

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0902

September Term, 2014

ROBERT S. LEE

v.

MARY LOU LEE N/K/A MARY LOUISE
BUTLER

Hotten,
Berger,
Arthur,

JJ.

Opinion by Berger, J.

Filed: July 7, 2015

*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 arises out of a memorandum opinion and order of the Circuit Court for Talbot County granting an absolute divorce between Robert S. Lee (“Lee”) and Mary Lou Lee, now known as Mary Louise Butler (“Butler”). In the same memorandum opinion and order, the circuit court valued and divided the couple’s marital property and awarded Butler indefinite alimony in the amount of \$5,000 per month. The court further awarded Butler a monetary award of \$1,853,313.50.

On appeal, Lee presents four issues¹ for our review, which we have rephrased as follows:

1. Whether the trial court erred in awarding Butler a monetary award equal to half of the couple’s marital property and requiring Lee to pay Butler \$5000 per

¹ The issues, as presented by Lee, are:

1. Did the trial court err when it failed to consider the interplay between its monetary award and alimony award, as required by Family Law Articles §8-205 and §11-106, leaving Appellant without sufficient assets from which to generate money to pay alimony?
2. Did the trial court err when it determined the value of Encoda, LLC, Appellant’s start-up IT business, based upon its possibility of future success?
3. Did the trial court err, and/or was it clearly erroneous, when it determined that some pieces of art were in Appellee’s possession, but drafted its monetary award to Appellee as if Appellant had all of the art in his possession?
4. Did the trial court fail to account for the value of Appellant’s tools, which Appellee sold, and retained the proceeds?

month in indefinite alimony when Lee's only sources of income were interest and dividends on investments.

2. Whether the trial court erred in accepting Butler's expert valuation of Encoda, LLC, a business in which Lee holds a substantial ownership interest.
3. Whether the trial court erred in calculating the monetary award for Butler as if all of the art and antiques that were marital property were in Lee's possession.
4. Whether the trial court erred by declining to discount Butler's monetary award for the value of certain tools that allegedly constituted marital property.

For the reasons that follow, we affirm in part and reverse in part the judgment entered by the Circuit Court for Talbot County.

FACTUAL AND PROCEDURAL BACKGROUND

Lee and Butler were married on September 6, 1987 in Philadelphia, Pennsylvania. The couple had four children, Jordan Lee, Andrew Lee, Dillen Lee, and Robert Lee, all of whom are adults. Lee and Butler separated in March 2011, amid disagreements surrounding the remodeling of the kitchen in the couple's marital home.

On April 26, 2011, Butler filed a complaint for absolute/limited divorce in the Circuit Court for Talbot County. Lee filed an answer and counter complaint for limited divorce on June 9, 2011.

Early in the instant case, Lee and Butler disputed the validity of a prenuptial agreement they had executed prior to their marriage. Following a hearing on the issue on March 21, 2012, the Circuit Court for Talbot County declared that the couple's prenuptial

agreement was void and unenforceable because Butler executed it under duress. Lee appealed the circuit court's ruling to this Court and we, in an unreported opinion, affirmed the circuit court's ruling that the prenuptial agreement was void and unenforceable because it was executed by Butler under duress. *See* No. 288, September Term, 2012, Opinion by J. Zarnoch.

On October 4, 2013, we returned the record for the instant case to the Circuit Court for Talbot County accompanied by our mandate. On October 23, 2013, the circuit court struck the appearance of Lee's counsel, responding to a motion to strike appearance by consent filed by Lee and Lee's counsel.² The circuit court held hearings on the instant case from March 31, 2014 through April 3, 2014 regarding issues including the divorce, child support, use and possession of the marital home, alimony, the valuation and division of marital property, attorney's fees, the restoration of Butler's maiden name, and Butler's request for back *pendente lite* alimony.

On June 10, 2014, the Circuit Court for Talbot County issued a memorandum opinion and order in which it awarded Butler an absolute divorce from Lee on the grounds of mutual and voluntary separation for more than one year. At the hearing before the circuit court, Butler stated that she was abandoning her request for child support for sons Jordan and

² We note that although Lee appeared *pro se* during much of the proceedings before the Circuit Court for Talbot County, he has obtained counsel for the present appeal before this Court. Butler, however, has been represented by counsel for all relevant proceedings before the Circuit Court for Talbot County and this Court.

Dillen, and the circuit court accordingly refrained from addressing her original request for child support as sought in her complaint for absolute divorce.

The circuit court further found that the couple's marital home, located at 24615 Bantry Road, Easton, Maryland, had been sold at a sheriff's sale. The circuit court, therefore, concluded that the issue of use and possession of the marital home was no longer before it. Nevertheless, Butler sought contribution from Lee for payments Butler made towards the maintenance and upkeep of the marital home after the parties separated. The circuit court found that Butler had used marital funds to pay for the maintenance and upkeep of the marital home and, consequently, ruled that Butler was not entitled to any contribution from Lee.

The circuit court's June 10, 2014 memorandum opinion and order awarded Butler indefinite alimony in the amount of \$5,000 per month. After conducting an explicit analysis of the twelve factors that courts are statutorily required to examine to determine a fair and equitable alimony award,³ the circuit court found that Butler, a 56 year old woman who had been out of the workforce for 30 years and suffered from progressive multiple sclerosis, would likely face great difficulty in gaining sufficient education or job training to become self-supporting. The circuit court, therefore, granted Butler indefinite monthly alimony in the amount of \$5,000 to cover her stated monthly deficit of \$5,514.

³ See Md. Code (1984, 2012 Repl.Vol.), § 11-106(b) of the Family Law Article.

The circuit court subsequently conducted an extensive valuation and division of the couple's marital property. The circuit court ultimately found that the total value of the couple's marital property was \$4,623,999. The circuit court then further found that Lee had dissipated⁴ \$1,176,121 of the \$4,623,999 in marital property owned by Lee and Butler. At trial, the circuit court considered evidence that Lee had completely depleted the couple's HJ Sims #6766 account and their Charles Schwab IRA Rollover #5296 account. Before the breakdown of the couple's marriage in March 2011, the balance of the HJ Sims #6766 account was \$2,321,114 and the balance of the Charles Schwab IRA Rollover #5296 account was \$282,057. After the circuit court found that these accounts were depleted during the breakdown of the couple's marriage, the burden shifted to Lee to prove that he did not dissipate the funds from these accounts. Although Lee was able to prove that he contributed \$1,427,050 in funds from these accounts to Encoda, LLC, he failed to account for the remaining \$1,176,121 that he withdrew.

The circuit court found that Lee had dissipated the \$1,176,121 from the HJ Sims #6766 account and the Charles Schwab IRA Rollover #5296 account for which he could not account. Indeed, Lee's own counsel on appeal admits that "Lee has not contested this

⁴ "Dissipation may be found where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown." *Sharp v. Sharp*, 58 Md. App. 386, 401 (1984).

finding.”⁵ To balance the equities between the parties, the circuit court found it appropriate to award Butler a marital award of \$2,311,999.50. This marital award represents half of the total value of the couple’s marital property.⁶ After subtracting the value of marital property already titled to Butler from the \$2,311,999.50 marital award, the court granted Butler a monetary award of \$1,853,313.50 to cover the difference.

The circuit court concluded its June 10, 2014 memorandum opinion and order by finding that Lee and Butler were each responsible for their respective attorney’s fees. The trial court further restored Butler’s maiden name and granted Butler’s motion for contempt seeking unpaid *pendente lite* alimony from Lee. This timely appeal followed.

DISCUSSION

I. Interplay Between Monetary Award and Alimony

A. Standard of Review

When reviewing a trial court's award as to alimony, an appellate court will not reverse the judgment unless it concludes that “the trial court abused its discretion or rendered a judgment that was clearly wrong.” *Crabill v. Crabill*, 119 Md.App. 249, 260, 704

⁵ We also note the following argument posed by Lee’s counsel on appeal:

Lee’s silence [on the trial court’s finding of dissipation] is not an admission of dissipation, but rather recognition that he cannot prevail, on the facts in this record, upon a challenge to the findings of dissipation, in this Court.

⁶ The total value of the couple’s marital property was \$4,623,999. This included all marital property identified by the circuit court *and* the funds that Lee was found to have dissipated.

A.2d 532 (1998). Moreover, “appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Tracey*, 328 Md. at 385, 614 A.2d 590. *See also Durkee*, 144 Md.App. at 173, 797 A.2d 94; *Caccamise v. Caccamise*, 130 Md.App. 505, 513, 747 A.2d 221 (“The standard of review for alimony awards is the clearly erroneous standard ...”), *cert. denied*, 359 Md. 29, 753 A.2d 2 (2000); *Digges*, 126 Md.App. at 386, 730 A.2d 202. As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we might have reached a different result. *Reese v. Huebschman*, 50 Md.App. 709, 712, 440 A.2d 1109 (1982).

Malin v. Mininberg, 153 Md. App. 358, 414-15 (2003).

We, similarly, review monetary awards in divorce cases under the following standard of review:

In our review of the monetary award, we shall apply two standards of review. First, we utilize the “clearly erroneous” standard to the court's determination of what is, and what is not, marital property because “[o]rdinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property.” *Innerbichler v. Innerbichler*, 132 Md.App. 207, 229, 752 A.2d 291 (2000); *see also* Md. Rule 8-131(c). Factual findings that are supported by substantial evidence are not clearly erroneous. *Collins v. Collins*, 144 Md.App. 395, 409, 798 A.2d 1155 (2002). Second, as to the court's decision to grant a monetary award, and the amount thereof, we apply an abuse of discretion standard of review. *Gallagher v. Gallagher*, 118 Md.App. 567, 576, 703 A.2d 850 (1997). Within that context, “we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.” *Innerbichler, supra*, 132 Md.App. at 230, 752 A.2d 291.

Richards v. Richards, 166 Md. App. 263, 271-72 (2005).

B. Analysis

On appeal, Lee contends that the trial court erred when it granted Butler’s requests for indefinite alimony and a monetary award because it failed to consider the interplay between the monetary award and alimony award, as required by § 8-205(b)(10) and §11-106(b)(11) of the Family Law Article of the Maryland Code. *See* Md. Code (1984, 2012 Repl.Vol.), § 8-205(b)(10) of the Family Law Article; *and* Md. Code (1984, 2012 Repl.Vol.), § 11-106(b)(11) of the Family Law Article. Lee argues that he lacks the assets necessary for him to pay Butler both a monetary award of \$1,853,313.50 and indefinite alimony in the amount of \$5,000 per month. Lee further objects to the circuit court’s finding that he has an annual income of \$200,000. Lee’s financial statement, which was introduced into evidence at trial, reported an annual income of \$0 and a monthly deficit of \$11,665.

The circuit court rejected Lee’s allegation that he had no income, pointing to Lee’s 2012 tax return, which was introduced into evidence at trial. Lee’s 2012 federal income tax return reports that Lee received \$199,291.00 in 2012 in the form of nonbusiness income. “As neither party presented the Court with a gross monthly income figure for Mr. Lee, for purposes of calculating alimony,” the circuit court found it reasonable “to infer that Mr. Lee will continue to generate cash flow in the \$200,000 range” Indeed, trial judges are entitled to use “their common sense, powers of logic, and accumulated experiences in life to arrive at conclusions from demonstrated sets of facts.” *In re Gloria H.*, 410 Md. 562, 577 (2009) (quoting *Robinson v. State*, 315 Md. 309, 318 (1989)).

On appeal, Lee argues that "[t]o the extent that the trial court speculated that he had additional income, and rounded up the \$199,291 to \$200,000, that calculation was clearly erroneous." We, however, disagree. The circuit court appears to have rounded up Lee's 2012 income, from \$199,291 to \$200,000. Indeed, presuming that Lee's annual income is \$200,000 as opposed to \$199,291 makes no material difference in the instant case.

The overriding purpose of the circuit court's calculation of Lee's annual income is to determine how much alimony Lee can afford to pay after taking care of his own claimed expenses. If the trial court had used the lesser figure of \$199,291 that is drawn from Lee's 2012 federal income tax return in this calculation, Lee still had sufficient income to meet his claimed expenses and pay Butler \$5,000 per month in indefinite alimony. Although Lee claimed to have \$11,665 in expenses per month, the circuit court found that Lee had improperly included costs attributed to his children -- Jordan and Rob -- in this figure.⁷

In the financial statement that Lee filed with the circuit court, \$3,820 of Lee's \$11,665 in claimed expenses are explicitly attributed to the couple's children. Accordingly, Lee's actual monthly expenses are \$7,845.⁸ To cover his monthly expenses and the \$5,000 per

⁷ The circuit court notes in its June 10, 2014 memorandum opinion and order that "as all of the parties' children have reached the age of majority," and none of the parties' children were found to be destitute adult children, "their expenses should not have been calculated as expenses for Mr. Lee."

⁸ (\$11,665 - \$3,820).

month he owes to Butler in alimony, Lee requires a minimum annual income of \$154,140.⁹ Lee can adequately cover these expenses with his reported 2012 nonbusiness income of \$199,291. Therefore, although the circuit court refers to Lee’s 2012 nonbusiness income as totaling \$200,000, it is clear that the use of this number is simply for ease of reference. In examining the circuit court’s calculations, however, it becomes apparent that Lee actual reported nonbusiness income for 2012 is sufficient to cover Lee’s expenses and Butler’s alimony award.

The \$199,291.00 in nonbusiness income that Lee reported having received in 2012 could be attributed to three sources: taxable interest, dividends, and income from pass-through entities.¹⁰ First, Lee received \$129,003 in taxable interest from a number of investments, including a BSI Financial Services account, the Charles Schwab Brokerage Account #6128, the HJ Sims #6766 account,¹¹ and a Wells Fargo Bank account, as well as

⁹ $(\$7,845 + \$5,000) \times (12)$.

¹⁰ Black’s Law Dictionary defines “pass-through taxation” as “[t]he taxation of an entity’s owners for the entity’s income without taxing the entity itself.” TAXATION, Black’s Law Dictionary (10th ed. 2014). Entities that are subject to pass-through taxation are known as pass-through entities. “In Maryland, a ‘pass-through entity’ is defined as ‘(i) an S corporation; (ii) a partnership; (iii) a limited liability company that is not taxed as a corporation under this title; or (iv) a business trust or statutory trust that is not taxed as a corporation under this title.’” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451 n. 58 (2014), *reconsideration denied* (May 16, 2014) (citations omitted).

¹¹ We note that the Circuit Court for Talbot County ultimately found that the Charles Schwab Brokerage Account #6128 and the HJ Sims #6766 account were marital property. The circuit court did not address the remaining sources of Lee’s taxable interest income for 2012, so we presume that the BSI Financial Services account, the Wells Fargo Bank account, (continued...)

investments in HJSI Bozeman I, LLC, Sims Evergreen LLC, and Enterprise Products Partners. Most of the taxable interest that Lee reported receiving in 2012 was attributed to the HJ Sims #6766 account, which alone generated \$122,176 in taxable interest income. Second, Lee's reported 2012 nonbusiness income included \$3,057 in ordinary dividends from Charles Schwab Brokerage Account #5868 and Lee's interest in Enterprise Products Partners.¹² Third, Lee's reported 2012 nonbusiness income included \$67,231 in income that Lee received by virtue of his interest in various pass-through entities. All of Lee's 2012 pass-through entity nonbusiness income can be attributed to Lee's stake in Sims Fox Hill LLC.¹³

Lee argues that if all of his \$199,291 nonbusiness income for 2012 is based solely on the returns that Lee receives on his investments, then it is impossible to for him to maintain this level of income after paying Butler's monetary award. Lee reasons that "[i]f all of [his] income is derived from assets, and he is required to convey half of those assets to Butler, then obviously his income becomes only half of what it was." (emphasis omitted). Lee's position,

¹¹ (...continued)
and Lee's ownership stakes in HJSI Bozeman I, LLC, Sims Evergreen LLC, and Enterprise Products Partners are Lee's nonmarital property, which he will retain after the divorce.

¹² The Circuit Court for Talbot County classified the Charles Schwab Brokerage Account #5868 as marital property. As the circuit court was silent regarding Lee's ownership interest in Enterprise Products Partners, we presume that this interest is Lee's nonmarital property, which he will retain after the divorce.

¹³ As the circuit court was silent regarding Lee's ownership interest in Sims Fox Hill LLC, we presume that this interest is Lee's nonmarital property, which he will retain after the divorce.

however, is premised upon two faulty assumptions: (1) that all of the couple’s marital assets generated nonbusiness income; and (2) that all of the assets responsible for generating Lee’s nonbusiness income were marital property.

In reviewing the decision of a trial court to grant either a monetary award or an alimony award, we first must confirm that the trial court’s findings are not clearly erroneous. *See Richards v. Richards, supra*, 166 Md. App. at 271-72; *and Malin v. Mininberg, supra*, 153 Md. App. at 414-15. Only after confirming that the trial court was factually correct can we properly evaluate whether an award granted by the trial court constitutes an abuse of discretion. Furthermore, we have held that “[i]n arriving at a monetary award, [a] trial judge is not required to ‘articulate every step in his thought processes[.]’” but rather “is presumed to know the law and to apply it correctly, and that presumption is not rebutted by ‘mere silence.’” *Quinn v. Quinn*, 83 Md. App. 460, 466 (1990) (internal citations omitted).

In the instant case, the circuit court’s comprehensive memorandum opinion and order notes that the circuit court determined that Lee had sufficient assets to satisfy Butler’s monetary award, pay Butler \$5,000 per month in indefinite alimony, and cover Lee’s own claimed expenses. Nevertheless, the circuit court’s memorandum opinion and order are silent regarding the calculations that the circuit court performed to make this determination. We, therefore, endeavor to use the factual findings of the circuit court to “check their math” and determine if it is factually feasible for Lee to comply with the provisions of the circuit court’s monetary and alimony awards.

As explained previously, Lee’s reported nonbusiness income for 2012 can be traced back to a distinct set of assets. The overwhelming majority of Lee’s 2012 nonbusiness income can be traced to interest from the HJ Sims #6766 account, dividends from the Charles Schwab Brokerage Account #5868, and pass-through income from Lee’s interest in Sims Fox Hill LLC. These three assets alone generated 96.6%¹⁴ of Lee’s reported 2012 nonbusiness income, leading us to conclude that Lee can maintain his 2012 level of nonbusiness income as long as he maintains control of these assets.

In reviewing the circuit court’s examination of the couple’s marital property, we note that the circuit court determined that Lee, at the time of trial, had \$4,165,313 of the couple’s marital property titled in his name. The circuit court, however, could only identify \$2,989,192 in marital assets titled in Lee’s name. The circuit court found that Lee had dissipated the remaining \$1,176,121 in marital property, but presumed that Lee still had access to these funds. *See Karmand v. Karmand*, 145 Md. App. 317, 345 (2002) (“Having properly found that . . . funds were dissipated by the appellant, the trial court was entitled to treat the funds as if they still were in existence. Indeed, that is the very purpose of the doctrine of dissipation.”).

Of the \$4,165,313 in marital property titled in Lee’s name, only the Charles Schwab Brokerage Account #5868 (valued by the circuit court at \$20,016) and the HJ Sims #6766

¹⁴ [(\$122,176 from HJ Sims #6766) + (\$3,056 from Charles Schwab Brokerage Account #5868) + (\$67,231 from Sims Fox Hill LLC)] / (\$199,291 in 2012 nonbusiness income).

account generated a substantial amount of Lee's 2012 nonbusiness income. The remaining primary source of Lee's 2012 nonbusiness income, Lee's interest in Sims Fox Hill LLC, is unaffected by the circuit court's marital award. We note that Lee's interest in Sims Fox Hill LLC was not mentioned in the circuit court's examination of the couple's marital property, and thus must be considered Lee's nonmarital property, which he will retain after the divorce.

Subtracting Butler's monetary award from the marital property titled in Lee's name after the divorce, Lee will be left with \$2,311,999.50¹⁵ in marital property after satisfying the judgment Butler has against him. This figure is large enough to allow Lee to maintain the three primary sources of his nonbusiness income as reported in 2012. To preserve the majority of Lee's pass-through income, attributed to Lee's interest in Sims Fox Hill LLC, Lee must keep this interest intact. As previously explained, however, the circuit court did not classify Lee's interest in Sims Fox Hill LLC as marital property, so Lee will retain this interest regardless of the provisions of the circuit court's marital award. To preserve the majority of his dividend income, attributed to the Charles Schwab Brokerage Account #5868, Lee must keep the account intact, meaning that \$20,016 of the \$2,311,999.50 in marital property he retains must stay invested in the account.

To preserve the majority of his taxable interest income, that is attributed to the HJ Sims #6766 account, Lee must keep the account intact. The HJ Sims #6766 account, however, was found to be largely dissipated by Lee during the breakdown of his marriage

¹⁵ (\$4,165,313 - \$1,853,313.50).

to Butler. Although these funds have been hidden from Butler and the circuit court, Lee maintains access to these funds. The balance of the HJ Sims #6766 account in March 2011, prior to the breakdown of the couple's marriage, was found to total \$2,321,114. The circuit court further found that, during 2011, Lee contributed \$255,187 from the HJ Sims #6766 account to Encoda, LLC. This means that at the beginning of 2012, the balance of the HJ Sims #6766 account was approximately \$2,065,927.¹⁶ We note that the circuit court found that Lee proceeded to contribute \$534,308 from the HJ Sims #6766 account to Encoda, LLC in 2012. Nevertheless, Lee must retain \$2,065,927 in a comparable account, after satisfying Butler's monetary award, to maintain his reported 2012 level of nonbusiness income.

Provided Lee reinvests the money he dissipated from the couple's HJ Sims #6766 account, Lee will be able to maintain the three assets that generated the overwhelming majority of his 2012 nonbusiness income while still satisfying Butler's monetary award using marital property titled in Lee's name after the divorce. Lee will automatically retain his interest in Sims Fox Hill LLC, and its attendant pass-through income, because the circuit court did not classify this interest as marital property. Of the \$2,311,999.50 in marital property that Lee will retain after satisfying Butler's monetary award, Lee must keep \$20,016 invested in the Charles Schwab Brokerage Account #5868 and \$2,065,927 in an account similar to the HJ Sims #6766 account to maintain his reported level of nonbusiness income for 2012. This leaves Lee with a surplus of \$226,056.50 in marital property after satisfying

¹⁶ (\$2,321,114 - \$255,187).

Butler's monetary award *and* maintaining the investments necessary to keep an annual nonbusiness income of approximately \$200,000.

We, therefore, hold that the circuit court was not clearly erroneous in its calculation of an appropriate alimony award and monetary award for Butler in the instant case. Furthermore, we hold that the circuit court did not abuse its discretion in fashioning Butler's alimony award and monetary award. The circuit court's June 10, 2014 memorandum opinion and order explicitly references the factors that must be considered by a circuit court in fashioning an alimony or monetary award pursuant to § 8-205 and § 11-106 of the Family Law Article of the Maryland Code.

Section 11-106(b)(11) of the Family Law Article of the Maryland Code requires a circuit court to consider the ability of the parties to pay any potential alimony award in light of any monetary award being granted under § 8-205. *See* Md. Code (1984, 2012 Repl.Vol.), § 11-106(b)(11) of the Family Law Article. Similarly, § 8-205 of the Family Law Article of the Maryland Code requires a circuit court to consider the ability of the parties to pay any potential monetary award in light of any alimony award being granted under §11-106. *See* Md. Code (1984, 2012 Repl.Vol.), § 8-205(b)(10) of the Family Law Article.

In describing its consideration of each of these factors, the circuit court references its calculation of Lee's income based on his reported nonbusiness income in 2012, the finding that Lee dissipated marital funds, and the ultimate division of marital assets between the two

parties.¹⁷ We hold that the circuit court did not abuse its discretion in concluding, in light of these findings, that Lee would be able to satisfy Butler’s \$1,853,313.50 monetary award and pay Butler \$5,000 per month in indefinite alimony.

II. Valuation of Encoda, LLC

A. Standard of Review

“When an action has been tried without a jury,” as in this case, “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.” Md. Rule 8-131(c).

“A finding of a trial court is not clearly erroneous if there is competent or material evidence

¹⁷ In Part IV.A.11 of the circuit court’s memorandum opinion and order, located on page 8, the circuit court explicitly considers its alimony award to Butler in light of “[t]he financial needs and financial resources of each party, including . . . any award made during §§ 8-205 and 8-208” of the Family Law Article of the Maryland Code. In describing this consideration, the circuit court incorporates its “discussion concerning the disposition of the family home[.]” found on page 3, and its analysis of Lee’s income, found on page 5. Finally, in considering the effect of Butler’s monetary award on Lee’s ability to pay her alimony award, the circuit court refers to Part V(E) of its memorandum opinion and order, found on page 21, where it finds that Lee dissipated funds and sets the amount of Butler’s monetary award.

In Part V.C.10 of the circuit court’s memorandum opinion and order, located on page 19, the circuit court explicitly considers its monetary award to Butler in light of “[a]ny 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[.]” In describing this consideration, the circuit court incorporates its discussion in Part IV of the memorandum opinion and order, beginning on page 3, where the circuit court analyzes all of the factors that courts are statutorily required to consider when making an alimony award in a divorce case.

in the record to support the court's conclusion.” *Lemley v. Lemley*, 109 Md. App. 620, 628, 675 A.2d 596, 599 (1996).

B. Analysis

On appeal, Lee contends that the circuit court accepted an impermissible valuation for the value of Encoda, LLC, a business in which Lee holds a substantial ownership interest. In determining the value of Encoda, LLC for its examination of the couple’s marital property, the circuit court relied largely on a valuation report prepared on Butler’s behalf. Lee argues that the method of valuation proposed by Butler and adopted by the circuit court “is based upon the speculation that at some unknown point in the future, Encoda will become profitable.” (emphasis omitted).

Using market evidence and the reported revenue for Encoda, LLC for the year ended December 31, 2012, the valuation report concludes that the value of Encoda, LLC likely falls between \$864,000 and \$1,728,000. During the period of 2006 through 2012, however, Lee contributed \$1,770,923 in funds to Encoda, LLC, \$669,308 of which was contributed after Lee and Butler separated. The valuation report exercised the prudent investor principle to assume that Lee was contributing such a significant amount of marital funds to the company because he was hoping to “create an asset of greater wealth at some future date (i.e., post divorce).” The report further noted that “[i]n the absence of exercising the ‘prudent investor principle’, the contributions would present as a dissipation of marital funds.” Essentially, Butler’s valuation report assumes that Lee would only have contributed such a large amount

of marital funds to Encoda, LLC if he assumed the company was worth the value of those contributions. Otherwise, the valuation report concludes that the only explanation for such a large capital infusion to Encoda, LLC, which had been operating at a loss for several years, would be to dissipate marital funds and hide assets.

Pursuant to § 8-204(a) of the Family Law Article of the Maryland Code, a circuit court, in ruling on a divorce case, “shall determine the value of all marital property.” Md. Code (1984, 2012 Repl. Vol.), § 8-204(a) of the Family Law Article. For each identified item of marital property, the circuit court must determine the “fair market value, which is defined as “the amount at which property would change hands between a willing buyer and a willing seller” *Rosenberg v. Rosenberg*, 64 Md. App. 487, 525-26 (1985) (citations omitted). “In a divorce case, a party asserting a marital interest in property has the burden of producing evidence as to the identity of the property and of its value.” *Newborn v. Newborn*, 133 Md. App. 64, 94 (2000). After the moving party satisfies this burden of production, the burden shifts to the non-moving party to produce contradictory evidence. *Blake v. Blake*, 81 Md. App. 712, 720 (1990).

In the instant case, Butler sought to have Lee’s interest in Encoda, LLC classified as marital property, despite the fact that it was titled in Lee’s name alone. Butler, therefore, bore the initial burden of producing evidence regarding the fair market value of Lee’s interest in Encoda, LLC. Butler satisfied this burden by submitting the valuation report on which the circuit court relied. Lee, however, cannot identify any place in the record of proceedings

before the circuit court where he explicitly objected to the valuation report proffered by Butler. Lee contends that “there is no evidence of the value of Encoda, LLC at the time of divorce, from which the trial court could make a finding, so . . . the trial court was clearly erroneous and erred in making a finding of value.” Accordingly, Lee reasons that “[f]ailure to object to admission of” Butler’s valuation report “does not preclude review by the Court of the trial court’s error.” We, however, disagree and hold that Lee failed to preserve his objection to Butler’s valuation report on appeal.

Assuming, *arguendo*, that Lee adequately preserved his objection to the valuation report proffered by Butler, we hold that the circuit court was not clearly erroneous in relying on the report for its valuation of Lee’s interest in Encoda, LLC. We have previously held that it is not clearly erroneous for a trial court to rely on the valuation of a piece of marital property performed by an expert, provided that the expert’s reasoning and ultimate opinion were not devoid of logic. *See Fox v. Fox*, 85 Md. App. 448, 459 (1991). We explained our reasoning as follows:

In *Fox v. Fox*, 85 Md.App. 448, 584 A.2d 128 (1991), the goodwill valuation issue-and its corresponding intricacies-were preserved for appeal. In *Fox*, we considered the testimony of an expert witness and concluded that “his ratiocination or his ultimate opinion based thereon [was not] totally devoid of reason or logic.” *Fox*, 85 Md.App. at 459, 584 A.2d 128. We therefore found “nothing arbitrary or capricious in the chancellor's acceptance of it” and affirmed this aspect of the court's reasoning. *Id.*

Strauss v. Strauss, 101 Md. App. 490, 506 (1994). Thus, our task in the instant case “is to evaluate the reasoning and logic of appellee's expert . . . on which the trial court relied.” *Id.* It is not “our job on appeal . . . to re-weigh expert testimony, but to assure that there is an adequate foundation for the opinion rendered below.” *Id.*

As explained previously, we hold that the valuation report for Encoda, LLC proffered by Butler was based on sound reasoning and logic. The valuation report first reports a range of values for Encoda, LLC extending from \$864,000 to \$1,728,000 based upon market evidence and the reported revenue for Encoda, LLC for 2012. The report then increases its value for Encoda, LLC to \$1,771,000 to reflect the significant capital contributions Lee made to the business using marital funds. Contrary to Lee’s contentions on appeal, the valuation report does not assign some speculative, future value to Encoda, LLC based on the chance that it will be profitable in the future. Rather, it concludes that Lee’s contributions to Encoda, LLC reflect an inherent value in the company that is evident to individuals with an understanding of the health care IT industry, like Lee.

Maryland law requires a circuit court to value marital property using the fair market value of the property on the date of divorce. Lee’s contributions to Encoda, LLC from 2006 through 2012 reflect his belief that the company is valuable because its potential for future earnings is not as speculative as other potential investments. Skilled market participants would recognize this potential and would likely be willing to pay a higher cost to acquire the company and/or its intellectual property. Essentially, Butler’s valuation report does not take

into account the speculative, future value of Encoda, LLC, but rather reflects that it represents a strong investment for those knowledgeable about the relevant industry. We, therefore, hold that the valuation report proffered by Butler was not inherently illogical and it was, accordingly, not clearly erroneous for the circuit court to rely upon this report to value Lee’s interest in Encoda, LLC.

III. Possession of Couple’s Arts and Antiques

On appeal, Lee argues that the circuit court was clearly erroneous in finding that the parties owned \$200,000 in marital arts and antiques which were all in Lee’s possession and titled in his name. We concur, and hold that the circuit court was clearly erroneous in its treatment of the couple’s marital arts and antiques in calculating Butler’s marital award.

In its June 10, 2014 memorandum opinion and order, the circuit court found that the couple owned \$200,000 in arts in antiques as marital property. It further noted that since neither Lee nor Butler provided the circuit court with specific values for individual pieces of art and antiques, “and as neither party requested they be given title to specific pieces of art and antiques,” the circuit court “assume[d] the property issues as to art and antiques have been worked out by the parties.” The circuit court’s memorandum opinion and order further noted that Butler “testified that the parties each have certain pieces of art” and that Butler “has two Archie Rand paintings, two L.C. Armstrong paintings, three David Hockney prints, a painting of Scottish sailboats, a painting of fruit from St. Thomas, a painting of guys on stilts, and two Barry McGuire paintings.”

Nevertheless, in describing the division of marital property and the monetary award granted to Butler, the circuit court fails to deduct any of the arts and antiques in Butler's possession from her monetary award. The circuit court essentially assumes that all of the couple's marital art and antiques were in Lee's possession and requires him to give half of the value of the couple's marital arts and antiques to Butler as part of her monetary award. The circuit court's failure to deduct the value of marital art and antiques in Butler's possession from her monetary award, therefore, was clearly erroneous. We, accordingly, reverse the entry of the \$1,853,313.50 money judgment against Lee by the circuit court. We further remand this case to the Circuit Court for Talbot County for further proceedings whereby the court can determine the value of the marital arts and antiques in Butler's possession, and subtract their value from the judgment entered against Lee.

IV. Exclusion of Value of Tools from Calculation of Monetary Award

Lee argues that the circuit court erred in its examination of the couple's marital property because it failed to account for proceeds Butler retained after selling tools that allegedly belonged to Lee. Lee posits that any proceeds Butler retained from the sale of the tools -- which he claims were marital property -- should be deducted from Butler's monetary award. At the outset, we note that Lee failed to list these tools on his marital property statement, and only once brought the issue of the tools to the court's attention orally during trial.

We hold that the circuit court did not err in excluding proceeds from the sale of Lee’s tools from its review of the couple’s marital property. To the extent that Butler did sell tools that were marital property, we hold that these proceeds were used for the upkeep and maintenance of the marital home after Lee moved to Florida to separate from Butler. The couple’s marital home was sold at a sheriff’s sale before trial, but Butler sought a contribution from Lee for payments she made toward the marital home after Lee moved out.

The circuit court found that the total amount of expenses incurred by Butler for the upkeep and maintenance of the marital home after Lee’s departure was \$123,676.87. Nevertheless, the circuit court found that Butler was “not entitled to contribution for the marital home expenses, as she used marital funds to pay for those expenses.” Butler testified before the circuit court that she was required to take out a line of credit to pay for remodeling the kitchen in the marital home that led to the breakdown of Lee and Butler’s marriage. Furthermore, Charles Callahan, III, (“Callahan”) one of the contractors hired by the couple to complete the remodeling of the kitchen in the couple’s marital home, testified that Butler sold the tools at issue to his father.¹⁸ We, therefore, hold that the circuit court accounted for any possible proceeds that Butler retained from selling the couple’s marital tools through its

¹⁸ Callahan further testified that the couple’s marital tools were “[o]ld, beat up and not worth anything.”

determination that Butler used \$123,676.87 in marital funds to pay for the upkeep and maintenance of the marital home after Lee moved to Florida.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR TALBOT COUNTY FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. APPELLANT TO PAY THREE-FOURTHS OF THE COSTS, AND APPELLEE TO PAY ONE-FOURTH OF THE COSTS ASSOCIATED WITH THIS APPEAL.