81 and Wife’s legal fees were \$727,405.61.
- Wife financed a portion of her legal expenses with \$192,000 in marital property, received from Husband.
- Wife obtained loans from her Aunt and Uncle in order to finance “[t]he rest of her [legal expenses.]”

The needs of each party.

- Husband’s monthly expenses were \$28,581.57, including \$12,000.00 in “undifferentiated support paid to [Wife].”

- Wife operated at a monthly budget deficit of \$7,618.97.
- Husband “[wa]s in a financial position to provide a level of support to [Wife.]”

Whether there was a substantial justification for bringing, maintaining, or defending the proceeding.

- “Both parties desired a divorce, and therefore, both were justified in bringing their respective actions and defending the others.”
- Wife “received a substantial alimony award, child support amount, and monetary award.”
- “While the attorneys’ fees in this case are extraordinary, . . . each party pursued the case reasonably in light of the other party’s actions. This case presented the perfect storm that lead to runaway attorneys’ fees.”
- Wife did not act “in bad faith or without substantial justification[.]” when she attempted to litigate custody in Montgomery County.
- Wife was not justified in presenting expert testimony regarding her claim that Husband was abusive, because “[the] Court did not need to reach a clinical conclusion in order to consider testimony relating to the conduct of [Husband] and its impact on [Wife] and the children.”
- Wife was not justified in having her financial expert analyze scenarios in which the parties’ respective incomes were equal.

Whether the fees requested are reasonable and necessary.

- *The time and labor required:* Husband’s and Wife’s collective legal expenses represented at least 50% more time and labor than was reasonable and necessary; The parties engaged in “unnecessary adversarial posturing[.]” which resulted in “significant discovery efforts and disputes” that were unnecessary.
- *The novelty and difficulty of the questions:* the case did not present any novel or difficult legal questions, which would have justified Husband’s and Wife’s collective legal expenses; Witnesses called by Wife to support

her claim that Husband was abusive did not provide any testimony in support of that claim.

- *The skill required to perform the legal service properly:* the resolution of the case did not require any exceptional legal skill; An expert witness, called by Wife to support her claim that Husband was abusive, “did not address the facts of this case[or] touch on any of the factors that this Court must consider[;]” Wife’s expenditure of \$25,000.00 to retain an expert witness, Dr. Berman, was “simply not a reasonable expenditure. Nor was it necessary.”
- *Whether acceptance of this case precluded other employment by the attorney:* neither party presented evidence that their involvement in this case precluded their attorneys from accepting additional legal work.
- *The customary fee for similar legal services:* a reasonable hourly rate for the case was \$350; Husband’s and Wife’s legal teams billed at rates between \$750 and \$1,025 per hour; Wife incurred “tens of thousands of dollars” in legal expenses, because of “multiple billing,” in which, multiple attorneys were concurrently billing hours on her case.
- *Whether the fee is fixed or contingent:* both Husband and Wife were billed at fixed, hourly rates.
- *Any time limitations imposed by the client or the circumstances:* neither the case, nor the parties, imposed time limitations on the attorneys.
- *The amount involved and the results obtained:* Wife obtained substantial results, in the form of a monetary award, alimony, and child support; Husband obtained “the option to buy out [Wife]’s interest in the former marital home[;]” Both parties could have obtained the results that they did, without incurring the legal expenses that they did.
- *The experience, reputation, and ability of the attorneys:* Husband’s and Wife’s were represented by “highly experienced and talented attorneys.”
- *The undesirability of the case:* neither the case nor its issues was undesirable from a legal perspective.
- *The nature and length of the professional relationship with the client:* Husband and Wife had professional relationships with their respective

attorneys of at least seventeen months.

- *Awards in similar cases*: a \$150,000.00 attorneys’ fee award, which was addressed in *McCleary v. McCleary*, 150 Md. App. 448 (2002), was a “benchmark,” because the duration of the litigation and the parties’ combined legal expenses in *McCleary* and this case were similar.

Judge Silkworth then concluded that \$108,000.00 was the appropriate attorneys’ fee award, based upon application of the statutory authority and Rule, having also taken into consideration that Wife had already applied \$192,000.00 in marital funds, which she received from Husband, to her legal expenses:

Considering all of the factors discussed herein, this Court concludes that some award of attorney’s fees is appropriate, primarily because [Husband] has had access to the vast majority of the marital assets, including his income. [T]he attorneys’ fees incurred on both sides were not reasonable or necessary for the proper pursuit of the factual and legal issues presented. Both parties are experienced litigators who understand the standards covering an award of attorneys’ fees. In consideration of all the factors discussed above, including the \$192,000 transfer of marital funds from [Husband] to [Wife] that [Wife] applied to her attorneys’ fees, it is appropriate for [Husband] to pay [Wife] **\$108,000** towards [Wife]’s attorneys’ fees.

(emphasis in original).

Our review of the record supports that Judge Silkworth did not err in his findings. He also did not abuse his discretion in his considered application of the factors in the statutes and Rule to the findings of fact.

Wife, however, alleges that the economic disparity between Wife and Husband, which, she argues, resulted in her incurring substantial debt to pay her legal bills, “trumps” Judge Silkworth’s statutory and Rule-based analyses, without any reference to

any statute, Rule, or case law, and we have found none. As a result, we affirm Judge Silkworth's award of attorneys' fees.

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