Circuit Court for Montgomery County
Case No. C-15-FM-22-006750

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 23

September Term, 2024

ANGI PAMELA MONTECINOS

v.

JOSE ANTONIO LIMPIAS

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

JJ.

Opinion by Arthur, J.

Filed: November 22, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a divorce and child custody case in the Circuit Court for Montgomery County. After a final merits hearing, the court granted an absolute divorce, granted the parents joint legal custody of their child, granted primary physical custody to the mother, ordered the father to pay child support, divided certain marital property, and granted a monetary award.

The mother has appealed, contending that the circuit court erred in making its custody determination, its calculation of child support, and its determination of the value of marital property. Although we reject most of these contentions, we conclude that the court improperly excluded the mother's work-related child care expenses from the child support calculation. We will set aside the ruling on child support and remand the case to the circuit court for the purpose of reevaluating the father's child support obligation. We will uphold the rulings on the other issues.

FACTUAL AND PROCEDURAL BACKGROUND

A. Initiation of Divorce Proceedings

Jose Limpias and Angi Montecinos were married in 2010.[1] Their only child, a daughter, was born in April 2014. During their marriage, they acquired a family home in Bethesda, which they owned jointly. They financed the purchase through a loan solely in the name of Mr. Limpias.

The parties separated in November 2020, when Mr. Limpias moved out of the

[1] At trial, the only testimony about the date of the marriage came from Mr. Limpias, who testified that the parties married on September 15, 2010. Various documents in the record state that the date of marriage was October 15, 2020.

family home. Mr. Limpias moved to an apartment located a short distance away from the family home. The child continued to reside primarily with Ms. Montecinos in the family home. Beginning in January 2021, Ms. Montecinos paid the monthly home payments on her own.

On November 17, 2022, Mr. Limpias filed a complaint for divorce in the Circuit Court for Montgomery County. Mr. Limpias requested an absolute divorce on various grounds, including a 12-month separation. Mr. Limpias requested joint legal custody and shared physical custody of the child.

On March 27, 2023, Ms. Montecinos filed a counterclaim for absolute divorce, joint legal custody, and shared physical custody. In addition, Ms. Montecinos requested child support, alimony, valuation and division of marital property, and a monetary award.

B. Pendente Lite Child Support

At a hearing in April 2023, the parties placed an agreement on the record regarding child support during the pendency of the divorce action. The parties calculated the amount recommended by the Child Support Guidelines based on Mr. Limpias's pre-tax income ($7,259 per month), Ms. Montecinos's pre-tax income ($5,308 per month), work-related child care expenses paid by Ms. Montecinos ($597 per month), and health insurance expenses paid by Ms. Montecinos ($121 per month). In accordance with the agreement, the court ordered Mr. Limpias to pay $1,437 per month in child support until the resolution of the case.

One week after the entry of the pendente lite child support order, Mr. Limpias lost his full-time job. Previously, Mr. Limpias had worked for a subcontractor that provides

services to the FBI Academy, earning about $87,500 per year. His employer terminated his employment after he lost his security clearance because of an incident of misconduct. After a few months, Mr. Limpias stopped making the child support payments required by the pendente lite order. In mid-October 2023, Mr. Limpias started a new job at a private company, earning about $85,000 per year.

On October 30, 2023, Ms. Montecinos filed a petition asking the court to find Mr. Limpias in contempt for his failure to pay child support owed under the pendente lite order. In advance of the divorce merits hearing, the court issued an order requiring Mr. Limpias to show cause why he should not be held in contempt for his failure to pay child support.

C. Temporary Custody Order

Meanwhile, in accordance with the circuit court's Family Division Differentiated Case Management Plan and Procedures, the court had scheduled a multi-stage adjudication of the claims. The court scheduled a "Custody Merits Hearing" for July 19, 2023, to be followed by an eventual "Merits Hearing" on property issues and other issues in the case.

After the scheduled custody merits hearing, the circuit court entered a "Temporary Custody Order." The order stated that the parties had "reached an agreement with respect to temporary custody which was placed on the record" at the hearing.[2]

Under the temporary custody order, the parents shared joint legal custody of their

[2] The record does not include a transcript of the custody hearing on July 19, 2023.

child. The order gave Ms. Montecinos tie-breaking authority in the event of a disagreement, but it stated that she could exercise her tie-breaking authority only after the parties attended one mediation session. The order granted primary residential custody to Ms. Montecinos and gave Mr. Limpias access every other weekend from Friday evening until Sunday evening. The order allowed Mr. Limpias to have additional access on every weekday evening from 5:30 p.m. to 7:30 p.m.

The temporary custody order prohibited both parents from using corporal punishment on the child and from using alcohol or drugs during their time with the child. The order required Mr. Limpias to submit to a drug and alcohol assessment from a court-approved evaluator within 90 days after the entry of the order and to comply with any treatment recommendations made by the evaluator.[3] Finally, the order stated that the court would "set this matter in for review in six (6) months for the limited purpose of reviewing [Mr. Limpias's] compliance with the assessment and treatment provisions" of the order.

D. Scope of the Merits Hearing

The court scheduled the merits hearing to occur on December 21, 2023. For reasons not stated in the record, the court postponed the merits hearing until February 8,

[3] The temporary custody order stated that the "Defendant" must submit to a drug and alcohol assessment, even though Mr. Limpias was the plaintiff in the case. At the merits hearing, Mr. Limpias did not dispute that the order required him to submit to the evaluation.

2024.[4]

Previously, the court had scheduled a limited review hearing of the temporary custody order on January 19, 2024. That review hearing did not occur, because the courthouse was closed as the result of a snowstorm.

At the start of the merits hearing on February 8, 2024, the trial judge explained that, in addition to the pending claims for divorce, division of marital property, alimony, and child support, there was "an unresolved issue regarding custody[.]" The trial judge presented the parties with "three options" for how to proceed to the final custody determination. The first option, the trial judge said, was to "send everybody . . . over" to the judge who had issued the temporary custody order on that same day to allow the custody hearing judge "to issue a final order" on child custody. The second option, the trial judge said, was to "have a custody trial today[,]" during the merits hearing on divorce and property issues. The third option was for the parties to "agree that the temporary order is the final order."

Although the temporary custody order had required Mr. Limpias to complete a drug and alcohol assessment within 90 days after the entry of that order in July 2023, Mr. Limpias had still not provided the results of any assessment at the merits hearing. Counsel for Mr. Limpias claimed that Mr. Limpias had done an "evaluation online," but he had not "received the results yet." Counsel for Mr. Limpias represented that, when the parties had agreed to the temporary custody order, "it was everybody's understanding"

[4] In her brief, Ms. Montecinos asserts that the court postponed the merits hearing because of a "lack of available judges on that day."

that the temporary custody order "would be a final order[.]" In response, counsel for Ms. Montecinos expressed concern about Mr. Limpias's failure to complete the drug and alcohol assessment required by the temporary custody order. Her counsel stated: "I don't feel as though I'm in a position to advise my client whether or not agreeing to that order would be safe for the minor child because that was the reason we originally did this."[5]

The trial judge took a brief recess to inquire whether the custody hearing judge was available to address the unresolved custody issue. When the trial judge returned, he explained that the custody hearing judge would not be able to make a determination on that day because Mr. Limpias still had not provided the results of the drug and alcohol assessment. The trial judge concluded: "And so it doesn't make sense for [the custody hearing judge] to hear this any further. So I'll resolve those issues today." Neither party objected to the trial judge's decision to make the final custody determination as part of the divorce merits hearing.

E. Evidence at the Merits Hearing

The circuit court proceeded to take evidence concerning all issues in the case, including divorce, marital property, alimony, child custody, child support, and the petition for contempt. The parties themselves were the only witnesses to testify. The

[5] In his later testimony, Mr. Limpias admitted that he still had not completed a drug and alcohol evaluation. Mr. Limpias testified that he "went to three places" to find an evaluator but he could not afford the price of the evaluation. Mr. Limpias stated that he found a different "online" evaluation that was more affordable. Mr. Limpias testified that he signed up for that evaluation "[t]wo days" before the merits hearing and submitted a written questionnaire. Mr. Limpias stated that he still needed to schedule an in-person appointment to complete the evaluation.

parties' daughter was nine years old at the time of the hearing.

Shared Physical Custody During the Separation

Under the temporary custody order, Mr. Limpias was permitted to have access with the child on weekday evenings from 5:30 p.m. to 7:30 p.m. Mr. Limpias testified that he had been spending this time with his daughter "every single afternoon[.]" Ms. Montecinos estimated that Mr. Limpias had been using his access about "80 percent" of weekday evenings. On those occasions, Mr. Limpias would pick up his daughter from the home of Ms. Montecinos's mother and drop her off at Ms. Montecinos's home later in the evening.

According to Mr. Limpias, Ms. Montecinos frequently became upset any time they arrived after 7:30 p.m. Ms. Montecinos testified that she had repeatedly asked Mr. Limpias to arrive on time so that she can prepare her daughter for bedtime. Ms. Montecinos testified that, on some days, she would call her daughter to make sure that they would arrive on time. During some phone calls, she would hear Mr. Limpias screaming in the background, saying that Ms. Montecinos is "crazy" and making other derogatory comments about her.

Throughout her testimony, Ms. Montecinos expressed concerns about Mr. Limpias's temperament. Ms. Montecinos testified that she did not feel safe with Mr. Limpias "[b]ecause he has anger problems." Three years earlier, she said, Mr. Limpias "struck" her while they were at a party, having an argument about him "cheating on [her]" with another woman. She testified that she called the police and that they arrested Mr. Limpias at that time.

In her testimony, Ms. Montecinos also expressed concern that Mr. Limpias may have been inflicting corporal punishment on their daughter. Ms. Montecinos testified that, on three occasions, she observed "some marks" on her daughter's leg, which she believed were made by a belt. Ms. Montecinos also stated that her daughter sometimes "came home . . . crying" after visits with Mr. Limpias.

Mr. Limpias's Income

In his testimony, Mr. Limpias stated that, before May 2023, he had worked as a project manager for a subcontractor that provides services to the FBI Academy in Quantico, Virginia, earning about $87,500 per year. His employer fired him because of an incident of misconduct.

According to Mr. Limpias, this incident occurred on a night in April 2023 when he left the child at his apartment with a babysitter so that he could go out dancing. Around 2:30 a.m., a female friend confronted Mr. Limpias in a parking lot after seeing him with a different female friend. Mr. Limpias left the parking lot to avoid the discussion, leaving his keys and cell phone with one of the friends. The babysitter called the police at around 6:00 a.m. or 7:00 a.m., because Mr. Limpias had not returned home and she was unable to contact him. The police found Mr. Limpias at around 8:30 a.m., sleeping in a park within two blocks of his apartment. Mr. Limpias denied that he was under the influence of drugs or alcohol at the time of this incident.

Mr. Limpias admitted that he stopped making monthly child support payments a few months after losing his job in May 2023. In mid-October 2023, Mr. Limpias started a full-time job as a facilities operation analyst at Lucky Mart headquarters in Bethesda,

earning about $85,000 per year. Mr. Limpias did not contest the allegation that he owed $8,119 in child support arrears.

During cross-examination, Mr. Limpias admitted that he also worked "part-time" for a cleaning business that he started about five years earlier. When asked how much this cleaning business makes, Mr. Limpias answered: "Barely, maybe $2,000." Mr. Limpias stated that he spends "$5,000" each month for a vehicle used by the business, insurance, and other expenses. Mr. Limpias stated that he "d[oes]n't make money" from the business, but that he was operating it to "build[] credibility" for the company in the future.

Ms. Montecinos's Income and Expenses

Ms. Montecinos testified that she was employed as an architect for Penney Design Group in Bethesda. Ms. Montecinos provided paystubs showing that she earned $2,653.85 in pre-tax income every two weeks. Ms. Montecinos stated that her pay had recently increased by about $100 per month since those paychecks. Ms. Montecinos testified that, through her employment, she was currently providing health insurance for herself, her child, and Mr. Limpias.

Ms. Montecinos testified that, before leaving for work on weekday mornings, she takes her child to her mother's house, where her sister takes care of the child until the child leaves for school. Ms. Montecinos stated that her sister takes care of the child after school until one of the two parents returns after the workday. Ms. Montecinos also stated that she pays her sister $250 every two weeks to take care of the child before and after school. Previously, Ms. Montecinos stated, she had paid for child care before and after

school at the "Kids After Hours" program, which was "more expensive" than the child care provided by her sister.

Marital Property

Under Md. Rule 9-207, in a divorce case in which a monetary award is sought, the parties are required to file a joint statement listing all marital and non-marital property. In advance of the hearing, Ms. Montecinos had submitted a property statement, but Mr. Limpias did not submit any property statement. Mr. Limpias merely testified about each item that Ms. Montecinos had identified as marital property.

On her property statement, Ms. Montecinos claimed that the family home had a fair market value of $209,028.00, a lien of $177,674.09, and a net value of $31,353.91. Mr. Limpias agreed with this valuation.

On her property statement, Ms. Montecinos claimed that the parties owned land in Bolivia, all of which was marital property. Ms. Montecinos disclosed that she owned one property in her own name with a net value of $2,862.71. Ms. Montecinos claimed that Mr. Limpias owned two properties in his name with a net value of $9,060.00.

During his testimony, Mr. Limpias stated that he no longer owned any land in Bolivia. Mr. Limpias testified that he had sold the two properties for a total of about $8,000. Mr. Limpias also testified that he used the sale proceeds to pay for the funerals of three relatives—his father, his grandmother, and his aunt—who had each died of COVID within a period of a few weeks. According to Mr. Limpias, he "sent" a total of about $50,000 to his family members for funeral expenses. Mr. Limpias testified that, in addition to the property sales, he "g[ot] a loan from SoFi for 30K" and sent those funds to

family members. Later in his testimony, Mr. Limpias admitted that he removed about $4,000 or $5,000 of his 401(k) retirement account during the separation.

On her property statement, Ms. Montecinos listed a 2019 Mitsubishi Eclipse as marital property. Mr. Limpias testified that he owned the vehicle solely in his name, that he had paid off the loans for the vehicle, and that its value was around $17,000 or $18,000. The parties agreed that Ms. Montecinos alone used this vehicle.

In his testimony, Mr. Limpias stated that he previously owned a Honda Accord, but he had totaled that car about six months earlier in an accident involving a construction vehicle. Mr. Limpias stated that after that accident he received $4,000 of insurance proceeds, which he used to make the down payment for a new personal vehicle.

Mr. Limpias testified that, around the same time of that accident, he had totaled another vehicle, a Mitsubishi Outlander. Mr. Limpias claimed that this accident occurred when he was driving to a cleaning job early one morning after he had been out dancing the night before. According to Mr. Limpias, the accident occurred because one of the car's tires suddenly blew out. In her testimony, Ms. Montecinos recalled that Mr. Limpias called her to ask her to pick him up on the morning of that accident. Ms. Montecinos testified that, based on his behavior and the smell of alcohol, he appeared to be "drunk" at that time.

F. Opinion of the Trial Judge

At the conclusion of the hearing, the court delivered an oral opinion, which included factual findings based on the evidence.

In its discussion of the factors relevant to child custody,[6] the court found unequivocally that Mr. Montecinos was a fit parent. The court observed that the evidence established that Mr. Limpias provides appropriate care during his access time, including overnight visitation. The court stated that, even though Mr. Limpias "is fit" as a parent, he "could be a lot more fit."

In light of his failure to complete the required drug and alcohol assessment, the court stated that Mr. Limpias "probably" has "an alcohol problem" and "is in 100 percent denial about it." The court stated that it was "obvious that he has anger issues which he is not able to control, or at least not well enough." The court noted that Mr. Limpias "appeared to be highly agitated" and "angry" at times throughout the hearing. The court credited the testimony that Mr. Limpias "screams insults and other things" in the background during phone calls between his daughter and Ms. Montecinos.

The court stated that it did not "put[] much weight" on the allegations that Mr. Limpias inflicted corporal punishment on his daughter. Aside from her own testimony, the court stated, Ms. Montecinos offered "no corroborating evidence[,]" such as photographs of the injuries that she observed. The court noted that Ms. Montecinos had not requested supervised visitation or any significant changes to the shared physical custody arrangement that was already in place. For that reason, the court concluded that Ms. Montecinos did not believe that Mr. Limpias had abused their child.

[6] *See, e.g.*, *Kadish v. Kadish*, 254 Md. App. 467, 504 (2022) (discussing *Montgomery County Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977), and *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986)).

The court explained that it would leave most terms of the temporary custody order in place. Although the court acknowledged that the parties had demonstrated only "a limited capacity . . . to work together to make shared decisions[,]" the court decided that joint legal custody was appropriate. Finding that the "dynamic" between the parents was not "conducive to mediation[,]" the court decided to eliminate the requirement of a mediation session for Ms. Montecinos could exercise her tie-breaking authority. The court further decided to change the physical custody schedule so that Ms. Montecinos would also have more time with the child on weekdays. The court reduced Mr. Limpias's weekday access from five evenings per week to two evenings per week.

The court used the Child Support Guidelines to determine Mr. Limpias's child support obligation. To determine Mr. Limpias's income, the court relied on his testimony that he earns $85,000 per year, or $7,083 per month, from his full-time job. The court acknowledged Mr. Limpias's testimony that he also "makes $2,000 a month" working part-time for his cleaning business, but stated that "he also testified that all of that" revenue "goes away in expenses[.]" For that reason, the court did not include the cleaning business revenue as part of his income.

The court found that Ms. Montecinos earns $5,966 per month and that she pays $121 per month in health insurance expenses for the child. The court acknowledged that Ms. Montecinos testified that she pays her sister $250 every two weeks to watch the child before and after school. The court said that it would "not giv[e] [Ms. Montecinos] credit" for any work-related child care expenses "because it's a relative who's babysitting."

In deciding the disposition of marital property, the court determined the value of

the items listed as marital property on Ms. Montecinos's property statement. The court found the jointly-owned family home had a net value of $31,253.91. The court found the value of the 2019 Mitsubishi Eclipse, owned by Mr. Limpias and used by Ms. Montecinos, to be $17,500. The court noted that Mr. Limpias mentioned his ownership of two other vehicles, but stated that his business vehicle had "unknown value" and that there was "no evidence as to the value" of his personal use vehicle. The court accepted Ms. Montecinos's assertion that the net value of the property she owned in Bolivia was $2,862.71. The court found the value of the two properties in Bolivia, formerly owned by Mr. Limpias, to be $8,000. The court found that Mr. Limpias "essentially dissipated $8,000" of marital property by "selling th[o]se properties and then using it towards his relatives' funerals."

Based on its consideration of the relevant factors, the court denied the request for alimony but granted the request for a monetary award. To determine the monetary award, the court first calculated the total value of the land that Ms. Montecinos owned in Bolivia and the land that Mr. Limpias previously owned in Bolivia. The court divided the total value in half and then subtracted the value of the land that Ms. Montecinos still owned. This calculation resulted in a monetary award of $2,568.65 in favor of Ms. Montecinos.

G. Final Judgment of Absolute Divorce

On February 9, 2024, the court entered a final judgment resolving all issues raised in the divorce pleadings and in the petition for contempt.

The court granted the parties an absolute divorce on the ground of a 12-month

separation. The order required Mr. Limpias to transfer title of the 2019 Mitsubishi Eclipse (which the court had valued at $17,500) to Ms. Montecinos. The order required the parties to sell the marital home (with a net value of $31,253.91) and to divide the proceeds evenly. The court granted Ms. Montecinos a monetary award in the amount of $2,568.65.

The court granted the parties joint legal custody of their child and granted tie-breaking authority to Ms. Montecinos. The court granted primary physical custody to Ms. Montecinos. The court granted Mr. Limpias parenting time every other weekend, from Friday evening until Sunday evening. The court also granted Mr. Limpias additional access for two hours on Monday and Wednesday evenings during the week.[7]

The order prohibited the parents from using corporal punishment on the child. The order required both parents to refrain from using alcohol or non-prescription drugs during their time with the child. The order also required Mr. Limpias to submit to a drug and alcohol evaluation within 30 days of the entry of judgment, to follow any treatment recommendations by the evaluator, and to provide proof of his completion of the evaluation and treatment to Ms. Montecinos. Finally, the order required Mr. Limpias to participate in an anger-management program and to provide proof of his completion of the program to Ms. Montecinos.

[7] In its oral ruling, the court stated that the schedule for winter break, spring break, and summer vacation would remain "the same" as the schedule established in the temporary custody order. The final judgment included a holiday schedule, but, unlike the temporary custody order, it did not include any access schedule for the winter breaks, spring breaks, or summer vacation.

The court ordered Mr. Limpias to pay $1,066 per month in child support beginning February 28, 2024. This amount represented the recommended child support obligation under the Child Support Guidelines based on the following information: Mr. Limpias's pre-tax income ($7,083 per month), Ms. Montecinos's pre-tax income ($5,966 per month), and health insurance expenses paid by Ms. Montecinos ($121 per month).

The court found that Mr. Limpias owed $8,119 in child support arrears at the time of judgment. The court ordered him to pay an additional $338.29 per month towards his child support arrears until his arrears are paid in full. The court found Mr. Limpias in contempt for failing to comply with the pendente lite child support order. The order stated that Mr. Limpias could "purge this Contempt finding by paying $1,000.00 towards his arrears" within 45 days of the entry of judgment.[8]

After the entry of judgment, Ms. Montecinos filed a timely notice of appeal.

DISCUSSION

In this appeal, Ms. Montecinos challenges the circuit court's rulings on custody, child support, and the division of marital property. Ms. Montecinos asks this Court to reverse the judgment and to remand the case for a new hearing on those issues.

In her first challenge, Ms. Montecinos contends that the circuit court did not provide sufficient notice that it would conduct a final hearing on child custody as part of the merits hearing. Second, she contends that the court incorrectly calculated Mr. Limpias's income and improperly failed to include her work-related child care expenses

[8] Mr. Limpias has not asserted that the contempt order is invalid under *Breona C. v. Rodney D.*, 253 Md. App. 67 (2021).

when calculating child support. Third, she contends that the court incorrectly determined the value of certain marital property when evaluating her request for a monetary award. For his part, Mr. Limpias filed no appellate brief in this Court.

For the reasons discussed below, we will affirm the judgment in part and reverse the judgment in part. We conclude that the circuit court erred by excluding Ms. Montecinos's work-related child care expenses from its child support calculation. We will set aside the child support determination and remand the case for a reevaluation of child support. We will affirm the judgment with respect to all other issues.

I. Notice of the Final Child Custody Hearing

In this appeal, Ms. Montecinos contends that the circuit court failed to provide "sufficient notice that the [c]ourt intended to conduct a final custody merits hearing at the time of the divorce merits hearing[.]"

In the early stages of the case, the circuit court had issued a scheduling order notifying the parties that the court would hold a "Custody Merits Hearing" on July 19, 2023, to be followed by an eventual "Merits Hearing" on property issues and other issues. Both parties appeared with counsel for the scheduled custody merits hearing and placed "an agreement with respect to temporary custody" on the record. One provision of the temporary custody order required Mr. Limpias to submit to a drug and alcohol assessment within 90 days and to comply with any treatment recommendations made by the assessment provider. The order stated that the court would revisit the matter after six months "for the limited purpose of reviewing [his] compliance with the assessment and treatment provisions" of the order.

The court scheduled the review hearing contemplated by the temporary custody order to occur on January 19, 2024, but the courthouse was closed on that date as the result of a snowstorm. Thus, when the parties appeared with counsel for the "Merits Hearing" on February 8, 2024, the competing claims for custody remained unresolved.

At the beginning of the merits hearing, the trial judge announced that the purpose of the hearing was to resolve the claims for divorce, division of property, alimony, and child support. The trial judge explained that there was also "an unresolved issue regarding custody[.]" The trial judge stated that there was "still a temporary custody order" in effect and "there need[ed] to be a final custody order" in the case.

The trial judge presented the parties with "three options" for how to proceed to make the final custody determination. The first option, the trial judge said, was to "send everybody . . . over" to the custody hearing judge on the same day, to allow that judge "to issue a final order[.]" The second option, the trial judge said, was to "have a custody trial today" during the divorce merits hearing. The third option was for the parties to "agree that the temporary order is the final order."

The first option proved to be unworkable, because the custody hearing judge would not be able to make a final custody determination that day. The parties could not agree on the third option, because counsel for Ms. Montecinos said that she was unable to advise her client about whether to make the pendente lite order a permanent order in view of Mr. Limpias's failure to complete the drug and alcohol assessment. In accordance with the remaining option, therefore, the court asserted that it would resolve the custody and child support issues.

Neither party objected to the court's decision to include the final custody hearing as part of the divorce hearing. In response to the decision, counsel for Mr. Limpias stated, "Okay." Counsel for Ms. Montecinos responded, "Thank you, Your Honor."

In this appeal, Ms. Montecinos now argues that the circuit court failed to provide adequate notice of the final custody hearing. Ms. Montecinos asserts that, because the parties did not receive advance notice that the court would consider custody issues at the merits hearing on February 8, 2024, neither party was prepared to present evidence or make arguments on the custody issues. Ms. Montecinos contends that, by failing to give advance notice of the final custody hearing, the court violated her right to due process of law.

In support of her contentions, Ms. Montecinos cites *Van Schaik v. Van Schaik*, 90 Md. App. 725 (1992). According to Ms. Montecinos, the circumstances of the *Van Schaik* case are "similar" to those of the present case.

The *Van Schaik* case arose from a divorce proceeding in which two parents had reached an agreement that provided for joint legal custody of their child, primary physical custody with the mother, and visitation with the father. *Van Schaik v. Van Schaik*, 90 Md. App. at 729. The court-appointed attorney for the child "requested a hearing 'with regard to visitation and other issues.'" *Id.* at 730. The court issued a notice informing the parents of "a hearing on 'visitation and child's possessions.'" *Id.* at 738. Because the father and his counsel "understood that the purpose of the hearing involved minor visitation and property issues[,]" the father appeared without counsel at the hearing. *Id.* at 730. Neither the parents nor the attorney for the child had requested any change in

custody at any time before the hearing. *Id.* at 730 n.4. Nevertheless, at the conclusion of the hearing, the trial court "terminated [the father's] joint custody rights[.]" *Id.* at 730.

In the ensuing appeal, this Court determined that the father "was not given proper notice that matters relating to custody were to be the subject of the hearing at issue." *Van Schaik v. Van Schaik*, 90 Md. App. at 738. This Court observed that, by statute, trial courts must give parties "'reasonable notice and opportunity to be heard'" before making a child custody determination. *Id.* (quoting Md. Code (1984, 1991 Repl. Vol.), § 9-205 of the Family Law Article).[9] The Court explained: "[I]f a court is contemplating holding a hearing at which it will, or may, determine custody issues, a parent with custodial rights . . . must be notified that such an issue may be the subject of the hearing." *Van Schaik v. Van Schaik*, 90 Md. App. at 738.

The Court observed that the hearing notice "did not notify either parent that the court was contemplating making a custody decision." *Van Schaik v. Van Schaik*, 90 Md. App. at 738-39. Moreover, "[n]either parent had asked for a change in custody or for a custody determination." *Id.* at 739. In addition, "[n]either parent was represented by counsel and . . . , until the court made its ruling on custody at the conclusion of the hearing, neither parent was aware that the hearing was in any way concerned with the matter of custody." *Id.* The father did not even have "an opportunity for effective argument on the issue of custody when there was no notice at all that it would be

[9] The Code provision cited in *Van Schaik* was "[r]epealed and recodified without substantive change" at section 9.5-205 of the Family Law Article. *Burdick v. Brooks*, 160 Md. App. 519, 526 n.3 (2004).

considered nor any discussion during the hearing itself of that issue." *Id.* The Court concluded that the lack of notice "constituted prejudicial error[]" as well as "a denial of due process[.]" *Id*.

The circumstances of the present case differ in many important respects from those of *Van Schaik*. In *Van Schaik*, no party had requested any change in custody, the court had given notice of a hearing limited to visitation issues and issues related to the child's property, the parties appeared without counsel for the hearing, and the court ordered a change in custody without even alerting the parties of its intention to make a custody determination. In the present case, both parties had raised competing claims for custody. The circuit court had scheduled a custody review hearing to occur three weeks before the merits hearing, but that review hearing had not taken place. When the parties appeared with counsel for the merits hearing, the trial judge presented the parties with three options for resolving their custody claims, one of which was to resolve the custody issues during the divorce merits hearing.

After one option proved to be unavailable and counsel for Ms. Montecinos rejected another, the court announced that it would resolve the custody issues as part of the merits hearing. When the court announced this decision, counsel for Ms. Montecinos did not object or propose any alternatives. Counsel for Ms. Montecinos did not say anything indicating that she was unprepared to present evidence or argument on the custody issue. Counsel for Ms. Montecinos simply responded, "Thank you, Your Honor." This response gave the court no reason to think that Ms. Montecinos opposed the court's decision to adjudicate the custody issue on that day.

"Ordinarily," except for certain jurisdictional issues, this Court will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). The purposes of this Rule are "'to require counsel to bring the position of their client to the attention of the [trial] court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings' and 'to prevent the trial of cases in a piecemeal fashion[.]'" *Univ. Sys. of Maryland v. Mooney*, 407 Md. 390, 401 (2009) (quoting *Robinson v. State*, 404 Md. 208, 216-17 (2008)). Maryland Rule 2-517 prescribes the method of making objections in civil cases. This rule states that, "[f]or purposes of review by the trial court or on appeal of any . . . ruling or order" other than a ruling on the admission of evidence, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Md. Rule 2-517(c).[10]

In *Phillips v. Venker*, 316 Md. 212 (1989), the Court discussed what a party must do to preserve a contention that the party lacked adequate notice of a hearing. That case arose from a personal injury action in which the defendant had moved for summary judgment. *Id.* at 213-14. Three days before the summary judgment hearing, the trial judge arranged a "telephone conference between counsel for each party and the judge, ostensibly to discuss the [plaintiffs'] request for a continuance" of the summary judgment

[10] This rule further states: "If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection at that time does not constitute a waiver of the objection." Md. Rule 2-517(c). The *Van Schaik* case is an example of a situation in which the parties had no opportunity to make an objection. The father's "first notice that custody was to be determined was when he was divested of it in the court's decree at the conclusion of the hearing." *Van Schaik v. Van Schaik*, 90 Md. App. at 739.

hearing. *Id.* at 215. When the trial judge began to inquire into the merits of the motion, counsel for the plaintiffs "stated that he did not have his file in hand, had not reviewed it for argument and had two clients in his office at the time." *Id.* At the judge's direction, counsel for the plaintiffs retrieved his case file. *Id.* The judge proceeded to conduct the summary judgment hearing and granted summary judgment in favor of the defendants. *Id.*

In the ensuing appeal, the plaintiffs contended that the trial court had failed to give adequate notice of the summary judgment hearing. *Phillips v. Venker*, 316 Md. at 213. The Court first considered the "threshold question" of whether the plaintiffs had "preserved the issue of adequate notice for appellate review." *Id.* at 215. The Court concluded that "the protestations of [the] plaintiffs' attorney satisfied the requirement of a timely objection." *Id.* at 216. The Court acknowledged that "it would have been preferable for the attorney to employ the time-honored expression of 'I object,' thus removing any question about preservation[.]" *Id.* Under the "unusual circumstances" of that case, however, the Court concluded that the attorney's "statements were sufficient to convey his objection." *Id.* The Court explained:

> When the judge unexpectedly announced that he was turning to a discussion of the merits of the motion for summary judgment, plaintiffs' attorney protested. He said, understandably we think, that he was not prepared to argue the motion then and there. He had not reviewed his file, did not have his file before him, and was engaged with other clients. Under the circumstances, we treat those statements as an adequate objection. When the trial judge replied by insisting that the attorney obtain his file, he effectively overruled the objection. The question of adequate notice was preserved.

Phillips v. Venker, 316 Md. at 216.

In the present case, unlike in *Phillips v. Venker*, we see no statement that sufficiently expresses disagreement with the circuit court's proposal to conduct the final custody hearing as part of the divorce merits hearing. Although counsel for Ms. Montecinos now asserts that she was unprepared to try the custody issue on the day of the merits hearing, counsel never shared that information with the circuit court. When the court presented the parties with three options for resolving the custody claims, counsel for Ms. Montecinos stated that the "real issue" was that Mr. Limpias had not provided the results of the substance abuse evaluation as required by the temporary custody order. In light of his failure to complete the evaluations contemplated by the temporary custody order, counsel stated: "I don't feel as though I'm in a position to advise my client whether or not agreeing to *that order* would be safe for the minor child because that was the reason we originally did this." (Emphasis added.)

These statements were sufficient to communicate that counsel rejected the third proposed option: the option to agree that the terms of the final custody order should be the same as those in the temporary custody order. These statements did not, however, convey disagreement with the second proposed option: to conduct the final custody hearing as part of the divorce merits hearing. Moments later, when the court eliminated the first proposed option (sending the parties to the custody hearing judge to issue a final custody order), the court announced that it would "resolve those issues today." Counsel for Ms. Montecinos responded, "Thank you, Your Honor." This statement either affirmatively agreed with or at least acquiesced in the court's decision.

Throughout this exchange, we cannot find a statement sufficient to express

disagreement with the court's decision to hold the final custody hearing as part of the divorce merits hearing. If counsel had protested the court's decision—by, for example, telling the court that she was not fully prepared to litigate that issue because the court had not given pre-hearing notice—the court might have proceeded differently. Instead, the court was left with the impression that no party objected to its proposal to resolve the custody claims as part of the merits hearing. Because counsel for Ms. Montecinos did not "make[] known to the court the action that [counsel] desire[d] the court to take or the objection to the action of the court" (Md. Rule 2-517(c)), the court did not pass upon any objection. Without an objection, the court had nothing to overrule.

In sum, we conclude that counsel for Ms. Montecinos did not raise an objection to the circuit court's decision resolve the custody claims during the divorce merits hearing. Without an adequate objection, the issue of whether the court provided sufficient notice of the final custody hearing is not preserved for appellate review.

II. Child Support Determination

In her brief, Ms. Montecinos contends that the circuit court made two separate errors when it determined Mr. Limpias's child support obligation. First, she argues that the court erroneously failed to include $2,000 of earnings from Mr. Limpias's cleaning business as part of his monthly income. Second, she argues that the court erroneously failed to credit her with work-related child care expenses of $500 per month.

Mr. Limpias's Income

When calculating the child support obligation recommended by the Maryland Child Support Guidelines, the "central factual issue" is the adjusted actual income of each

parent. *Reuter v. Reuter*, 102 Md. App. 212, 221 (1994). As used in the Guidelines, the term "'[a]ctual income' means income from any source." Md. Code (1984, 2019 Repl. Vol.), § 12-201(b)(1) of the Family Law Article ("FL"). The statute broadly defines "actual income" to include salaries, wages, commissions, bonuses, and various other types of income. FL § 12-201(b)(3). It further provides: "For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, 'actual income' means gross receipts minus ordinary and necessary expenses required to produce income." FL § 12-201(b)(2).

In the present case, Mr. Limpias testified that, since October 2023, he was earning an annual salary of $85,000, working full-time as a facilities operation analyst for Lucky Mart. Mr. Limpias did not introduce any documentation of his income from this employer. Mr. Limpias did, however, introduce paystubs from his previous employer, which had terminated his employment in May 2023.

During cross-examination, Mr. Limpias mentioned that he also worked part-time for a cleaning business that he started about five years earlier. Counsel for Ms. Montecinos asked, "how much per month does your cleaning business make?" Mr. Limpias answered: "Barely, maybe $2,000 . . . . 5,000 goes to the payment of the car, insurance and all of that. I don't make money." Counsel asked Mr. Limpias to explain why he was operating this business without making any money. Mr. Limpias stated that he was trying to "build[] credibility" for the company and "build[] . . . the company's values" because he was "planning to start bidding for . . . federal contracts" in the future. **[**Mr. Limpias further stated that the only asset owned by his cleaning business was a

"Transit Connect" minivan that he had acquired through financing about six months earlier.

When the court determined Mr. Limpias's actual income, the court credited his testimony that he earns $85,000 per year, or $7,083 per month, from his full-time job. The court stated: "There was some evidence that he makes $2,000 a month or something in his [cleaning] business, but he also testified that all of that goes away in expenses, so I didn't include that into the calculation." The court added: "I don't have any competent evidence as to what he makes in this business." The court proceeded to calculate the recommended child support obligation using $7,083 per month as Mr. Limpias's actual income.

In her appellate brief, Ms. Montecinos argues that the circuit court "improperly reduced" Mr. Limpias's income "when it refused to include" the $2,000 of monthly revenue from his cleaning business as part of his actual income. In support of that argument, Ms. Montecinos cites section 12-203 of the Family Law Article.

FL § 12-203(a) authorizes the Supreme Court of Maryland to "issue standardized worksheet forms to be used in applying" the Child Support Guidelines. FL § 12-203(b) provides: "Income statements of the parents shall be verified with documentation of both current and past actual income." This section further provides that "suitable documentation of actual income includes pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent's 3 most recent federal tax returns." FL § 12-203(b)(2)(i). This section "simply lists several documents that are suitable documentation of a parent's

actual income[,]" and a party "could produce any one, two, or all three" forms of documentation in a child support case. *Tanis v. Crocker*, 110 Md. App. 559, 572 (1996).

In her appellate brief, Ms. Montecinos argues for a selective application of FL § 12-203(b). Ms. Montecinos takes no issue with Mr. Limpias's testimony that he made "maybe $2,000" per month of revenue from his cleaning business, even though he provided no documentation to verify that testimony. Ms. Montecinos takes issue only with Mr. Limpias's additional testimony that he incurred more than $2,000 of monthly expenses for his cleaning business. Ms. Montecinos asserts that Mr. Limpias "failed to provide any documentation of these expenses[.]" Ms. Montecinos argues that the court erred by "accepting without documentation that all revenue was being consumed by expenses." In her view, the court "improperly reduced [Mr. Limpias's] income when it refused to include the $2,000" of revenue from his business as part of his actual income.

As stated earlier, actual income from self-employment is the difference between the "gross receipts" and the "ordinary and necessary expenses required to produce income." FL § 12-201(b)(2). Suitable documentation of income from self-employment may include "receipts *and* expenses" if the parent is self-employed. FL § 12-203(b)(2)(i) (emphasis added). Accordingly, the documentation requirement of FL § 12-203(b) should apply to *both* the receipts and expenses from self-employment. The statute does not specify what the court should do when a parent testifies about income from self-employment without providing documentation.

We are unaware of any authority establishing that, in this situation, the court should accept the parent's testimony about gross receipts (despite the lack of

documentation), but the court should reject the testimony about expenses (based on of the lack of documentation). In this case, counsel for Ms. Montecinos elicited the testimony that she now argues, on appeal, is deficient. During cross-examination, counsel for Ms. Montecinos asked Mr. Limpias how much he makes each month from his cleaning business. It would seem unreasonable to require the court to use part of his answer to those questions ($2,000 of receipts) but to require the court to ignore the rest of his answer (more than $2,000 of expenses). Neither party asked additional questions about supporting documentation of this self-employment income. During closing arguments, neither party made any argument about how the court should evaluate the testimony about his cleaning business.

In our view, if Ms. Montecinos wanted the court to accept Mr. Limpias's unverified testimony about the receipts from his cleaning business, but to ignore his unverified testimony about the expenses from that business, counsel should have made that position known to the circuit court. Because that argument was never made in the circuit court, we cannot second-guess the court for failing to use this proposed application of FL § 12-203(b). We conclude, therefore, that Ms. Montecinos's argument is not properly preserved for appellate review. *See Horsley v. Radisi*, 132 Md. App. 1, 20 (2000) (holding that parent failed to preserve argument that court should have excluded certain costs from its child support calculation where parent failed to make that argument in the circuit court) (citing Md. Rule 8-131(a)).

Accordingly, we will not disturb the circuit court's decision not to add $2,000 of monthly revenue from Mr. Limpias's cleaning business to his actual income.

Work-Related Child Care Expenses

As a separate issue, Ms. Montecinos argues that the circuit court erred when it refused to credit her with $500 per month in work-related child care expenses. We agree that the court erred in this respect.

To calculate a parent's child support obligation under the Child Support Guidelines, the court must find the combined adjusted actual income of the parents and use that amount to find the "basic child support obligation[.]" FL § 12-204(a). The Guidelines further require the court to account for certain expenses, including work-related child care expenses, health insurance expenses, extraordinary medical expenses, and certain additional expenses for the child's particular educational needs or expenses for transportation of the child between the parents' homes. FL § 12-204(*l*).

The statute states that "actual child care expenses incurred on behalf of a child due to employment or job search of either parent shall be added to the basic obligation and shall be divided between the parents in proportion to their adjusted actual incomes." FL § 12-204(g)(1). It further states that these expenses "shall be determined by actual family experience, unless the court determines that the actual family experience is not in the best interest of the child[.]" FL § 12-204(g)(2)(i). "[I]f there is no actual family experience or if the court determines that actual family experience is not in the best interest of the child[,]" the court must determine the expenses by "1. the level required to provide quality care from a licensed source; or 2. if the obligee chooses quality child care with an actual cost of an amount less than the level required to provide quality care from a licensed source, the actual cost of the child care expense." FL § 12-204(g)(2)(ii).

Because the statute uses mandatory language requiring the court to account for work-related child care expenses, "child care expenses always fall outside of the [trial court's] discretion" in child support cases. *Chimes v. Michael*, 131 Md. App. 271, 292-93 (2000). The statute narrow limits the court's inquiry. As an initial matter, the court must determine whether a parent incurred "actual child care expenses . . . on behalf of a child due to employment or job search[.]" FL § 12-204(g)(1). Next, unless the court finds that actual family experience is not in the best interest of the child, the court "[is] required to determine the child care expense[s] by actual family experience." *Krikstan v. Krikstan*, 90 Md. App. 462, 471 (1992) (citing FL § 12-204(g)(2)(i)). Where the evidence establishes that a parent incurs work-related child care expenses, it is an error for the court to "eliminate" those expenses. *Krikstan v. Krikstan*, 90 Md. App. at 471.

In this case, when the parties agreed to the pendente lite child support order in April 2023, they agreed that Ms. Montecinos incurred work-related child care expenses of $597 per month. At trial in February 2024, Ms. Montecinos testified that the actual family experience had changed since the court issued the pendente lite order. Ms. Montecinos explained that her work schedule requires her to leave home at 7:30 a.m. on weekday mornings. Ms. Montecinos also testified that, before leaving for work, she takes her child to her mother's house, located about 10 minutes away, where her sister takes care of the child until the child leaves for school. Ms. Montecinos stated that her sister also takes care of the child after school each day until one of the parents returns home after the workday. Ms. Montecinos testified that she pays her sister $250 "[e]very two weeks" (or "$500 a month") to care for the child before and after school.

Ms. Montecinos testified that, in the past, she had paid for child care before and after school at the "Kids After Hours" program, which was "more expensive" than the child care provided by her sister. Ms. Montecinos stated that this new arrangement made it "easier" for her to drop off and pick up the child and that it was "better for [her child] to have more time with [her] family." Ms. Montecinos explained that she "still pay[s] because [her] sister puts time" to taking care of her daughter.

Ms. Montecinos further explained that her sister had asked her to pay to take care of the child because her sister was not employed. At that point, the court asked Ms. Montecinos whether she and her sister were "close" to each other. Ms. Montecinos answered: "Yes." The court stated: "So you're kind of like giving your sister welfare." Ms. Montecinos responded: "Kind of."

At the start of cross-examination, counsel for Mr. Limpias asked Ms. Montecinos to clarify her testimony about how often she pays her sister for child care. Ms. Montecinos reiterated that she pays her sister $250 "every two weeks." At that point, the court told counsel: "I'm not going to credit that towards child support, so you don't need to . . . ask her anything about that."

When explaining its child support ruling, the court stated that it would not include work-related child care expenses because Ms. Montecinos was paying a family member to provide child care. The court stated:

> The evidence of work-related childcare expenses was that the defendant pays her sister $250 every couple weeks to watch their child. I'm not giving [Ms. Montecinos] credit for that. What I took from that is that the defendant's sister needs money, and she was, it made sense because it's

> half the price of Kids After Hours,[11] and so it's a win-win for everybody. Well that's true, but I'm not including it in the child support guidelines because it's a relative who's babysitting.

When the court made its findings, the court did not question the credibility of Ms. Montecinos's testimony about her "actual family experience" (FL § 12-204(g)(2)(i)) of paying her sister $250 every two weeks to take care of her child before and after school. Nor did the court question whether these child care expenses were work-related, i.e., whether these expenses were "actual child care expenses" incurred "on behalf of a child due to employment[.]" FL § 12-204(g)(1).

The undisputed testimony established the necessity of care for the nine-year-old child, because Ms. Montecinos leaves for work before the school bus arrives and does not return home until a few hours after the school bus drops off the child in the afternoon. The court made no finding that the child care provided by Ms. Montecinos's sister was somehow not in the child's best interest. Nor was there any evidence to support such a finding. There was no evidence, for example, that her sister failed to provide suitable care or that the cost of care from her sister was unreasonably high.

The court's stated reason for "not giving [Ms. Montecinos] credit" for her work-related child care expenses was the following: "I'm not including it in the child support guidelines because it's a relative who's babysitting."

This stated reason is not a valid basis to eliminate work-related child care

[11] According to the transcript, Ms. Montecinos did not say that paying her sister was "half" of the price of child care at Kids After Hours. Ms. Montecinos said that the Kids After Hours program was "more expensive" than paying her sister.

expenses from the child support calculation. Under the statute, there is no requirement that, to qualify as work-related child care expenses, the parent must pay the expenses to a non-relative. The statute requires the court to determine child care expenses "by actual family experience, unless the court determines that the actual family experience is not in the best interest of the child[.]" FL § 12-204(g)(2)(i). In many cases, a family's actual experience might include paying a relative to care for a child while a parent is at work. As long as the parent actually pays the expenses for work-related child care, the statute requires the court to account for those expenses in its child support calculation. *See Krikstan v. Krikstan*, 90 Md. App. at 471.

In sum, we conclude that the circuit court erred in part of its child support calculation. We agree with Ms. Montecinos that the circuit court should have credited her with $500 per month in work-related child care expenses when it calculated the amount of child support recommended by the Child Support Guidelines.[12]

Consequently, we vacate the judgment to the extent that it ordered Mr. Limpias to pay $1,066 per month in child support beginning on February 28, 2024. We remand the case to the circuit court to recalculate the amount of child support recommended by the Child Support Guidelines, after accounting for the work-related child care expenses of $500 per month paid by Ms. Montecinos.

With the exception of these work-related child care expenses, the other amounts

[12] Ms. Montecinos testified that she pays her sister $250 "[e]very two weeks," but also testified that she pays "$500 a month." These two rates of pay are not exactly equal. In her appellate brief, Ms. Montecinos argues that the court should use the lesser rate: $500 per month.

used in the circuit court's calculation should remain unchanged. As explained earlier, we have rejected the contention that the court erred when it found that Mr. Limpias's actual income was $7,083 per month. Neither party has challenged the findings that Ms. Montecinos's actual income is $5,966 per month and that Ms. Montecinos incurs health insurance expenses for the child of $121 per month.

Until the court issues a new judgment in accordance with this opinion, the existing order requiring Mr. Limpias to pay $1,066 per month in child support will remain in force as the equivalent of a pendente lite order. *See St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016) (citing *Simonds v. Simonds*, 165 Md. App. 591, 613 (2005)).

III. Division of Marital Property and Monetary Award

As the third issue presented, Ms. Montecinos contends that the circuit court "failed to properly value and divide the marital property of the parties."

When a party seeks a monetary award in a divorce action, the circuit court must undertake a three-step process. *See, e.g.*, *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). First, the court must determine whether each disputed item of property is marital property. FL § 8-203(a).[13] Second, the court must determine the value of all marital property. FL § 8-204(a). Third, after the court determines which property is marital property and the value of the marital property, the court may transfer ownership of an interest in certain types of property, grant a monetary award, or both, "as an adjustment of the equities and rights of the parties concerning marital property[.]" FL § 8-205(a)(1).

[13] "'Marital property' means the property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1).

The purpose of the monetary award is "'to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage, strictly in accordance with its title.'" *Abdullahi v. Zanini*, 241 Md. App. at 406-07 (quoting *Brewer v. Brewer*, 156 Md. App. 77, 110 (2004)).

Although the trial court "is responsible for determining the value of the marital property, this responsibility does not carry the burden of producing such evidence." *Blake v. Blake*, 81 Md. App. 712, 720 (1990). Rather, "[t]he party who asserts a marital property interest bears the burden of producing evidence of the identity and value of the property." *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993); *see K.B. v. D.B.*, 245 Md. App. 647, 680 (2020) (stating that "'the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property'") (quoting *Murray v. Murray*, 190 Md. App. 553, 570 (2010)); *Abdullahi v. Zanini*, 241 Md. App. at 412 (stating that "[a] party seeking a monetary award has the burden of establishing the value of the marital property") (citing *Blake v. Blake*, 81 Md. App. at 720).

"Generally, 'property disposed of before trial cannot be marital property.'" *Solomon v. Solomon*, 383 Md. 176, 202 (2004) (quoting *Turner v. Turner*, 147 Md. App. 350, 409 (2002)). As an exception to this general rule, "when a court 'finds that property was intentionally dissipated in order to avoid inclusion of the property towards consideration of a monetary award[,]'" the court may include the dissipated property in its evaluation. *Solomon v. Solomon*, 383 Md. at 202 (quoting *Sharp v. Sharp*, 58 Md.

App. 386, 399 (1984)). If a party claims that the other party intentionally dissipated marital property during the pendency of a divorce action, "'[t]he party alleging dissipation has the initial burden of production and burden of persuasion.'" *Solomon v. Solomon*, 383 Md. at 202 (quoting *McCleary v. McCleary*, 150 Md. App. 448, 463 (2002)); *see also Omayaka v. Omayaka*, 417 Md. 643, 656-57 (2011) (quoting *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 311 (1994)); *Turner v. Turner*, 147 Md. App. at 409 (stating that "[w]hen a claim is made of dissipation, the party making the claim must present affirmative evidence to establish it").

The trial court's determination of whether an item is marital property is a question of fact and, therefore, the appellate court will not disturb that determination unless it is clearly erroneous. *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (citing *Collins v. Collins*, 144 Md. App. 395, 408-09 (2002)); *Omayaka v. Omayaka*, 417 Md. at 654. Likewise, the trial court's determination of the value of marital property "is a question of fact subject to the clearly erroneous standard of review." *Abdullahi v. Zanini*, 241 Md. App. at 413 (citing *Blake v. Blake*, 81 Md. App. at 720). In addition, a trial court's determination regarding dissipation of marital property "is a factual one and, therefore, is reviewed under [the] clearly erroneous standard." *Solomon v. Solomon*, 383 Md. at 202. Ordinarily, "[i]f there is any competent evidence to support the factual findings" of the trial court, "those findings cannot be held to be clearly erroneous.'" *Id.* (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)).

The ultimate decision to grant a monetary award "is generally within the sound discretion of the trial court." *Alston v. Alston*, 331 Md. 496, 504 (1993) (citing FL § 8-

205(a)). Accordingly, this Court reviews the decision of whether to grant a monetary award, as well as the amount of that award, under the abuse of discretion standard. *Huntley v. Huntley*, 229 Md. App. 484, 489 (2016) (citing *Gordon v. Gordon*, 174 Md. App. 583, 625-26 (2007)). Under this deferential standard, the appellate court may not substitute its own judgment for that of the trial court even if the appellate court might have reached a different result. *Flanagan v. Flanagan*, 181 Md. App. 492, 521-22 (2008) (citing *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000)).

In this appeal, Ms. Montecinos takes issue with the circuit court's finding that Mr. Limpias dissipated marital property. Ms. Montecinos calls attention to Mr. Limpias's testimony that, during the separation, he sent about $50,000 to his relatives in Bolivia to pay for the funeral expenses of three relatives. Mr. Limpias testified that he obtained some of those funds by selling two properties in Bolivia for a total of approximately $8,000. Mr. Limpias testified that he acquired other funds by taking out a loan. He stated: "I got a loan from SoFi for 30K and I have to pay 40K. I take my 40K and I sold these two lands here." Later in his testimony, Mr. Limpias admitted that he also withdrew about $4,000 or $5,000 from his 401(k) retirement account during the separation.

The court interpreted this testimony to mean that Mr. Limpias obtained about $50,000 from three sources: selling the two properties in Bolivia, taking out a personal loan, and taking money from his 401(k) retirement account. The court stated: "[Mr. Limpias] took $8,000 in actual assets plus money from his 401K which may be a marital asset, I'm not really sure, but $4,000 or $5,000 from his 401K, so that's $12,000 or

$13,000, plus a loan for another 30-odd thousand dollars and used that to spend on dead relatives, as opposed to using it to support his living child."

When determining the monetary award, the court said that it considered the fact that Mr. Limpias "essentially dissipated $8,000 in selling [the two] properties and then using it towards his relatives' funerals." The court granted a monetary award to compensate Ms. Montecinos for half of the value of the dissipated marital property. Specifically, the court calculated the total value of the land that Ms. Montecinos owned in Bolivia and the land that Mr. Limpias previously owned in Bolivia. The court divided that total in half, and then subtracted the value of the land that Ms. Montecinos still owned in Bolivia.

On appeal, Ms. Montecinos argues that the court should have treated the entire sum of $50,000 that Mr. Limpias sent to his relatives as the dissipation of marital property. She acknowledges that the court found that "selling the land and sending the $8,000 to relatives amounted to dissipation of a marital asset." She argues that the court "ignored and failed to account for the additional $42,000 in assets" that Mr. Limpias sent to his relatives.

In our assessment, the court did not "ignore" or "fail[] to account" for the funds that Mr. Limpias sent to his relatives. The court concluded that the evidence established that the land that Mr. Limpias formerly owned in Bolivia was marital property and that its value was $8,000. The court was unable to conclude, based on the evidence presented, that he obtained the other $42,000 through the dissipation of marital property.

When discussing Mr. Limpias's 401(k) retirement account, the court

acknowledged the possibility that this retirement account "may be a marital asset," but stated that it was "not really sure" whether it was marital property. The parties had offered no evidence establishing *when* Mr. Limpias acquired the funds in the 401(k) retirement account. Because there was no evidence establishing that Mr. Limpias had acquired the property "during the marriage" (FL § 8-201(e)(1)), the court had no basis to conclude that the account satisfied the definition of marital property. As the party alleging the existence of marital property or the dissipation of marital property, Ms. Montecinos had the burden to produce evidence of the identity and value of the property. *See Solomon v. Solomon*, 383 Md. at 202; *Abdullahi v. Zanini*, 241 Md. App. at 412. The court did not commit clear error in finding that she failed to meet that burden.

In her brief, Ms. Montecinos asserts that the "loan of $30,000" that Mr. Limpias received from a lender is an "asset[]" that he "managed to liquify into cash and transfer to family out of the country." We are unaware of any authority holding that a personal loan is an "asset" for the purpose of evaluating marital property. Even if the funds that Mr. Limpias borrowed from a lender might qualify as marital property, the court had no basis to conclude that this property had any positive value.

As a basic principle of valuation, when the court determines the value of marital property, the court must deduct the amount of marital debt traceable to the acquisition of the property from the gross value of the property. *See Zandford v. Wiens*, 314 Md. 102, 108 (1988); *Goldberg v. Goldberg*, 96 Md. App. 771, 782 (1993); *Quinn v. Quinn*, 83 Md. App. 460, 468 (1990). "Only the net value of marital property is, in fact, available for equitable distribution via a monetary award." *Zandford v. Wiens*, 314 Md. at 107-

08.[14] At trial, the only testimony about this loan was Mr. Limpias's testimony that he "g[ot] a loan from SoFi for 30K and" that he "ha[d] to pay 40K." The court had no basis to find any positive net value, i.e., to find that the loan amount was greater than the debt incurred to obtain it. The court did not err in declining to conclude that Mr. Limpias had dissipated any amount of marital property when he obtained a personal loan, which he was obligated to repay, and sent the borrowed funds to his relatives.

The evidence also failed to establish that Mr. Limpias acquired the remainder of the $50,000 of funds from the dissipation of marital property. As Ms. Montecinos admits in her brief, "it is unclear how or where [Mr. Limpias] obtained the other $7,000" of the $50,000 that he sent to his relatives. We agree. The testimony failed to establish whether he obtained those funds by liquidating property acquired during the marriage or from some other source. The court had no basis, therefore, to conclude that he had obtained $7,000 through the dissipation of some unknown source of marital property. The court was not clearly erroneous in failing to conclude that this amount resulted from the dissipation of marital property.

Ms. Montecinos further takes issue with the court's evaluation of the evidence that Mr. Limpias had recently acquired two vehicles through financing agreements. Mr. Limpias testified that, during the separation, he had totaled two vehicles in different accidents. Mr. Limpias testified that he received about $4,000 of insurance proceeds for

[14] For example, to determine the value of the family home in this case, the parties and the court subtracted the amount of the mortgage lien from the fair market value of the home to find the net value of the property.

one vehicle, and about $1,000 of insurance proceeds for the other vehicle. Mr. Limpias testified that he used the insurance proceeds to make the "downpayment for [a] new car." In addition, Mr. Limpias mentioned that his cleaning business had acquired a "Transit Connect" minivan, for which he incurred monthly payments.

On appeal, Ms. Montecinos argues that the court "failed to account for the value of either vehicle owned by [Mr. Limpias] or even the insurance [proceeds] received by [Mr. Limpias] for the damaged vehicles." Ms. Montecinos does not elaborate on her suggestion that the court should have "account[ed]" for the value of the two vehicles or the insurance proceeds.

As Ms. Montecinos acknowledges, the car insurance proceeds were no longer available for distribution at the time of trial because Mr. Limpias had used the insurance proceeds to make the down payment for a new vehicle. There was no testimony indicating that his purchase of a replacement vehicle was a lavish or unnecessary expense. To the contrary, the testimony established that Mr. Limpias needed a vehicle, at a minimum, to travel back and forth to work and to pick up and drop off his daughter for visitation. Use of car insurance proceeds to make the down payment for a replacement vehicle cannot be readily characterized as the dissipation of marital property. The circuit court did not err in declining to find that Mr. Limpias "'intentionally dissipated'" the car insurance proceeds "'in order to avoid inclusion of the property towards consideration of a monetary award.'" *Solomon v. Solomon*, 383 Md. at 202 (quoting *Sharp v. Sharp*, 58 Md. App. at 399).

Although the two vehicles owned by Mr. Limpias at the time of the trial were

marital property, the court found that the evidence was inadequate to determine their value. The only testimony potentially related to the value of Mr. Limpias's personal vehicle was his testimony that he "financed" the purchase and made a down payment about six months before the trial. The only testimony potentially related to the value of the Transit Connect minivan was his testimony that he "financed" the purchase and makes monthly payments. During the trial, neither party asked questions about the fair market value of these vehicles or the amount of debt incurred to acquire these vehicles. The circuit court did not err in concluding that the business vehicle had "unknown value" and that there was "no evidence as to the value" of the personal use vehicle.

More generally, Ms. Montecinos argues that, "even with the lack of hard numbers[,]" the circuit court's disposition of marital property "was unfair." Using her assessment of the evidence, she asserts that Mr. Limpias "left the marriage with a significantly larger share of assets" than she did. This assertion that Mr. Limpias retained the larger share of marital property relies on many assumptions that were not supported by the evidence. The court could not resort to speculation to determine whether certain property, such as the 401(k) retirement plan, was marital property or to determine the unknown value of marital property, such as the personal vehicle that Mr. Limpias obtained during the separation.

To the extent that the evidence was adequate to show which assets were marital property and the value of those assets, the court ensured that Ms. Montecinos received more than half of the total value. Under the court's decision, Ms. Montecinos received half of the proceeds from the sale of the family home; gained outright ownership of a

vehicle valued at $17,500; retained ownership of land with a net value of $2,862.71; and received a monetary award of $2,568.65 to offset the dissipation of marital property by Mr. Limpias. Based on the limited evidence presented to it, the court did the best that it could to ensure a fair distribution of marital property. We perceive no abuse of discretion in the circuit court's disposition of the marital property.

CONCLUSION

For the reasons stated in this opinion, we affirm the judgment in part and reverse the judgment in part. We conclude that the circuit court erred when it excluded $500 per month of work-related child care expenses incurred by Ms. Montecinos from its child support calculation. We set aside the child support determination and remand the case for a reevaluation of Mr. Limpias's child support obligation as of February 28, 2024. The judgment is affirmed with respect to all other issues.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART. JUDGMENT REVERSED AS TO CHILD SUPPORT BEGINNING ON FEBRUARY 28, 2024, AND THEREAFTER. JUDGMENT AFFIRMED AS TO ALL OTHER ISSUES. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY APPELLEE.