UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0060

September Term, 2015

SHEILA JONES

v.

RICHARD L. JONES

Eyler, Deborah S.,
Berger,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: February 3, 2016

On May 7, 2013, appellee, Richard Jones ("Husband"), filed a complaint for absolute divorce in the Circuit Court for Baltimore City. Thereafter, appellant, Sheila Jones ("Wife"), filed an answer and a counter-complaint seeking an absolute divorce as well as a marital property or monetary award, alimony, and attorney's fees. Prior to trial, Husband's complaint was dismissed. Wife later filed a petition for the court to hold Husband in contempt due to his failure to comply with court orders mandating that he participate in discovery. The court denied Wife's petition for contempt and the case proceeded to trial. At trial, Wife was granted an absolute divorce and an alimony award, but the court denied Wife's request for a marital property or monetary award and attorney's fees.

On appeal, Wife challenges the denial of her petition for contempt, the denial of her petition for a marital property or monetary award, and the denial of her request for attorney's fees. Further, Wife challenges the amount of her alimony award. Specifically, Wife presents six issues for our review,[1] which we consolidate, rephrase, and reorder as follows:

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[1] The issues, as presented by Wife, are:

> I. Did the lower court err when it failed to grant Appellant a marital property award?
>
> II. Did the lower court err or abuse its discretion when it refused to allow 90 days for marital property determination?
>
> III. Did the lower court err or abuse its discretion in its alimony award?
>
> IV. Did the lower court err when it failed to award back alimony?

(continued...)

1. Whether the Court of Special Appeals has jurisdiction to consider the trial court's denial of a petition for contempt.

2. Whether the circuit court erred by failing to award Wife a marital property or monetary award.

3. Whether the circuit court erred in its alimony award.

4. Whether the circuit court erred in failing to award Wife attorney's fees.

For the reasons set forth below, we shall affirm the judgment of the Circuit Court for Baltimore City granting an absolute divorce. We vacate and remand the judgments on the issues of a marital property or monetary award, alimony, and attorney's fees for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In 1975, Husband and Wife had a child together. At the time, Wife possessed a high school diploma, some job training, and was employed as a "temp." Upon the birth of her first child, Husband initially denied paternity. After the circuit court determined paternity, the parties married in 1979 in Baltimore City. Together, the couple had three children. The arrangement between the parties was that Wife would contribute to the relationship as a "stay

[1] (...continued)

V. Did the lower court err or abuse its discretion when it failed to find Appellee in contempt of court?

VI. Did the lower court err or abuse its discretion when it failed to award Appellant attorney's fees and reasonable and necessary expenses of litigation?

at home mom" while Husband was primarily responsible for the financial contributions to the family. The couple originally lived together in their home in Harford County. In 1995, however, the couple separated when Husband moved out of the family home and into an apartment in Baltimore City.

Upon the couple's separation, the couple's children resided with Wife in the Harford County home. Further, after Husband moved away, he continued to support Wife financially by paying the mortgage and other utilities. In 1997, Husband returned to the family home and demanded that Wife find a new residence. In exchange for Wife's acquiescence in vacating the home, the parties agreed that Husband would provide temporary alimony until their divorce was finalized. The agreement between the parties read as follows:

> Pending the execution of a final divorce decree between Richard L. Jones ("Richard") and Sheila E. Jones ("Sheila"), Richard hereby agrees to provide Sheila with certain biweekly temporary alimony payments. Effective July 1997, Richard will pay Sheila $550 biweekly.
>
> This biweekly payment has been established based on Sheila's current financial position and living arrangements. Should Sheila's financial position or living arrangements change, Richard, at his sole discretion, may adjust the biweekly payment with thirty days prior written notice.
>
> This temporary Alimony Agreement will terminate upon the execution of the Final Divorce Decree.

Husband made biweekly payments pursuant to this agreement from 1997 until September 1999. In October 1999, Husband reduced his alimony to Wife and paid her $420

every two weeks. In June of 2005, Wife lost her job. As a result of Wife's unemployment, Husband increased his temporary alimony payments to $700 every two weeks.

In September of 2010, after the couple's youngest child had reached age 28, Husband ceased making all payments to Wife. Also, in 2010 Husband reported to his employer that he was divorced, and as such, Wife's health insurance coverage was discontinued. Thereafter, Wife was obliged to obtain medical assistance and food stamps to subsist. Wife reported a monthly income of $1,333.97, and expenses totaling $2,770, for a monthly deficit of $1,436.03.[2] Additionally, Wife identified her 2007 Ford Escape, valued at $7,228, as marital property. Wife also claimed possession of $5,000 worth of jewelry and furniture that she claimed were non-marital property.

Husband blatantly refused to participate in discovery or to comply with the circuit court's orders. As a result, the rather thin record precludes us from knowing the true extent of Husband's assets. Nevertheless, the record does reflect that various records subpoenaed from Husband's employer and financial institutions where Husband maintains accounts indicate that Husband is employed as Chief Financial Officer of the Bon Secours Baltimore Health System where he earns a base salary of $365,000 per year. Additionally, documents from his employer indicate that Husband was entitled to receive a $50,000 retention bonus. The record further reflects that Husband possessed a retirement account worth $183,941.91, maintained a bank account worth $3,754.39, and was vested in an annuity plan with benefits

[2] The value of Wife's food stamp benefits is not incorporated into the figure representing Wife's income.

as of June 1, 2014 of up to $261.66 per month for life depending upon his selection at the time of retirement.

On May 7, 2013, Husband filed a complaint in the Circuit Court for Baltimore City seeking an absolute divorce, but he sought no determination as to marital property or alimony. Upon being served with the complaint, Wife sought assistance from the Maryland Volunteer Lawyers Service. Wife's counsel initially agreed to handle the matter pro bono, as the case initially appeared to involve an uncontested divorce. It became apparent, however, that there was a significant disparity in assets of the parties, and that Wife's interest would be severely prejudiced if she did not contest the divorce. Accordingly, on July 5, 2013, Wife filed a counter-complaint seeking an absolute divorce, alimony, a marital property or monetary award, and attorney's fees.

After Wife indicated that she intended to contest the divorce, Husband abruptly refused to participate in the litigation. Between late July and early August of 2013, the parties exchanged requests for discovery. On November 6, 2013, Wife certified that she submitted her answers to interrogatories and documents to Husband. Husband, for his part, did not comply with Wife's discovery request, nor did he file an answer to Wife's counter-complaint. Accordingly, Wife requested that the court issue an order of default due to Husband's failure to respond to her counter-complaint, and a motion for sanctions for refusing to comply with discovery.

Thereafter, Husband's counsel filed a motion to strike his appearance. The attorney's motion articulated how Husband's "chronic inactivity and lack of cooperation makes it impossible for [Husband's] counsel to continue to competently represent him." On January 13, 2013, the court issued an order compelling discovery which specifically provided that Husband "shall be subject to further sanctions of the Court for any failure to timely comply in good faith with the terms of this Order." Later, on March 7, 2014, the court held a scheduling conference where Wife, her counsel, and Husband's counsel were in attendance. In the scheduling order, the parties were required to comply with discovery, and Husband's complaint was dismissed. Thereafter, the court granted Husband's counsel's motion to strike his appearance.

Representing himself, Husband continued to disregard the circuit court's discovery orders resulting in Wife incurring unnecessary litigation expenses.[3] On April 23, 2014, Wife filed a motion for sanctions and for other relief due to Husband's failure to provide discovery and for disregarding the court's order to compel discovery. Wife's motion requested immediate monetary relief because Wife was having trouble maintaining the litigation due to her impoverishment, and Husband's refusal to comply with her discovery requests and the court's previous orders. Wife's motion was denied on May 15, 2014.

[3] It is noteworthy, however, that on appeal, Husband retained Spencer M. Hecht of Hecht & Associates, LLC, 1100 Wayne Avenue, Suite 600, Silver Spring, Maryland 20910, to represent him. We further note that Mr. Hecht's 48-page brief is noncompliant with Md. Rule 8-503(d).

On June 12, 2014, Wife filed a petition to hold Husband in contempt for failing to comply with discovery, and for disregarding the court's previous orders compelling discovery. The court issued a show cause order directing Husband to appear on July 16, 2014, the day previously scheduled for trial, and articulate why he should not be held in contempt. The trial judge conditioned his order upon proper service on Husband either at his residence or place of employment. Two business days later, Wife's attorney personally delivered the show cause order to Bon Secours Hospital, where Husband was employed. After confirming that Husband was still employed as the CFO of Bon Secours Hospital, and that he maintained an office at the hospital, Wife's attorney left the documents with the security receptionist.

Wife appeared for trial on July 16, 2014, but Husband did not.[4] The proceeding began with the court addressing the issue of contempt. The court denied Wife's petition for contempt on the grounds that service of process was insufficient when Wife's attorney delivered process to the security receptionist at Husband's place of business. Alternatively,

[4] In the circuit court's memorandum opinion, the court found that "[Wife] did not personally serve [Husband] to appear for trial in accordance with the Maryland Rules." The parties dispute whether service of the show cause order issued on June 12, 2014, ordering Husband to appear on July 16, 2014, was proper. For the reasons articulated in Part I, *infra*, we do not reach the question as to whether service of the show cause order was proper. Nevertheless, Husband did have proper notice that he was to appear on July 16, 2014 for trial. The scheduling order issued on March 7, 2014, provides that it is "**ORDERED**, that there shall be a Trial on the Merits before this Court on **July 16, 2014** . . ." (emphases in original).

the court indicated that it lacked jurisdiction to use its contempt power to remedy discovery orders. Notably, however, the primary basis for denying Wife's petition for contempt was grounded in insufficient service of process.[5] Immediately after the trial judge declined to hold Husband in contempt, the matter proceeded to trial to address the issues contained in Wife's counter-complaint.[6] At trial, Wife and her friend, Bonita Thomas, testified.

Additional facts will be discussed as necessitated by the issues presented.

DISCUSSION

I. This Court Lacks Jurisdiction to Consider Wife's Appeal From the Circuit Court's Denial of Her Petition for Contempt.

Wife contends that the circuit court erred when it failed to find Husband in contempt for his failure to comply with the court's orders compelling discovery. For the reasons that follow, we lack jurisdiction to consider Wife's challenge to the trial court's failure to hold Husband in contempt. The scope of our review of the trial court's failure to find Husband in contempt is as follows:

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[5] With respect to the propriety of contempt to remedy discovery orders, the trial judge indicated that "again, I'm not going to rule on the issue legally, but it would seem to me that the Court of Appeals has provided sanctions for failure of discovery when one of those does not appear to be holding the offending party in contempt." For the reasons articulated in Part I, *infra*, we decline to review the propriety of this statement. We, however, observe that "[i]f justice cannot otherwise be achieved, the court may enter an order in compliance with Rule 15-206 treating the failure to obey the order as a contempt." Md. Rule 2-433(c).

[6] Notably, the trial judge expressed concern about the consequences of proceeding to trial without having had the opportunity to complete discovery, and even indicated that she may be amenable to a postponement. Wife elected not to postpone the trial, and instead, opted to proceed to trial.

> (a) *Scope of review*. –Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudge him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action.

Md. Code (2006, 2013 Repl. Vol., 2015 Suppl.) § 12-304(a) of the Courts and Judicial Proceedings Article ("CJP"). The language employed in CJP § 12-304, has been interpreted in a manner that

> requires that two (2) prerequisites be satisfied before an appeal may be successfully maintained in a contempt case. Firstly, there must be an 'order or judgment passed to preserve the power or vindicate the dignity of the court' and, secondly, the appeal must be prosecuted by the person adjudged to be in contempt.

Becker v. Becker, 29 Md. App. 339, 344-45 (1975). The reason we generally limit the appealability of a contempt order to a party that has been adjudged to be in contempt is because "[t]he right to appeal in this State is wholly statutory." *Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 247 (2002). Additionally, the text of CJP § 12-304 provides that one may only appeal contempt orders when the court has "adjudg[ed] him in contempt of court." CJP § 12-304. As such, we cannot entertain an appeal relating to a contempt brought by someone who has not been adjudged to be in contempt in the absence of statutory authority granting us jurisdiction to hear the appeal. *Pack Shack, Inc.*, *supra*, 371 Md. at 247.

Further, in *Pack Shack, Inc.*, the Court of Appeals determined that this narrow construction of CJP § 12-304–limiting the appealability of contempt cases to those who are adjudged to be in contempt–is in accordance with the common law that predated the

promulgation of that article. *Id.* at 257-58. Accordingly, the right to review a decision regarding civil or criminal contempt ordinarily belongs "only to those adjudged in contempt, not to those who unsuccessfully seek to have another held to be contemptuous." *Tyler v. Balt. Cnty.*, 256 Md. 64, 71 (1969).

In *Tyler*, *supra*, the Court of Appeals acknowledged the existence of a narrow exception to the rule limiting the right to appeal a contempt case to an individual held to be in contempt. In *Tyler*, *supra*, the Court of Appeals determined that the general prohibition on appeals of contempt orders brought by individuals other than those held in contempt may be abrogated if

> the order imposing the punishment for civil contempt or refusing to impose the order for civil contempt is so much a part of or so closely intertwined with a judgment or decree which is appealable as to be reviewable on appeal as part of or in connection with the main judgment.

Tyler, *supra*, 256 Md. at 71. The legitimacy of this exception, however, has subsequently been called into question by the Court of Appeals. Indeed, the Court of Appeals has noted that

> the continued vitality of this exception, which was a very narrow one to begin with, is highly doubtful. . . . [T]hat exception very likely would not apply when the appeal is filed by a person who was not held in contempt, however closely related and intertwined it is with other orders or judgments also pending appeal. *Tyler* simply does not support affording the losing party to a contempt action the right to appeal.

Pack Shack, Inc., *supra*, 371 Md. at 260; *see also Becker*, *supra*, 29 Md. App. at 345 ("*Tyler* makes it vividly clear that in this State only those adjudged in contempt have the right to appellate review.").

In the instant case, we perceive no jurisdictional basis upon which we may consider Wife's challenge to the circuit court's failure to find Husband in contempt. The contempt power is possessed by all courts, and exists as a tool employed to maintain the integrity, independence, and existence of the judiciary. *Muskus v. State*, 14 Md. App. 348, 358 (1972). The contempt power, then, is generally not intended to affirmatively cloak litigants with any substantive rights, but rather to assist the courts in exercising its necessary functions. *Id.* In recognition of this principle, we perceive no basis for this Court's jurisdiction to consider Wife's appeal of the denial of her petition for contempt since she "was not held in contempt, however closely related and intertwined it is with other orders or judgments" in this case. *Pack Shack, Inc.*, *supra*, 371 Md. at 260. Accordingly, we hold that we lack jurisdiction to review the circuit court's failure to hold Husband in contempt.

II. The Circuit Court Erred by Failing To Acknowledge Evidence Sufficient to Grant Wife a Marital Property Or Monetary Award.

A. Standard of Review

We review a circuit court's decision whether to grant a marital property or monetary award under an abuse of discretion standard. *Gallagher v. Gallagher*, 118 Md. App. 567, 576 (1997). A trial court's "decision whether to grant a monetary award is generally within the sound discretion of the trial court. Nevertheless, even with respect to a discretionary

matter, a trial court must exercise its discretion in accordance with correct legal standards." *Id.* (quoting *Alston v. Alston*, 331 Md. 496, 504-06 (1993)). "[A]n exercise of discretion based upon an error of law is an abuse of discretion." *Brockington v. Grimstead*, 176 Md. App. 327, 359 (2007). Further, the factual findings a trial court relies upon to render its discretionary decision will not be reversed unless they are clearly erroneous. *Noffsinger v. Noffsinger*, 95 Md. App. 265, 285 (1993). If there is any competent material evidence to support the factual findings, those findings cannot be held to be clearly erroneous. *Fantasy Valley Resort, Inc. v. Gaylord Fuel Corp.*, 92 Md. App. 267, 275 (1992).

B. The Circuit Court Did Not Err by Refusing to Permit Wife to Enter Evidence After Trial.

Wife avers that the court abused its discretion by failing to permit Wife to enter evidence regarding Husband's assets between the time when the court granted the divorce and 90 days thereafter. When a party to a divorce proceeding seeks a marital property award,

> the trial court must undertake a three-step process which may culminate in a monetary award. . . . First, for each disputed item of property, the court must determine whether it is marital or nonmarital. . . . Second, the court must determine the value of all marital property. . . . Third, the court must decide if the division of marital property according to title would be unfair. If so, the chancellor may make a monetary award to rectify any inequity created by way in which property acquired during marriage happened to be titled.

Brown v. Brown, 195 Md. App. 72, 109-10 (2010) (emphases, quotations, and citations omitted). Notably, the court may only transfer ownership of marital property or make a monetary award "after the court determines which property is marital property, and the value

of the marital property." Md. Code (1984, 2012 Repl. Vol., 2015 Suppl.), § 8-205(a) of the Family Law Article ("FL").

With respect to determining the value of marital property, the Maryland Code provides:

> (a) *Time of court action.* – In a proceeding for an annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court shall determine which property is martial property:
>
> (1) when the court grants an annulment or an absolute divorce;
>
> (2) within 90 days after the court grants an annulment or divorce, if the court expressly reserves in the annulment or divorce decree the power to make the determination; or
>
> (3) after the 90-day period if:
>
> (I) the court expressly reserves in the annulment or divorce decree the power to make the determination;
>
> (ii) during the 90-day period, the court extends the time for making the determination; and
>
> (iii) the parties consent to the extension.

FL § 8-203(a). Wife cites *Green v. Green*, 64 Md. App. 122 (1985), and *Rosenberg v. Rosenberg*, 64 Md. App. 487 (1985), for the proposition that FL § 8-203 permits the trial court to receive evidence up to 90 days after it grants a divorce.

In *Green*, *supra*, we recognized that FL § 8-203(a) was promulgated to avoid "hasty decision making" with respect to the valuation of marital property awards. *Green*, *supra*, 64

Md. App. at 140-41. Accordingly, in *Green*, *supra*, we held that a trial court did not err when it deferred determination of the value of marital property beyond the date of the divorce decree so long as that valuation is based on the value of the property on the date of the divorce decree. *Id.* Likewise, in *Rosenberg*, *supra*, we upheld a circuit court's decision to defer adjudicating the value of marital property beyond the date of trial. *Rosenberg*, *supra*, 64 Md. App. at 507. Critically, both *Green* and *Rosenberg* rely on our holding in *Dobbyn v. Dobbyn*, 57 Md. App. 662 (1984), for the principle that marital property is

> to be valued as of the date of the decree of absolute divorce **based upon the evidence produced at trial**. In the absence of an agreement as to a date certain, if the chancellor needs additional time to determine value as of the date of the decree due to fluctuations in the market, he may reserve in the decree an additional ninety days.

Dobbyn, *supra*, 57 Md. App. at 676-77 (emphasis added).

Pursuant to our holding in *Dobbyn*, *supra*, the trial court has the discretion to defer ascribing a value to everything that has been identified as marital property beyond the date the divorce is decreed. *Dobbyn*, *Green*, and *Rosenberg*, however, do not stand for the proposition that litigants remain free to offer additional evidence and have it be adjudged to be marital property beyond the date of trial. To the contrary, in *Dobbyn*, we held that the valuation of the marital property, whether that valuation takes place on or after the date of the divorce, is to be "based upon the evidence produced at trial." *Dobbyn*, *supra*, 57 Md. App. at 676.

In the instant case, upon Wife's request to hold evidence open for 90 days to permit her to enter evidence that would prove the existence of additional marital property, the court responded:

> [THE COURT]: I can't take evidence on that and then just wait for you to produce new evidence. The time for trial is now . . . . [W]hat you ought to be asking for is more time . . . . The law doesn't work for me to just hold it for 90 days for you to just keep submitting evidence outside of the Court.

We hold that the circuit court did not err in refusing to permit Wife to submit evidence of additional marital property after trial.[7] Section 8-203(a) of the Family Law Article permits the judge, in her discretion, to defer ascribing a value to the marital property until after the divorce decree. That section, however, does not permit litigants to present additional evidence of marital property that may be valued beyond the date the divorce is decreed. We, therefore, hold that the circuit court did not err by refusing to permit Wife to submit evidence of marital property after trial.

C. The Circuit Court Erred In Finding That Wife Presented No Evidence Of The Existence of Marital Property.

Wife asserts that the circuit court erred when it failed to grant her a marital property or monetary award under FL § 8-205. Husband, for his part, argues that the circuit court was not clearly erroneous in failing to find any marital property from which to make an award

[7] We further observe that the trial judge thrice indicated that she may be amenable to a postponement so that Wife may seek further redress for Husband's egregious discovery violations, and she warned of the potential consequences of proceeding to trial with insufficient evidence. Nevertheless, Wife did not request to postpone the trial, and instead, elected to proceed to trial.

because Wife "did not provide the court with any meaningful proof as to the existence or non-existence of property – either marital or non-marital." We hold that the circuit court erred in finding that Wife failed to present legally sufficient evidence of marital property from which the court could have made a marital property or monetary award.

We have recognized that when making a marital property or monetary award, a trial judge has "all the discretion and flexibility [s]he needs to reach a truly equitable outcome." *Long v. Long*, 129 Md. App. 554, 579 (2000). "Although an equal division of the marital property is not required, the division must nevertheless be fair and equitable. To do otherwise is an abuse of discretion." *Id.* at 578. Before a court exercises its discretion and makes a marital property or monetary award, however, it must follow a three-step process:

> (1) if an equitable adjustment over and above the distribution of the spouse's property in accordance with its title is an issue, the court shall determine which property is marital property; (2) the court shall then determine the value of all marital property; and finally, (3) the court may make a monetary award as an adjustment of the parties' equities and rights concerning marital property, whether or not alimony is awarded.

Hollander v. Hollander, 89 Md. App. 156, 162 (1991) (internal citations and quotations omitted). Notably, with respect to the third step, "the court *may* make a monetary award to rectify any inequity 'created by the way in which property acquired during marriage happened to be titled.'" *Innerbichler v. Innerbichler*, 132 Md. App. 207, 228 (2000) (emphasis in original) (quoting *Doser v. Doser*, 106 Md. App. 329, 349-50 (1995)). "If an award is deemed appropriate, the court then must consider each of the factors enumerated in section 8-205." *Hollander*, *supra*, 89 Md. App. at 162. Those factors include:

> (1) the contributions, monetary and non-monetary, of each party to the well-being of the family;
>
> (2) the value of all property interests of each party;
>
> (3) the economic circumstances of each party at the time the award is to be made;
>
> (4) the circumstances that contributed to the estrangement of the parties;
>
> (5) the duration of the marriage;
>
> (6) the age of each party;
>
> (7) the physical and mental condition of each party;
>
> (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
>
> (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
>
> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
>
> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

FL § 8-205(b).

"With respect to the ultimate decision regarding whether to grant a monetary award and the amount of such an award, a discretionary standard of review applies . . . . This means

that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result." *Innerbichler*, *supra*, 132 Md. App. at 230. Indeed, we review the trial court's decision whether to grant a monetary award, and if so, the amount of that award, under the abuse of discretion standard. *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007). A trial court abuses its discretion when

> no reasonable person would take the view adopted by the [trial] court, . . . when the court acts without reference to any guiding rules or principles[,] where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, . . . or when the ruling is violative of fact and logic.

In re Adoption/Guardianship No. 3598, 347 Md. 295, 312 (1997) (quotations and citations omitted).

Critically, the discretionary factorial analysis under FL § 8-205(b) is conditioned upon a finding of marital property to distribute in the first instance. In this case, Wife, as the proponent of the counter-complaint seeking a marital property or monetary award, bore both the burden of production and the burden of persuasion in establishing the existence of marital property. The burden of production is satisfied when the evidence presented by Wife "if given the maximum credibility and maximum weight, could permit the fact finder fairly to find" that she is entitled to a marital property or monetary award. *Terumo Med. Corp. v. Greenway*, 171 Md. App. 617, 626 (2006). Whether a litigant has satisfied her burden of production, that is whether a litigant has produced legally sufficient facts that would entitle her to relief, is a question of law that we review *de novo.*

The question in this case, then, is whether the trial court acknowledged Wife's evidence of Husband's assets and found that evidence incredible in a valid exercise of discretion, or whether the trial judge found that Wife's evidence was insufficient as a matter of law. When reviewing a trial judge's determination as to whether to make a marital property or monetary award, we will defer to the trial court's exercise of sound discretion, but "discretion cannot be said to have been soundly exercised which wholly disregarded evidence by which its exercise should have been aided." *Mitchell v. Hous. Auth. of Balt. City*, 200 Md. App. 176, 205 (2011) (internal quotations omitted).

In the instant case, the trial judge found that Wife had failed to satisfy her burden of production by failing to present evidence that would, if given maximum weight and credibility, establish the existence of marital property. In the court's opinion, it articulated that:

> With regard to a monetary award, this court **lacks sufficient evidence to determine whether there exists marital property**, and, if so, the amount of the marital property. Given the **complete failure of evidence**, this court can make no determination regarding marital property and shall not make a monetary award.

(emphases added). Moreover, in the trial judge's factual findings, the court determined that:

> [Wife] presented **no evidence of the value of each party's property interests**. Other than statements from Bon Secours Hospital, the court **only** has evidence of the fact that [Wife] owns a Ford Escape Valued at approximately $7,228, jewelry valued at $1,000 and furniture valued at $4,000.

(emphases added).

These findings, however, are clearly erroneous. The trial judge's finding that there was a "complete failure of evidence" and that Wife had "presented no evidence of the value of each party's property interests" is inaccurate. Indeed, the record shows that there is sufficient evidence to permit the court to conclude that Husband's assets include a retirement account worth $183,941.91, a bank account worth $3,754.39, and that Husband was vested in an annuity plan with benefits as of June 1, 2014 of up to $261.66 per month for life depending upon his selection at the time of his retirement. Husband, due to his absence, presented no evidence contesting the existence or value of his assets.

Although we are cognizant that under the abuse of discretion standard, we "view the evidence in the light most favorable to the appellee," *Levin v. Levin*, 43 Md. App. 380, 386 (1979), we cannot affirm the trial judge's failure to consider, or the *ipse dixit* rejection of the evidence presented by Wife. Indeed:

> Were we to hold that, in every instance when all of the evidence is one way, it may all be disregarded and the trial judge permitted to make a finding completely devoid of supporting substantial evidence, merely because he declines to credit the evidence that does exist, then the clearly erroneous rule would be no rule at all. A trial court essentially could never be reversed on its factual finding. We do not believe this to be the law, nor should it be.

Bd. of Cmty. Coll. Tr. for Balt. Cnty.-Essex Cmty. Coll. v. Adams, 117 Md. App. 662, 692 (1997).

In this case, evidence of the parties' assets was entered into the record below. Accordingly, Wife made a *prima facie* showing that there was marital property from which

the court could distribute. We emphasize that here we do not find that Wife's evidence accurately depicts the value of the parties assets. Of course, the trial judge was free to find some evidence not credible, and Husband was free to challenge the persuasive value of Wife's evidence.[8] But, the trial court erred in finding that there was "no evidence of the value of each party's property interests." Additionally, the trial court erred in finding that it "lacks sufficient evidence to determine whether there exists marital property." As a result, the trial court erred in finding that there was a "complete failure of evidence" prohibiting it from making a marital property or alimony award.

To the contrary, Wife presented evidence sufficient to make a *prima facie* claim for such relief. To be sure, the trial court has a significant degree of discretion in fashioning an award, but "discretion cannot be said to have been soundly exercised which wholly disregarded evidence by which its exercise should have been aided." *Mitchell*, *supra*, 200 Md. App. at 205 (internal quotations omitted). We, therefore, hold that the circuit court erred by finding Wife's evidence legally insufficient to sustain a claim for a marital property or monetary award. Notably, because we hold that the trial court erred in finding that there was insufficient evidence to determine what, if anything, constituted marital property under FL § 8-203, we do not reach the question as to whether the court properly weighed the factors it is required to consider when making an award pursuant to FL § 8-205(b).

[8] Although the persuasive value of Wife's evidence is properly the subject of attack, we find it completely inconceivable that the court could find -- or Husband could argue -- that the parties subsisted for the entirety of their 36-year marriage without acquiring *any* marital property.

The trial court, of course, has a significant degree of discretion in weighing the factors outlined in FL § 8-205(b). Comparing the circuit court's opinion with the evidence adduced at trial, however, reveals that the court's analysis of the factors in FL § 8-205(b) was rather perfunctory. For example, the court found that Wife presented no evidence as to the contributions each party made to the family, yet, in her testimony, Wife articulated how she was a stay at home parent who raised the couple's three children. The court further determined that Wife failed to present evidence on the circumstances that contributed to the estrangement of the parties, yet Wife testified Husband left her because "we was having arguments back and forth . . . to the point where he just said he was unhappy and he was leaving."

With regard to the court's consideration of the duration of the marriage, the court determined that "[t]he parties married in 1979 and separated in August of 1995." While this statement is true, it minimizes the fact that the length of the marriage is calculated not from the period of separation, but from the period from which the marriage occurs until the marriage is dissolved. In the instant case, this distinction amounts to a difference of approximately two decades. Moreover, the court determined that Wife failed to present evidence as to each parties' age, notwithstanding the fact that Wife testified that her birthday was April 22, 1952, and that she was 62 years old. Further, the court could have easily

discerned from Husband's retirement statements that his birthday was August 16, 1955, making him 58 years and 11 months old on the date of trial.[9]

III. The Interdependency of An Alimony Award And a Marital Property or Monetary Award Mandate That We Vacate the Circuit Court's Alimony Award.

In light of our holding in Part II (C), *supra*, we also vacate the circuit court's alimony award.

> When a judgment in a domestic case is reversed by an appellate court because of an error in establishing a monetary award, on remand the trial court must reconsider the alimony awarded based on the interdependence of the two awards. *Campolattaro v. Campolattaro*, 66 Md. App. 68, 75, 502 A.2d 1068 (1986). The judgment is a package, so when a judgment in a domestic case is amended following a motion to alter or amend, the trial court must reconsider those other portions of the award which are affected. If a change is made that affects the amounts awarded, a reconsideration of the remaining segments is required.

Bricker v. Bricker, 78 Md. App. 570, 579 (1989).

Accordingly, the factors that the circuit court must consider when making a marital property or monetary award and an alimony award are interdependent on each other. Therefore, because we reverse the circuit court's decision not to make a marital property or monetary award, we also vacate the circuit court's alimony award. Critically, we do not address Wife's contentions that the trial court abused its discretion by failing to award back alimony, or that the alimony awarded by the court was unreasonably low. Rather, we vacate

[9] Although we need not reach this issue, we have serious reservations as to whether the court's analysis regarding the factors articulated in the Family Law Article was not otherwise an abuse of discretion.

the circuit court's alimony award as a consequence of the court's error in denying Wife's request for a monetary award. We further instruct the circuit court to reevaluate the FL § 11-106(b) factors on remand. For the reasons stated in this section, we vacate the entirety of the circuit court's alimony award. As such, we render no opinion with regard to the Wife's claim for "back alimony," or whether the circuit court abused its discretion in fashioning an alimony award.

We observe further that in its judgment, the circuit court awarded Wife rehabilitative alimony in the amount of $800 per month for a period of three years. This judgment was based, in part, on the fact that Husband "paid alimony for a time, and has shown an ability to pay $700 **per month** to assist with [Wife]'s support." (emphasis added). While this statement is technically correct, it mischaracterizes the nature of the agreement between the parties regarding payments made by Husband prior to divorce. Moreover, in its analysis of the FL § 11-106 (b) factors, the circuit court found that "[w]hile [Wife] from 1995 through September 2010, [Husband] paid [Wife] alimony ranging from $450 to $700 **per month**." (emphasis added). This fact is unsupported by the evidence presented at trial. Rather, the evidence at trial indicated that Wife received payments on a bi-weekly, rather than a monthly basis. This discrepancy indicates that the circuit court's alimony award was likely premised upon a clearly erroneous fact.

Notably, in her complaint Wife sought indefinite alimony. A trial judge has discretion to award indefinite alimony if the party seeking alimony "cannot reasonably be expected to make substantial progress toward becoming self-supporting; or . . . the

respective standards of living of the parties will be unconscionably disparate." FL § 11-106(c). On remand, we direct that the trial court to determine whether, in conjunction with the factors outlined in FL § 11-106(b), an annual income disparity of no less than $367,252.36 amounts to an unconscionably disparate difference in the parties' standards of living.

IV. The Interdependency of An Attorney's Fee Award With a Marital Property, Monetary, and Alimony Awards Mandate That We Vacate the Circuit Court's Denial of Attorney's Fees.

For reasons similar to those regarding why we vacate the circuit court's alimony award, we also vacate the circuit court's determination with regard to Wife's request for attorney's fees. Indeed, "[t]he factors underlying alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other." *Turner v. Turner*, 147 Md. App. 350, 400 (2002). We, therefore, vacate the circuit court's judgment denying wife an award of attorney's fees in this case so that the court may reconsider the factors articulated in FL §§ 7-107(b), 8-214(b), and 11-110(b), in conjunction with its reconsideration of the issues of a marital property or monetary award, and an alimony award.

Although we vacate the denial of attorney's fees merely as a consequence of reversing the court's decision on the issue of a marital property or monetary award, we question whether the circuit court's analysis of the propriety of attorney's fees was not otherwise an abuse of discretion. In its opinion, the circuit court determined that "[Wife] is not awarded attorney[']s fees in this case. There has been a complete failure of proof with

regard to the requirements of Md. Fam. Law Code Ann. Sections 7-107, 8-214 and 11-110." Our review of the record, however, indicates that Wife's attorney admitted his log of hours into the record in which he claimed that he spent 48.7 hours on Wife's case. Additionally, Wife's attorney questioned Wife extensively on direct examination about the propriety of attorney's fees in this case. Further, there appears to be ample evidence in the record from which the court could assess the financial resources and needs of both parties and the justification for pursuing or defending the proceedings. Lastly, we note that with respect to Husband's conduct, "[w]e do believe that a recalcitrant litigant should not be rewarded for needlessly and unconscionably protracting discovery. Accordingly, on remand the chancellor may wish to reconsider the award in light of [Husband]'s contribution to the needless protraction of discovery." *Gravenstine v. Gravenstine,* 58 Md. App. 158, 183 (1984).

V. Conclusion

For the reasons stated herein, we decline to consider Wife's challenge to the circuit court's failure to hold Husband in contempt because we lack jurisdiction to consider an appeal from a case involving contempt by one other than a person held in contempt. Further, we hold that the circuit court did not err by refusing to permit Wife to admit additional evidence relating to assets of the parties after trial. We hold, however, that the circuit court abused its discretion by determining that there was insufficient evidence of the existence of marital property, thereby prohibiting it from making a marital property or monetary award. In light of our holding on the issue of a marital property or monetary award, we vacate the circuit court's judgment on the issues of alimony and attorney's fees for reconsideration on

remand. We, therefore, reverse the judgments of the Circuit Court for Baltimore City and remand the case for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY GRANTING AN ABSOLUTE DIVORCE AFFIRMED. JUDGMENTS ON THE ISSUES OF A MARITAL PROPERTY OR MONETARY AWARD, ALIMONY, AND ATTORNEY'S FEES VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT TO PAY TWO-FIFTHS OF THE COSTS. APPELLEE TO PAY THREE-FIFTHS OF THE COSTS.