UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1628

September Term, 2015

CHARLES LOCKLAIR

v.

ALICIA TESTER

Eyler, Deborah S.,
Wright,
Harrell, Glen T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 19, 2016

Appellee, Alicia Tester-Locklair, filed a Complaint for Absolute Divorce against appellant, Charles Locklair, in the Circuit Court for Anne Arundel County on November 22, 2013. Following a series of motions, Mr. Locklair filed his answer on April 22, 2014. The parties were scheduled for a two-day merits hearing on February 3 and 4, 2015, but because the parties were able to resolve certain issues, the hearing was completed in one day.

On February 3, 2015, at the conclusion of the hearing, the circuit court entered its oral findings on the record. Ms. Tester-Locklair's counsel was asked to prepare the Judgment of Absolute Divorce. When the parties were unable to agree on the language of the proposed judgment, the matter was set for a review hearing on May 18, 2015. After hearing oral arguments from both parties, the court signed the Judgment of Absolute Divorce, which was entered May 20, 2015. Subsequently, Mr. Locklair filed a Motion to Alter or Amend the Judgment of Absolute Divorce, and Ms. Tester-Locklair responded with her Response and Opposition and later filed a Petition for Contempt and Supplemental Petition for Contempt. All three filings were heard on September 1, 2015, after which the court signed an Amended Judgment of Absolute Divorce.

Mr. Locklair noted his timely appeal to this Court, presenting the following questions, which we have tweaked insubstantially for the purpose of greater clarity:

1. Did the trial court abuse its discretion in requiring the Appellant to [comply with] a condition relating to his alcohol use as part of his access to the party's minor child?

2. Did the trial court abuse its discretion in ordering that if the Appellant is unable to be with the minor child for more than 30 minutes for any reason during his periods of access, he shall notify the Appellee immediately and

prior to leaving the minor child with any babysitter, the Appellee shall have the right to pick the minor child up and keep her until such time as the Appellant is available to pick her up?

3. Did the trial court abuse its discretion in requiring that the Appellant video record [initially] the minor child's intended room and the interior of his home before he would be able to exercise an overnight access?[1]

4. Did the trial court err in its decision to include the $6.99 [per] hour worked that the employer of the [A]ppellant pays for health funds as attributable to his income?

5. Did the trial court err when calculating Appellee's income to be $57,480.00 per year?

6. Did the trial court abuse its discretion when determining the monetary award and child support arrears that the Appellant should pay to the Appellee?

7. Did the trial court abuse its discretion in making an award of attorney's fees to the [A]ppellee without applying the statutorily prescribed methodology for consideration of an award of attorney's fees?

We answer all of the questions above, except question 2, in the negative and therefore, affirm in part and vacate in part the court's judgment, and remand for proceedings not inconsistent with this opinion.

FACTS

The parties were married on July 7, 2007, and had a child, Seanna Locklair, on April 25, 2009. Mr. Locklair has two children from a prior relationship, Josh and Jacob,

[1] After argument in the case, Ms. Tester-Locklair filed a Motion to Supplement the Record. Attached to the Motion were purported text messages exchanged between the parties related to the issue of providing the video. Because these text messages were not part of the record, "we shall, as we must, disregard and not consider such extraneous materials." *Colao v. Prince George's County*, 109 Md. App. 431, 469 (1996) (explaining that "a party may not supplement the record with documents that are not part of the record").

both of whom were over 18 years old at the time of trial. The parties separated in October 2012, and Ms. Tester-Locklair filed for absolute divorce on November 22, 2013. Subsequently, she filed an Amended Complaint for Absolute Divorce and Second Amended Complaint for Absolute Divorce, alleging adultery, constructive desertion, and divorce based on separation.

After their separation, Mr. Locklair continued to reside in the parties' former marital home until the Winter or Spring of 2015 when he moved into his girlfriend, Kimberly Silverstro's, residence. Ms. Silvestro's adult child, Randall Brandon, lived with her. Jacob also lived with Mr. Locklair in Ms. Silvestro's three bedroom home. While there was no room made for Seanna, Ms. Silvestro testified at trial that 6-year old Seanna would share her 18-year-old brother, Jacob's, room on the weekends that Mr. Locklair had overnight access. Ms. Tester-Locklair requested physical inspection of this space, which was allegedly denied by Ms. Silvestro. Appellee then requested a videotaped view of the room and space Seanna would be staying in, which Mr. Locklair failed to fully produce.

The parties' marital home was listed and sold prior to trial. A net of $14,419.70 was received from the sale proceeds, which the parties agreed would be held in escrow for ultimate division by the circuit court. Between April of 2013 and April of 2014, Mr. Locklair paid the mortgage on the home.[2] Ms. Tester-Locklair introduced evidence of

[2] As a result, the circuit court did not impose the child support obligation retroactively all the way to filing, instead imposing it only from April 1, 2014, the day he stopped paying the full mortgage amount.

the work that she and her family put into getting the house ready for sale, including hiring painters and incurring fees for supplies.

At the outset of trial and during the course of the hearing, the parties reached various agreements and stipulations, leaving only visitation, child support, determination of monetary award, and Ms. Tester-Locklair's claim for attorney's fees contested at the conclusion of the hearing. The final Judgment for Absolute Divorce outlined, among other things, that the parties have joint legal custody, with tie-breaker authority going to Ms. Tester-Locklair. Ms. Tester-Locklair would have primary physical custody, with Mr. Locklair's access schedule of every Tuesday 5:00 p.m. to 7:30 p.m., and alternating weekends, Saturday and Sunday, from 11:00 a.m. until 7:30 p.m. Over the summer, Mr. Locklair would have Seanna every other weekend overnight, in addition to his weekday non-overnight visitation, provided that he complied with certain conditions precedent that included abstaining from alcohol during visitation, allowing Ms. Tester-Locklair to visit his residence and see Seanna's room and interior of the home, and providing Ms. Tester-Locklair the right of first refusal if he was unable to care for the child for any period of time during any visitation. The circuit court also awarded a monetary award to Ms. Tester-Locklair as well as $5,000.00 from Mr. Locklair towards Ms. Tester-Locklair's attorney's fees.

After a series of post-trial hearings and motions, including a Petition for Contempt and to Enforce Judgment of Absolute Divorce and Supplement to Petition for Contempt filed by Ms. Tester-Locklair, an Amended Judgment of Absolute Divorce was entered. This judgment modified the circuit court's initial bench opinion on the issues of Ms.

Tester-Locklair's right to physically inspect Mr. Locklair's residences prior to the beginning of overnight visitation, imposition of the right of first refusal only if Mr. Locklair would be unavailable for 30 minutes or more, inserted a holiday access schedule, and revised the amount of monthly child support arrearage payments due from Mr. Locklair.

Additional facts will be provided as they become relevant to the discussion of the issues.

DISCUSSION

I. Visitation Restrictions

Appellate review of the circuit court's determination of custody and visitation are subject to an "abuse of discretion" standard. Determinations regarding "visitations are within the sound discretion of the trial court as it is in the best position to assess the import of the particular facts of the case and to observe the demeanor and credibility of the witnesses." *Beckman v. Boggs*, 337 Md. 688, 703 (1995) (citation and footnote omitted), overruled on other grounds by *Koshko v. Haining*, 398 Md. 404 (2007). Further, "it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (citation omitted). "The paramount consideration must always be that which best fulfills the needs of the child." *Beckman*, 337 Md. at 703 (citation omitted).

a. The circuit court did not abuse its discretion in requiring Mr. Locklair to abstain from alcohol as part of his access to Seanna.

Mr. Locklair himself stipulated to abstaining from alcohol during his periods of access and to the "challenge" provision regarding alcohol testing, which he deemed permissible "so long as it is not structured in a way that [Ms. Tester-Locklair] could not use [sic] it to prevent me from getting access . . . ." The circuit court directly referenced this stipulation in its opinion, stating, "The Court will adopt, what I think the parties have stipulated to, a challenge test of where if [Ms. Tester-Locklair] believes that he is under the influence, that she could require him to take a test . . . ." The court refused to include Mr. Locklair's request that the provision only be effective for six months because "[Mr. Locklair's] use of alcohol has been described to go on for years. He's promised to not do it before. He's promised to cut back to simply beer or wine before. And he has backslid on his promises."[3]

The circuit court again addressed this issue with Mr. Locklair at the show cause and motions hearing on September 1, 2015, when appellant requested that the Court remove the provision regarding alcohol abstinence:

> THE COURT: Sir . . . what the original arrangement had been, had you stated to the Court at the time of the judgment of divorce that you intended to be abstinent and not drink, or is it your position that you just intend to be, you know, moderate and not do it, not be under the influence, when caring for your child?
>
> [Mr. Locklair]: Not be under the influence when caring for the child.

[3] Ms. Tester-Locklair testified that Mr. Locklair had promised her he would cut back on his drinking "several times," but that he would start back up again.

Mr. Locklair cites *Cohen v. Cohen*, 162 Md. App. 599, 608-09 (2005), a case where the Court restricted access to the appellant's daughter because of his history of public intoxications and numerous alcohol-related arrests. Mr. Locklair compares his behavior to *Cohen* and notes that because his behavior does not rise to the same level as the facts in *Cohen*, he should not be similarly restricted. In essence, Mr. Locklair asks us to view *Cohen* as a minimum threshold of what a parent abusing alcohol must exhibit in order to have restrictions placed on child visitations. We decline to interpret *Cohen* in that manner, and instead view the case in the manner posited by Ms. Tester-Locklair, as an analysis of how a fact-finder can analyze and apply evidence related to alcohol abuse when making a best interest determination.

Even without Mr. Locklair's own agreement to abstain from alcohol during his periods of access with Seanna, there was ample evidence for the circuit court to make an independent finding that some conditions on Mr. Locklair's consumption of alcohol during his periods of access were in Seanna's best interest. While Mr. Locklair argues that there "is no evidence that [Mr. Locklair] is an alcoholic," there is no requirement that a fact-finder must find a parent to be an "alcoholic" before imposing safety precautions when the parent who has a history of excessive alcohol use is with the minor child during visitation. Here, evidence was presented about Mr. Locklair's excessive drinking. Ms. Tester-Locklair and two of her family members provided testimony regarding Mr. Locklair's excessive drinking throughout the marriage, and Mr. Locklair also admitted that drinking was a major point of contention during his and Ms. Tester-Locklair's

marriage. Ms. Tester-Locklair testified as to Mr. Locklair's aggressive behavior when he drank.[4]

[4] The circuit court heard testimony from several witnesses regarding Mr. Locklair's drinking. Ms. Tester-Locklair provided her own testimony, describing an incident resulting from his drinking:

> [Ms. Tester-Locklair]: That night, we were eating dinner. And I could tell that he started getting to the point where he's drinking too much. And his demeanor changes, everything starts to change. Then he started getting upset. And he was drinking rum that night. And he started getting upset that I took out too much of the wall in the hallway [where we were redoing a room].
>
> So, he started kicking the wall, and punching the wall, and saying, is this what you want? You could just go ahead and take whatever you want. Should I just do this to the house if it doesn't matter[?]
>
> [Counsel]: Were those the holes in the wall that your friend Lori testified to seeing[?]
>
> [Ms. Tester-Locklair]: Yeah. And he also kicked it, kicked the cabinets a couple of times, and then he kicked one of the doors in underneath the sink.
>
> ***
>
> I would say, during the weekdays, [he drinks] either 2 glasses of liquor on the rocks a night, 2 to 3. And then with the beer, it would be 6 to 8 . . . . [On weekends] [i]t would be more, probably like, roughly around 12 to 14.

Ms. Tester-Locklair's father, Mr. John Tester, testified to the following:

> [Counsel]: And had your daughter ever expressed to you concerns about his drinking?
>
> [Mr. Tester]: Yes, she has . . . . I had some alcohol, some bottles of cooking wine, and stuff like that in our shed. And, you know, I wanted to get rid of them. And she kept on telling me, don't bring it over, don't bring it over, you know.

(continued…)

The circuit court also reviewed Mr. Locklair's 2013 and 2014 credit card and bank account statements which contained evidence of expenses showing liquor store purchases of $10 to $25 per trip multiple times per week, along with his admission that he was going to the liquor store every two days during that period. Further, Mr. Locklair was convicted of driving under the influence in 2012. The court is permitted to "[draw] legitimate inferences from facts that were introduced." *Cohen*, 162 Md. App. at 610. With the evidence presented, the circuit court appropriately drew inferences about Mr.

Ms. Tester-Locklair's brother-in-law, David Mallon, testified as to Mr. Locklair's drinking as well:

> [Counsel]: Okay. Did Mr. Locklair ever become aggressive – or let me say, more aggressive, or did his behavior change in any way when he was drinking?
>
> [Mr. Mallon]: Depends on how much he had, maybe.
>
> [Counsel]: Okay. What was the most you ever witnessed him drink?
>
> [Mr. Mallon]: Several drinks at a housewarming party.
>
> [Counsel]: Okay. And after he had those drinks, did it have an effect [sic] on his behavior?
>
> [Mr. Mallon]: Yes.
>
> [Counsel]: Okay. And how did it effect [sic] his behavior?
>
> [Mr. Mallon]: It got to the point where, through whatever discussions or actions, he picked me up in the air, over his shoulders, and spun me around.
>
> [Counsel]: And was that something that you consented to at the time?
>
> [Mr. Mallon]: No.

Locklair's relationship with alcohol and it was within its power to set limits on his consumption of it while with his daughter.

b. The circuit court abused its discretion in requiring Mr. Locklair to contact Ms. Tester-Locklair if he must leave Seanna for more than 30 minutes.

Mr. Locklair asserts that the provision in the Amended Judgment requiring that Ms. Tester-Locklair have the right of first refusal to care for their daughter if Mr. Locklair were not able to care for her for a period of more than 30 minutes "is absolutely absurd." He maintains that not only is this provision difficult to abide by logistically, because it would take more than 30 minutes for the parties to do the exchange and does not leave any room for emergencies, it also infringes on Mr. Locklair's rights as a fit parent. Mr. Locklair cites *Troxel v. Granville*, 530 U.S. 57, 69 (2000), in support of his argument that "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to interject itself into the private realm of the family to further question the ability of that parent to make the best decision concerning the rearing of that parent's children."

However, we have held that the "State may regulate this custodial relationship whenever necessary, and virtually without limitation when children's welfare is at stake . . . . A chancellor may also, within the exercise of his discretion, impose such conditions upon the custodial and supporting parent as deemed necessary to promote the welfare of the children." *Cohen*, 162 Md. App. at 611 (citations omitted). This Court "will affirm the imposition of such a condition so long as the record contains adequate proof that the

condition or requirement is reasonably related to the advancement of a child's best interests." *Id.* (emphasis omitted).

Although the circuit court possesses discretion in imposing conditions to protect the child's welfare, in this case we cannot affirm this particular condition because the circuit court has provided no rationale in the record for the 30-minute deadline it imposed upon Mr. Locklair. There is no "adequate proof" that explains why the selection of a 30-minute time period is "reasonably related" to Seanna's best interests.

We find no mention of the 30-minute time limit during the circuit court's findings at the conclusion of the trial, where it explained:

> And if there are other times during Mr. Locklair's visit with [Seanna] that Mr. Locklair is not able to be with her the whole time, and we need a babysitter he should either give Ms. Tester[-Locklair] the chance of first refusal . . . or let who knows who the babysitter is going to be to make sure that she agrees, if it couldn't be perhaps a babysitter that they would both use.

After the February 3, 2015 trial, the original Judgment of Absolute Divorce was ordered on May 18, 2015. The provision in the first Judgment stated:

> If the Defendant [Mr. Locklair] is unable to be with the minor child for more than two hours for any reason during his periods of access, he shall notify the Plaintiff [Ms. Tester-Locklair] immediately and prior to leaving the minor child with any babysitter. If the parties are unable to agree upon a mutually satisfactory babysitter, the Plaintiff shall have the right to pick the minor child up and keep her until such times as the Defendant is available to pick her up.

The May 2015 judgment presented in the record includes handwritten edits. In the provision, the words "for more than two hours" are crossed out, and the circuit judge's initials are placed in the margin next to the edits. In Mr. Locklair's Motion to Alter or

Amend Judgment, he takes issue with the circuit court's direction that if Mr. Locklair "is unable to be with the minor child *for any reason* during this period of access, he shall notify [Ms. Tester-Locklair] immediately . . ." (emphasis in original), indicating that the "two hour" requirement was omitted. The provision was then changed in the parties' Amended Judgment of Absolute Divorce, ordered September 3, 2015, to state the following:

> If the Defendant is unable to be with the minor child *for more than 30 minutes* for any reason during his period of access, he shall notify the Plaintiff immediately and prior to leaving the minor child with any babysitter. If the parties are unable to agree on a mutually satisfactory babysitter, the Plaintiff shall have the right to pick the minor child up and keep her until such time as the Defendant is available to pick her up.

(Emphasis added). The 30-minute wait time appears to be added as some sort of compromise to Mr. Locklair. However, the 30 minutes, even if given out of generosity by the circuit court, seems to be an arbitrary period of time. Because the circuit court did not state the basis for its determination, we are unable to properly review the decision.

In child custody cases, the appellate court may not set aside factual findings of the chancellor unless they are clearly erroneous. *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 418 (1977) (citations omitted). This presupposes factual findings to review. *See Davis v. Davis*, 280 Md. 119, 125 (1977) (explaining that the appellate court scrutinizes factual findings to determine chancellor error); *see also Boswell v. Boswell*, 352 Md. 204, 239 (1998) (reasoning that where "the trial court made no factual findings that evidenced actual or likely future harm [on the child] the Court of Special Appeals was correct in vacating the visitation order"). There being a lack of

factual findings and evidence for the selection of a 30-minute qualification, we vacate this provision and remand fur further proceedings not inconsistent with this opinion.

On a related issue, the circuit court's restrictions on Mr. Locklair's older son, Jacob, and Ms. Silvestro's older son, Randall, from babysitting Seanna due to general safety concerns are justifiable and supported by the record. The court heard testimony from Corporal Glenn Shorter regarding a home invasion at the Locklair—Silvestro residence while Jacob was home alone, which took place about two months before trial. During the invasion, armed suspects held Jacob at gunpoint while they searched Randall's room. The suspects threatened to come back if Jacob were to "snitch." Corporal Shorter testified that one of the boxes found by police in Randall's room had the "distinct odor of marijuana."

In a separate incident, Jacob, who at the time was in the primary physical custody of Mr. Locklair, threw an underage drinking party in the parties' former marital home while it was vacant and being prepared for sale. Mr. Locklair and Ms. Silvestro were driven to the house party by Ms. Silvestro's son because the couple was drinking. Jacob also had repeated disciplinary and academic issues and dropped out of the tenth grade in January 2015. Randall also had issues with the law in the past, including a domestic violence incident with his girlfriend. In light of this evidence, the circuit court expressed: "I think it makes sense, at least for the time being, that [the parties] should not use [Jacob and Randall] for babysitters for [Seanna], since they have demonstrated a lack of discretion." We agree.

c. The circuit court did not abuse its discretion by requiring that Mr. Locklair provide a video recording of Seanna's intended room and the interior of his room before he is able to exercise overnight access.

Mr. Locklair requests that this Court vacate the circuit court's requirement that Mr. Locklair videotape the interior of his home and of Seanna's sleeping quarters for Ms. Locklair-Tesler's view prior to having any overnight access with her. Mr. Locklair explains that the requirement is excessive because he "is not seeking physical custody, we are talking about alternate weekend overnights and one dinner visit per week." He also argues that recording the living space is "an abuse of discretion and a violation of not only [Mr. Locklair's] right to privacy, but the right to privacy of the other individuals who reside with [Mr. Locklair]."

The original judgment permitted Ms. Tester-Locklair "to come in and see [Seanna's] intended room and the interior of the home . . . ." However, because Ms. Silvestro did not want Ms. Tester-Locklair in her home, Mr. Locklair's attorney suggested during trial "that Mr. Locklair could take pictures of the child's room." The circuit court then required Mr. Locklair to shoot a video of the space in Ms. Silvestro's room where Seanna would be staying. Mr. Locklair refused to provide footage of the interior of the home; what he did provide was a video of a bedroom from his prior residence before he moved.[5] Ms. Silvestro testified that there was no bedroom for Seanna, but that she and Mr. Locklair anticipated that Seanna would share a room with

[5] The circuit court held Mr. Locklair in contempt for failing to provide the requisite video tapes of the residence.

her 18-year-old brother Jacob, who would sleep in the "rec room" on the weekends when Seanna would stay over.

Considering Mr. Locklair's evasive behavior regarding his residence, as well as the fact that Seanna would not have a space of her own in the home, the circuit court was within its discretion to require that Mr. Locklair provide video footage of the environment Seanna would be staying in, both her bedroom and the interior of the home. Seanna would be spending one day a week plus potential overnight weekends every other week in that home. It is appropriate, and in Seanna's best interest, for the court to require that Ms. Tester-Locklair be apprised of the environment in which her young daughter would be residing.

II. Financial obligations and calculations

a. The circuit court did not err in including the $6.99 per hour that Mr. Locklair's employer pays towards a health fund as part of Mr. Locklair's income.

At trial, evidence was presented that in addition to Mr. Locklair's gross wage income, his employer pays $6.99 per hour worked towards health care, $4.10 per hour worked towards his pension, and $3.50 per hour worked towards his severance and annuity. The circuit court, in its discretion, included the $6.99 per hour as part of Mr. Locklair's income[6] for the purposes of determining child support by relying on *Walker v. Grow*, 170 Md. App. 255, 285 (2006), which states that "[i]n calculating a party's actual income, health insurance payments made by an employer are to be included 'to the extent

[6] The circuit court did not include Mr. Locklair's employer's payments of his annuity or pension when calculating his income.

[the payments] reduce the parent's personal living expenses.'" (Quoting Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL") § 12-201(b)(B)(3)(xvi)). Mr. Locklair now asserts that was in error, explaining for the first time that his health benefits are unlike those in *Walker* because "the health fund payment is directly from [Mr. Locklair's] employer, Kroeger Electric, to the Union. It is an agreement between the employer and the [U]nion (not the employer and [Mr. Locklair])[.]" Mr. Locklair explains that the payments go directly into a fund that subsidizes not only Mr. Locklair, but other Union employees as well. The funds, he argues, therefore do not "reduce the parent's personal living expenses" in a way that a typical health care plan would otherwise reduce them. FL § 12-201(b)(3)(xvi).

While we understand the point Mr. Locklair is now raising on appeal, he does not point to anything in the record to support his argument. In fact, there is no evidence in the record that explains the function of the $6.99 per hour payment as he now presents it. While there was some discussion throughout the trial about Mr. Locklair's $6.99 per hour health insurance benefit, it was often by Ms. Tester-Locklair's attorney in advocating for its inclusion:

> [Counsel]: . . . [I]t's correct that in addition to your base pay . . . you've also receive [sic] contributions to your health fund?
>
> [Mr. Locklair]: Um-hum.
>
> [Counsel]: Is that your health insurance?
>
> [Mr. Locklair]: Yes.
>
> [Counsel]: Okay. And that's calculated at 6.99 per hour, correct?

[Mr. Locklair]: That's what it says there, yes.

[Counsel]: Okay. Now that 6.99 per hour, that does not appear on your pay stub, or on your W-2, correct?

[Mr. Locklair]: No.

[Counsel]: That's something that's taken right off the top, before they actually run your pay stub, correct?

[Mr. Locklair]: It's a benefit.

[Counsel]: Okay. So that's something your employer provides 100 percent as a result of your employment?

[Mr. Locklair]: It's through the union.

Mr. Locklair provided no evidence or testimony to challenge Ms. Tester-Locklair's assertion that the $6.99 an hour is part of his wages. There was nothing produced at trial which explained how Mr. Locklair's health care plan worked; the record does not indicate whether the $6.99 an hour goes in a fund, as Mr. Locklair now claims, whether that money is paid out directly to Mr. Locklair, or whether he has a choice in the distribution of these health care funds. In sum, he provided no support for how the funds did not "reduce his personal living expenses." *Walker*, 170 Md. App. at 285. Because of the lack of evidence, we would be required to look beyond the record in order to determine whether or not the $6.99 an hour is considered wages for Mr. Locklair. Going beyond the record, however, is not within the scope of our review, and we refuse to do so. Because we cannot find error in the circuit court's judgment, we uphold its decision in finding that the $6.99 per hour paid by Mr. Locklair's employer to his union did, in fact, reduce his health care expenses and does qualify as wages.

b. The circuit court did not err in calculating Ms. Tester-Locklair's income as $57,480.00 per year.

Mr. Locklair maintains that the circuit court erred in calculating Ms. Tester-Locklair's annual income as public school teacher as $57,480.00 when her 2014 pay stub stated that her yearly salary was $62,857.20. Mr. Locklair offers no other explanation for the error other than this discrepancy.

However, Ms. Tester-Locklair provided adequate testimony explaining the difference between her 2014 and 2015 salaries. She explained that the gap was due to her participation in her school's Science Technology Engineering Mathematics ("STEM") program, which involves workshops that would not be available in the upcoming year:

> [Counsel]: Why is [your 2014 income] much higher than the salary that you're making this year?
>
> Ms. Tester[-Locklair]: Because we became a STEM school, and they offered us different workshops, different opportunities to – like, I ended up creating a STEM club; so, money with that. And then sometimes, I'll do the Art Club afterwards . . . . And then I went to do the STEM Camp, and then I did some STEM Saturdays. So, I was trying to do as much as I could to make more money to be able to pay for everything.
>
> [Counsel]: Is that income guaranteed for this year, that you'll have -
>
> Ms. Tester[-Locklair]: No.
>
> [Counsel]: -- those opportunities?
>
> Ms. Tester[-Locklair]: Because we were the first STEM school. And now, the third one will be opening, so. And we are all grades. So, there's really not too much money left, because now it's spread between all those schools.

Ms. Tester-Locklair's additional income during the 2014 school year was essentially a form of overtime pay on top of her base salary of $57,480.00. "Decisions that bring overtime pay into child support calculations stress that this additional income must not be

speculative or uncertain. Rather, the overtime must be a regular part of the parent's employment." *Brown v. Brown*, 119 Md. App. 289, 295 (1998) (citations omitted). As a result, the circuit court did not err in calculating Ms. Tester-Locklair's income as of January 2015 as $57,480.00.

c. The circuit court did not abuse its discretion in determining the monetary award and child support arrears that Mr. Locklair should pay Ms. Tester-Locklair.

Mr. Locklair next argues that the circuit court reached its decision regarding Ms. Tester-Locklair's monetary award of $7,209.85 "based upon an erroneous application of the facts to the law." We recognize that as long as it is in accordance with the correct legal standards, the circuit court has "broad discretion in determining whether to grant a monetary award . . . ." *Malin v. Mininberg*, 153 Md. App. 358, 430 (2003) (citations omitted). "Indeed, the decision whether to grant a monetary award will not be overturned unless the judgment is clearly erroneous and due regard will be given to the trial judge's opportunity to judge the credibility of the witnesses." *Id.* (citations omitted).

One of the factors the circuit court took into consideration when determining the monetary award was that Ms. Tester-Locklair "did a disproportionate amount of shares and expenditures in connection with the home" to get it ready for sale. Mr. Locklair now challenges the value of the work that Ms. Tester-Locklair and her family put into the marital home, opining that the exhibit outlining the costs was a spreadsheet that she had created, and that there was no supporting evidence to corroborate the values set forth in the spreadsheet. However, Ms. Tester-Locklair, in addition to her own testimony, offered two additional witnesses who provided much of the labor on the house and confirmed the

hours worked, the materials provided, and the extent of the work that Ms. Tester-Locklair undertook. Further, during Ms. Tester-Locklair's testimony, she was never challenged on cross-examination regarding the values on her spreadsheet.

Next, Mr. Locklair argues that the circuit court failed to take into consideration his full payments of the mortgage for the marital home "from the time they separated in October 2012 until it was sold in June 2014" when determining a monetary award. Mr. Locklair was living in the marital home during this time while Ms. Tester-Locklair and Seanna were living with her mother. Although the court took the payments into consideration when determining child support arrears, reducing child support as a result, Mr. Locklair maintains that "[s]aid mortgage payments should have been considered when determining the monetary award and not the child support arrearages as on top of paying 100% of the mortgage payments during the parties[']' separation, [Mr. Locklair] also paid over $5,800 from April 2013 through April 2014, which were not considered . . . of what the Court stated would be []a small arrearages of several hundred dollars to $1,882.00, as of January 1, 2015."

The circuit court, after acknowledging Mr. Locklair's support of "at least one other child of his own" and the "costs incurred" with teenage children, recognized Mr. Locklair's extra payments:

> And the Court recognizes that Mr. Locklair was paying the full mortgage when the parties' Stipulation [sic] between basically April of 2013 and April of 2014, which, if he had not done that, would have increased the burden on Ms. [Tester-]Locklair at the time where she was also struggling to get through this process.

> For all those reasons, collectively, the Court thinks it's appropriate to deviate, and not impose the support obligation retroactively all the way to filing; but instead, will do it only effective April 1 of 2014, when he stopped paying the full mortgage.

The record reflects that the circuit court fully took into consideration Mr. Locklair's full mortgage payments for the period between April 2013 and April 2014, and it chose to credit Mr. Locklair those extra payments towards child support that he would have otherwise owed during this time. Mr. Locklair cites no legal authority requiring any court to credit a party's extra expenses on one obligation over another. Further, not only was Mr. Locklair getting the benefit of residing in the marital home while he was paying the mortgage, the costs of preparing the home for sale were incurred solely by Ms. Tester-Locklair. As a result, the court committed no error in not crediting Mr. Locklair's full mortgage payments towards the monetary award.

d. The circuit court did not abuse its discretion by awarding attorney's fees to Ms. Tester-Locklair.

The circuit court awarded $5,000.00 in attorney's fees to Ms. Tester-Locklair. Mr. Locklair argues that this was in error because (1) the court "did not take into account the fact that the subpoena was extremely unnecessary," and the court did not look at the actual costs Ms. Tester-Locklair's counsel incurred for those actions; (2) the court "failed to explain adequately how [Mr. Locklair] can afford to pay a $5,000[.00] on top of the $7,209.85 monetary award;" and (3) Ms. Tester-Locklair's attorneys performed "unnecessary actions . . . that increased the attorney's fees that were incurred, such as filing an Amended complaint and not serving [Mr. Locklair] with said complaint, but filing a Request for Default that was denied due to lack of service." Further, Mr.

Locklair argues that the court did not properly analyze and explain the financial status and needs of the party.

The circuit court has the sole discretion of awarding counsel fees. *Jackson v. Jackson*, 272 Md. 107, 111-12 (1974). An award of counsel fees is permitted in proceedings relating to custody, support, or visitation of a minor child after the court has considered: "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was a substantial justification for bringing, maintaining, or defending the proceeding." FL §12-103(b). "An award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (citations omitted).

The circuit court explained its rationale for awarding attorney's fees:

> As to the Counsel fees – well, I've said I've considered it as part of the parties' financial circumstances. The Court also can consider it separately, and recognizes that there were some things that Counsel was obliged to do, as a result of Mr. Locklair's inaction and lack of cooperation, which required a Motion to Compel, required the issuance of some subpoenas.
>
> And also, I think the fact that his situation, his parenting of his own child, leading to two police calls to the home in the course of 12 months? I'm not sure when the party was. There was the party, and there was the break-in, and the holding-up incident.
>
> Each of those, I think made this case take longer, and require more Counsel fees, which is nothing in the doing of Ms. [Tester-]Locklair's side of the case, I'm inclined to award an additional contribution of $5,000 in Counsel fees.
>
> Considering the three factors of their respective needs, resources, and substantial merits of the claim or defense, I think that given her greater needs, and the requirements of her presentation of evidence that wasn't made easy by Mr. Locklair, it would make sense to add the additional

> $5,000, which if Mr. Locklair is not able to pay it within 30 days, the Court would reduce to judgment in favor of Ms. [Tester-]Locklair . . . .

Given the circuit court's explanation, we disagree with Mr. Locklair that its reasoning is insufficient. Consideration of the statutory criteria is mandatory in making the award and failure to do so constitutes legal error. *Carroll County v. Edelmann*, 320 Md. 150, 177 (1990). However, we believe that the court sufficiently went through the statutory criteria in determining legal fees. The court made on-the-record findings of the financial circumstances of the parties, the needs of the parties, the merits of each party's claims, and any additional costs incurred by the parties. Further, Mr. Locklair's assertion that the court failed to consider how he would pay both the $5,000.00 in attorney's fees along with the monetary award was addressed by the circuit court, which stated that Ms. Tester-Locklair would be "permitted to receive the full balance of the proceeds [of the marital home], in a way to avoid Mr. Locklair having to pay her still more in the future. Because I don't think – I think he's got limited ability to pay." The proceeds were held in escrow by the parties' attorneys and payment would come from those funds. Thus, the court was aware of Mr. Locklair's limited ability to pay and ensured that he would have no obligation to contribute any additional sums to the monetary award. We, therefore, find no error in the circuit court's award of $5,000.00 in attorney's fees to Ms. Tester-Locklair.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.