

Circuit Court for Baltimore County
Case No. C-03-FM-21-002573

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0268

September Term, 2023

JUNO SIMMONS

v.

JOI SIMMONS

Berger,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: March 18, 2025

* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

This appeal concerns two financial matters that were contested in a divorce case in the Circuit Court for Baltimore County. First, Appellant Juno Simmons (“Husband”) challenges the Circuit Court’s determination of the extent to which certain financial assets titled in his name were marital property and its order for him to transfer half of those assets to Appellee Joi Simmons (“Wife”). Second, he asserts that the court abused its discretion in the amount of child support it awarded against him and in favor of Wife.

For the reasons set forth below, we remand this case to the Circuit Court to revise its order to limit the transfer of property to that which the court found to be marital property. We hold that the court did not abuse its discretion in determining the amount of child support.

I

Background

A. Marriage, Children, and Work

Husband and Wife lived together for a number of years, primarily in Texas, beginning in at least early 2012. They eventually were married in Baltimore, Wife’s home town, on May 27, 2017. Three children were born as a result of their relationship – one each in 2012, 2019, and 2020. The parents separated in May 2020 when Wife moved from Texas to Maryland with the children to be closer to her extended family. In November 2020, Husband moved from Texas to Atlanta, Georgia, in connection with his employment.

Before, during, and after the marriage, Husband worked in a managerial position for Google LLC. His position was initially based in Texas and more recently in Atlanta. Wife

worked as a dialysis technician for part of the time they lived in Texas. She then worked as a chef for Google at the time they were married until the birth of their youngest child. After Husband and Wife separated, Wife was rehired by Google for a job based in Atlanta, but she is able to work remotely from Baltimore County.

Both Husband and Wife participated in the Google LLC 401(k) Savings Plan (“Google 401(k) plan”), a retirement investment plan sponsored by the company. According to exhibits introduced at trial, it appears that the Google 401(k) plan is administered by Vanguard, a well-known financial services and mutual fund company. Husband’s and Wife’s separate Google 401(k) plan accounts were derived from their own contributions and from an employer match. Husband’s account consists entirely of shares of a specific Vanguard target-date mutual fund; Wife’s account consists entirely of shares of another such fund with a different target date.¹

Both Husband and Wife also received shares of restricted stock in Google’s parent company, known as Alphabet, Inc., in connection with their employment with Google. As a form of deferred compensation and an incentive to remain with the company, at least some of those shares do not vest until the employee has served a specified tenure with the company. Those shares are held in accounts, in the employee’s name, at Morgan Stanley, a well-known investment bank and brokerage firm.

¹ A target-date mutual fund holds a mix of stocks, bonds, and other investments. The mix of investments changes over time and is intended to become more conservative as the target retirement date draws near. *See* U.S. Securities & Exchange Commission, “Target Date Funds” at <https://www.investor.gov/introduction-investing/investing-basics/investment-products/mutual-funds-and-exchange-traded-6> (last visited March 4, 2025).

B. Divorce Litigation

In May 2021, one year after the separation, Wife filed a complaint for absolute divorce in the Circuit Court. Husband filed an answer to the complaint in July 2021 and a counter-complaint for divorce in November 2021.

The Circuit Court conducted a trial on December 5-6, 2022. Testimony at the trial focused largely on issues relating to custody of and access to the children, and only briefly on the monetary issues on which this appeal is based. In a Decision and Judgment dated January 10, 2023 – and entered by the Clerk on February 13, 2023 – the Circuit Court granted a judgment of absolute divorce based on the ground that the parties had lived separately for one year. In that divorce decree, the Circuit Court also delineated its resolution of various issues related to the couple’s children and property.

Child Custody. The court gave the parties joint legal custody of their children, with Wife having tie-breaking authority as to certain decisions. The court granted Wife “primary physical custody” of the children and set forth in detail the times and circumstances under which Husband would have access to, or custody of, the children. The child custody element of the Circuit Court order is not at issue in this appeal. However, as we shall see, Husband contends that the specifications in the court’s order effectively provided for “shared physical custody” by the former spouses for purposes of the law relating to child support.²

² See Maryland Code, Family Law Article (2019 Repl. Vol. 2020 Supp.) (“FL”), §12-201(n) (definition of “shared physical custody”), (o) (definition of “shared physical custody adjustment”), §12-204 (m) (computation of child support guidelines in cases of shared physical custody).

Child Support. The court ordered Husband to pay Wife child support in the amount of \$4,000 per month and child support arrears totaling \$46,236 at a rate of \$770.60 per month until the arrearage is paid in full. Husband was ordered to maintain his employment-related medical, dental, and vision insurance for the children and to pay the children's travel-related expenses in connection with visitation.

Equitable Distribution of Marital Property. The court identified certain property titled in the name of either Husband or Wife alone that was properly characterized as marital property. The court reviewed the various statutory considerations for determining an equitable distribution of the marital property. *See* FL §8-205(b). It concluded that a number of those factors favored the transfer of property and a monetary award to Wife. Among those factors were the following: the contributions of each party to the well-being of the family, the value of all property interests of each party, the economic circumstances of Husband and Wife, the duration of the marriage, and the non-monetary contributions of Wife that contributed to the accumulation of marital property.

The court determined that Husband and Wife were each entitled to 50% of the marital property. Husband does not dispute the court's even split of marital property, but rather disagrees with some of its determinations as to whether certain property was marital or non-marital.

Monetary Award. As part of the division of marital property, the court ordered Husband to pay a monetary award of \$81,114.49 to Wife. That figure corresponded to one-half of the equity in the Georgia home occupied by and titled in the name of Husband. The court reasoned that the Georgia home had been purchased during the parties' marriage

and, contrary to Husband’s contentions, that there was insufficient evidence that the funds used to purchase it were traceable to non-marital property of Husband. This monetary award is not at issue in this appeal.

Division and Transfer of Certain Financial Assets. The court listed the current valuations of each party’s interests in the Google 401(k) plan and the extent to which that interest was marital or non-marital property. The court’s valuations were apparently³ derived from Vanguard account statements, introduced as exhibits at trial, that related to differing time periods and that reflected the total value of the mutual fund shares in each party’s account on the particular dates.

The court took the same approach to determining the value of each party’s holdings of Alphabet stock that each received in connection with their respective employment with Google. Again, the court’s valuations were apparently derived from Morgan Stanley account statements that the parties introduced as exhibits at trial. Those account statements set forth the number of Alphabet shares each owned and the value of those shares during particular periods of time.⁴

³ The court did not explain its precise methodology and how it obtained the numbers set forth in the opinion. However, with respect to both the mutual fund shares in the Google 401(k) plan and the restricted Alphabet stock, the numbers correlate to figures that appear in relevant exhibits.

⁴ As will be discussed further below, these financial accounts actually consist of mutual fund shares (in the case of the Google 401(k) plan) and restricted shares or “stock units” of a specific corporation (in the case of the Alphabet stock), not sums of money, as the court’s analysis seems to imply. The value of those holdings fluctuates over time as the price of a share or stock unit goes up or down. The valuations identified by the Circuit Court in its analysis are simply snapshots at a given point of time. Since some of the snapshots used by the court were at different points of time with different share values,

Google 401(k) plan. With respect to the Google 401(k) plan, the court found that Husband’s total interest in that plan was valued at \$235,851.19. That figure was apparently derived from a 2022 quarterly statement of the plan and represented the value of Husband’s shares in the plan as of September 30, 2022. The court determined that shares valued at \$65,096.34 were non-marital property. That figure was apparently derived from a 2017 monthly statement of Husband’s shares in the plan as of June 1, 2017 – shortly after he married Wife. The court determined that the marital portion of Husband’s interest in the Google 401(k) plan was \$170,754.85. That figure was apparently derived by subtracting the June 2017 value of Husband’s shares from the September 2022 value of Husband’s shares. The exhibits on which the court apparently relied do not indicate the precise number of shares that Husband owned in 2017 and 2022, nor do they indicate the share prices at those times.⁵

As to Wife, the court found that her interest in the Google 401(k) plan was valued at \$14,778.70 and that all of it was marital property. This figure was apparently based upon a quarterly statement for Wife’s account and represented its value on September 30, 2022.

they were therefore not directly comparable. The use of these snapshot dollar valuations renders the court’s analysis problematic. See Part II.B.3 of this Opinion.

⁵ The two statements from which the court derived these numbers show that the shares did in fact fluctuate in value. Each contains a line representing “market gain/loss.” The share price apparently increased during the month covered by the 2017 statement, but declined in price over the three months covered by the 2022 statement.

Alphabet restricted stock. As to their Alphabet stock holdings, the court found that Alphabet stock valued at \$251,172.65 was titled in Husband's name as of the time of trial. That figure was apparently derived from a Morgan Stanley quarterly report for Husband's account that closed on September 30, 2022. Of that amount, the court found that stock worth \$16,357.14 was non-marital property. That number was apparently derived from a Morgan Stanley quarterly statement that closed on June 30, 2017 – approximately one month after Husband and Wife married.⁶ The court apparently subtracted the value obtained from the 2017 statement from the value stated on the 2022 statement and concluded that the result – \$234,815.51 – was the value of Husband's Alphabet stock that was marital property.

With respect to the Alphabet stock titled in Wife's name, the court found that it was valued at \$5,144.69 and that all of that stock was marital property. This finding was apparently based on a Morgan Stanley quarterly statement as to Wife's account and represented the value of her stock holdings on March 31, 2022.

⁶ That statement shows that Husband owned a total of 18 shares on that date, valued at a share price of \$908.73 per share, with a total value of \$16,357.14. Notably, however, that statement also indicated that Husband acquired six of those 18 shares on June 25, 2017 – a date after the parties were married.

As was the case with the mutual fund shares in the Google 401(k) plan, the Morgan Stanley account statements show that the value of the restricted Alphabet stock fluctuated over time. For example, the 2017 Morgan Stanley quarterly statement for Husband's stock shows that the price of a share rose from \$829.58 per share at the beginning of that period to \$908.73 at the end of that period. Later stock splits increased the number of shares in Husband's account and apparently resulted in proportional reductions in share prices. The 2022 Morgan Stanley quarterly statement shows that Husband owned 2,612.3 shares valued on the closing date at a price of \$96.15 per share.

Order to Transfer 50% of Each Account. After listing its conclusions as to the marital and non-marital portions of the financial assets outlined above, the court ordered Husband and Wife to each transfer 50% of their respective interests in the Google 401(k) plan to the other. Similarly, they were each ordered to transfer 50% of their respective holdings of Alphabet, Inc. stock to the other.⁷

Miscellaneous Issues. The court’s order also included various other provisions concerning personal property, payment of legal fees, and other matters not at issue in this appeal. The order provided that certain extraordinary expenses incurred for the children were to be split by the parties, with Husband paying 65% of those expenses and Wife responsible for the remaining 35%. No alimony was assessed as both parties had waived alimony.

Shortly after the judgment was issued, Husband obtained new counsel, who filed a motion to alter or amend the judgment.⁸ The Circuit Court denied that motion on March 16, 2023. Husband then filed a timely notice of appeal.

⁷ Although the court was careful to distinguish what it believed to be the portions of Husband’s holdings that were marital from those that were non-marital, the order that he transfer 50% of each to Wife does not limit the transfer to the marital portion of his holdings. As we shall see, that ambiguity is related to one of the issues on appeal.

⁸ It appears that Husband changed counsel multiple times during the course of this litigation in the Circuit Court.

II

Discussion

In this appeal, Husband argues that the Circuit Court erred in three respects when it ordered him to transfer financial assets to Wife and awarded her child support. In particular, he raises the following issues:

1 – Whether the Circuit Court erred in its determination of the portion of Husband’s Google 401(k) plan account and Alphabet stock that was marital property.

2 – Whether the Circuit Court abused its discretion when it ordered Husband to transfer half of his Google 401(k) plan account and half of his Alphabet stock to Wife.

3 – Whether the Circuit Court abused its discretion when it determined Husband’s child support obligation.

A. *Standard of Review*

An appellate court accepts a circuit court’s fact findings underlying that court’s division of marital property in a divorce case and the determination of a parent’s child support obligation unless those findings are clearly erroneous. If the fact findings are accepted, the appellate court will overturn orders concerning marital property or child support only if the circuit court abused its discretion. *Wasylyuszko v. Wasylyuszko*, 250 Md. App. 263, 269 (2021) (marital property); *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (child support). If the circuit court decision turns on a question of law, an appellate court undertakes a *de novo* review of that legal issue. *Walter v. Gunter*, 367 Md. 386, 391-92 (2002).

B. *The Determination of Marital Property in Husband’s Financial Accounts*

1. Statutory Three-Step Process

To determine the division of marital property and the amount of any monetary award in a divorce case, a court proceeds in three steps:

First, the court identifies “marital property” – defined generally as “property, however titled, acquired by 1 or both parties during the marriage.” Maryland Code, Family Law Article (“FL”), §§8-201(e), 8-203. Pertinent to this case, marital property does not include property that was acquired by one of the parties before the marriage, or that is “directly traceable” to such property. FL §8-201(e)(3)(i), (iv).

Second, the court determines “the value of all marital property” that it has identified. FL §8-204. In particular, the court determines the current value of that property at the time of the divorce. For example, in segregating the marital portion of a financial asset account from the non-marital portion of that account, the court looks to the current value of the assets in the account. *See, e.g., Wasyluszko*, 250 Md. App. at 274.

Third, in order to achieve an equitable distribution of the marital property, the court may take certain actions “as an adjustment of the equities and rights of the parties concerning marital property.” FL §8-205(a)(1). Pertinent to this case, the court may transfer ownership of an interest in property, including an ownership interest in a “pension, retirement, profit sharing, or deferred compensation plan, from one party to either or both parties[.]” FL §8-205(a)(2). The court may also grant a monetary award to be paid by one party to the other. FL §8-205(a)(1). The court is to make such decisions after considering various factors set forth in the statute and “any other factor that the court considers

necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property[.]” FL §8-205(b).

To aid the court in determining and valuing marital property, Maryland Rule 9-207 directs parties in a divorce case to file a joint statement of all property owned by them and to do so at least 10 days before the scheduled trial date. The joint statement is to identify three categories of property: (1) property that both parties agree is marital; (2) property that they agree is non-marital; and (3) property about which they disagree whether the property is marital or non-marital. Maryland Rule 9-207(b). As to property in each of those three categories, the joint statement is to indicate how each item of property is titled, its fair market value in the opinion of each spouse, and any liens, encumbrances or debts associated with that property. *Id.* The rule is obviously intended to narrow and focus the issues concerning marital property that a court must decide.

2. The Order to Transfer One-Half of Each Party’s Retirement Accounts⁹

In this case, as part of its determination of the equitable distribution of marital property, the Circuit Court considered the interests of both Husband and Wife in the Google 401(k) plan and in their respective Morgan Stanley accounts holding restricted Alphabet stock. The court found that both accounts titled in Wife’s name were marital property. It

⁹ The court referred to the restricted Alphabet stock owned by Husband and Wife as a “retirement account,” although they each received that stock as a deferred part of their current compensation and technically not as a retirement benefit like the Google 401(k) plan. However, as interests based on deferred compensation plans are governed by the same statutory provision as those based on retirement plans, the court’s shorthand reference to them collectively as “retirement accounts” simply indicates that both types of accounts are treated similarly under the relevant statute. *See* FL §8-205(a)(2).

found that part of both accounts titled in Husband’s name preceded the marriage and was non-marital property, but that most of the funds in those two accounts was marital property. The court also directed each party to transfer 50% of their respective retirement accounts to the other.¹⁰ The court directed the parties to draft qualified domestic relations orders (“QDROs”) “if necessary to avoid tax or other financial consequences resulting from the transfer of assets.”

The court was no doubt hindered in its effort to sort out marital property issues by the parties’ failure to submit the joint statement required by Maryland Rule 9-207 before the December 2022 trial. To be more precise, Wife’s counsel and one of Husband’s prior counsel had filed a joint statement signed by both counsel pursuant to that rule in August 2022. However, Husband later disclaimed the accuracy of that joint statement in his testimony at trial. His trial counsel submitted an alternate “joint statement” signed only by Husband and Husband’s trial counsel.¹¹ As the Circuit Court observed during the trial: “[D]espite the rules requiring a joint statement, it doesn’t look like we ever got a truly joint statement ... so we’re left piecing together things from various statements.”

¹⁰ As indicated earlier, the court also made a monetary award in favor of Wife that corresponded to one-half of the equity in the Georgia residence, which is not at issue on appeal.

¹¹ That “joint statement” was apparently designed to incorporate Husband’s argument during trial that certain property he acquired after the parties separated but before they divorced (including shares in the Google 401(k) plan and the Alphabet stock account) was non-marital property. The Circuit Court properly rejected the contention that property Husband acquired post-separation but pre-divorce was non-marital. *See* C. Callahan & T.C. Ries, *Fader’s Maryland Family Law*, §13-8(f), and cases cited therein. Husband does not repeat that argument on appeal.

3. Husband’s Contentions on Appeal

Husband makes several arguments to support his contention that the Circuit Court erroneously undervalued the non-marital portions of his interest in the Google 401(k) plan and his Alphabet stock holdings.

“Passive Growth” of Husband’s 401(k) Plan Account. Husband argues that the Circuit Court was clearly erroneous when it used the cash value of the Husband’s account at the time of the marriage and “failed to account for the passive growth” of the non-marital share of that account. He does not elaborate in any significant detail on this argument – or the consequences if the Circuit Court had taken account of that “passive growth.”

Delayed Vesting of Restricted Stock. Husband argues that the Circuit Court did not take into account that some of the Alphabet restricted stock that he owned constituted “compensation for work performed partially during the marriage and partially prior to the marriage.” He asserts that he received some of the stock prior to the marriage¹² and that, even though it did not vest until after the parties were married, those shares should not be treated as marital property in their entirety. He provides his own detailed analysis of the “marital/non-marital breakdown” of his Alphabet stock based on alleged grant dates and vesting dates.

¹² It is not clear that the record supports some of his assertions. Husband states that he owned 18 shares of Alphabet stock as of the date of the marriage. However, a Morgan Stanley statement ending June 30, 2017 that appears in the record as one of Husband’s exhibits appears to indicate that six of those shares were added to his account approximately one month after the date he married (May 25, 2017).

Alphabet Stock Split. Husband notes that one of the Morgan Stanley account statements among the exhibits that were admitted at trial appears to indicate that there was a 20 to 1 stock split – presumably 20 new shares exchanged for each old share – on July 15, 2022.¹³ He argues that the Circuit Court erred in failing to take account of the stock split in its analysis of the non-marital portion of Husband’s restricted Alphabet stock. Husband also suggests that the stock split might affect that determination of non-marital property if the court were to consider the stock split in conjunction with his argument concerning the treatment of restricted stock he received prior to the marriage, but which vested during the marriage.

Request for Remand and Reconsideration. As to each of those points, Husband asks us to remand the case to the Circuit Court to revisit its determinations and valuations of marital and non-marital property while applying various approaches that Husband now outlines.

¹³ The federal Securities and Exchange Commission (SEC) describes the concept of a stock split as “[A]n increase in the number of shares of a corporation’s stock without a change in the shareholders’ equity.” U.S. Securities & Exchange Commission, “Stock Split”, available at <https://www.investor.gov/introduction-investing/investing-basics/glossary/stock-split> (last visited March 3, 2025). The SEC elaborates:

Companies often split shares of their stock to make them more affordable to investors. Unlike issuing new shares, a stock split does not dilute the ownership interests of existing shareholders. For example, if you own 100 shares of a company that trades at \$100 per share and the company declares a two-for-one stock split, you will own 200 shares at \$50 per share immediately after the split. If the company pays a dividend, your dividends paid per share also will fall proportionately.

Id.

4. Whether the Court Erred in Calculating the Non-Marital Portion of Husband's Accounts

Method of Identifying and Valuing Marital and Non-Marital Portions of Accounts

There are several issues with the methodology used by the Circuit Court in identifying and valuing the marital and non-marital portions of Husband's accounts. This methodology was not invented by the court, but rather was the methodology advocated by both Husband and Wife in their arguments to the court.

Shares, not Dollars

While the Circuit Court recited *dollar* valuations for the parties' respective Google 401(k) plan and Alphabet stock accounts on particular dates, what the parties actually owned were *shares* of a Vanguard target-date mutual fund through the Google 401(k) plan and *shares* of restricted Alphabet stock. In both cases, the dollar value of those shares would fluctuate over time with the rise or decline of the market price of a mutual fund share and a share of that stock.

The Circuit Court's analysis of the marital/non-marital proportions of Husband's Google 401(k) plan account and Alphabet stock account treats both accounts as though they consist of dollars, like a bank account, rather than shares of securities. The proper analysis would identify the non-marital shares in those accounts, trace them to the date of the divorce, and calculate the value of those shares as of the date of divorce. *See, e.g., Wasyluszko*, 250 Md. at 271-74. The analysis applied by the court in this case would make sense only in the extremely unlikely event that the share prices remained constant over

time.¹⁴ Depending on whether share prices rose or fell during the relevant time period, the Circuit Court’s methodology could have undervalued – or overvalued – the non-marital portion of Husband’s two accounts.¹⁵

¹⁴ Some mutual funds, such as money market mutual funds, attempt to maintain a constant share price equivalent to \$1, but they are the exception rather than the rule, and neither of the target-date mutual funds in the parties’ Google 401(k) plan accounts falls into that category. Nor does the restricted Alphabet stock.

¹⁵ Some hypothetical examples illustrate the point:

Assume in each instance that a spouse owns 10 shares prior to the marriage, acquires 90 additional shares during the marriage, and accordingly has 100 shares at the time of the divorce. Thus, 10 shares are non-marital property; 90 shares are marital. (To keep the hypothetical simple, we assume that the shares do not yield dividends reinvested as additional shares).

Share price constant. Suppose that the share price begins and remains \$10 per share throughout the relevant period. The 10 non-marital shares are thus worth \$100 (10 x \$10) prior to the marriage, as well as at the time of divorce. The total value of all 100 shares at the time of divorce is \$1,000 (100 x \$10) and the 90 shares acquired during the marriage are worth \$900 (90 x \$10) at the time of divorce. Subtracting the total valuation of the non-marital shares when the parties married from the total valuation of all shares at the time of divorce yields the same answer – marital property worth \$900. This appears to be the assumption implicit in the methodology used by the Circuit Court.

Share price rises. Suppose instead that the share price is \$10 at the beginning of the marriage but rises to \$20 per share by the time of divorce. In that case, the 10 non-marital shares are worth \$200 (10 x \$20) at the time of divorce and the total value of all shares is \$2,000 (100 x \$20). Subtracting the total valuation of the non-marital shares at the time of divorce from total valuation of all shares at the time of divorce results in non-marital property worth \$200 and marital property worth \$1,800. If, as the Circuit Court did in this case, one uses the value of the non-marital shares at the time of the marriage (\$100) instead of their value at the time of the divorce, the result is non-marital property worth \$100 and marital property worth \$1,900. Thus, in this example, the failure to take into account the change in share price *undervalues* the non-marital portion of the spouse’s property. This appears to be the assumption implicit in Husband’s “passive growth” argument; he does

“Passive Growth” of Husband’s 401(k) Plan

As best we can tell, Husband’s argument is an oblique attack on the methodology used by the Circuit Court to value the marital and non-marital portions of Husband’s Google 401(k) plan account. For the reasons explained above, an analysis that focused on the actual property in the account – mutual fund shares – would have been preferable to one that used non-comparable snapshots of the cash value of those shares at different times and different prices. However, at trial, both Husband and Wife endorsed the methodology used by the court.¹⁶ Neither party proposed any different methodology at trial. We cannot fault the Circuit Court for not having an insight that Husband has only in hindsight. And, even if we were willing to undertake such an analysis on appeal, the parties never included

not provide any analysis of the record to support in the record for his contention that the “passive” change in the value of the non-marital shares was positive.

Share price falls. Suppose instead that the share price is \$10 at the beginning of the marriage but falls to \$5 per share by the time of the divorce. In that case, the 10 non-marital shares are worth \$50 (10 x \$5) at the time of divorce and the total value of all shares is \$500 (100 x \$5). Subtracting the total valuation of the non-marital shares at the time of divorce from total valuation of all shares at the time of divorce results in non-marital property worth \$50 and marital property worth \$450. If, as the Circuit Court did in this case, one uses the value of the non-marital shares at the time of the marriage (\$100) rather than their value at the time of the divorce, the result is non-marital property worth \$100 and marital property worth \$400. Thus, in this example, the failure to take into account the change in share price *overvalues* the non-marital portion of the spouse’s property.

¹⁶ Wife “stipulated” to the valuations of non-marital portions of Husband’s accounts yielded by that methodology. Husband’s trial counsel used the same methodology in the “joint statement” presented at trial that only he and Husband signed. They came up with a different determination of non-marital property in that document only because they incorrectly treated the increase in value of Husband’s 401(k) plan account between the date of separation and the date of divorce as non-marital. *See* footnote 11 above.

the necessary information in the trial record to determine whether the methodology that the Court used was to Husband’s benefit or detriment. Husband’s belated appellate embrace of a “passive growth” theory in the abstract does not support a conclusion that the Circuit Court was clearly erroneous or abused its discretion in its determination of marital property.

Vesting of Restricted Stock

Whatever merit Husband’s proposed analysis based on the vesting of his restricted Alphabet stock may have in the abstract, there are two problems with his argument in the context of this case. One is the lack of a factual basis in the evidence admitted at trial; the second is the failure to preserve this issue in the trial court.

As to the first, in his brief Husband bases his analysis on a Morgan Stanley account statement that appears to list the award and vesting of Husband’s restricted stock for the period from January 2019 to May 2022. However, while that statement was marked for identification by Wife’s counsel, neither party moved its admission into evidence at trial and neither relied on it in their presentations to the Circuit Court. Moreover, there was no testimony at trial explaining or analyzing the various entries on the document.¹⁷ It would have required more than a dollop of speculation on the Circuit Court’s part to reach the conclusions Husband now urges.

¹⁷ Husband testified briefly and in general about the vesting of Alphabet restricted stock. However, that was in the context of attempting to persuade the court that a figure in a Google document summarizing his annual compensation should be discounted because not all of the stock he received that year had vested. That testimony did not concern whether particular stock was marital or non-marital property, but rather the determination of Husband’s income in connection with the award of child support.

As to the second problem – lack of preservation – Husband’s counsel conceded at oral argument in this Court that neither the analysis he advances on appeal, nor anything resembling it, was presented to the Circuit Court at the trial.

Hindsight as to what Husband’s counsel should have argued at trial is not a basis for concluding now that the Circuit Court was clearly erroneous in its factual findings as to the restricted Alphabet stock or abused its discretion in the decision it made based on those findings.

Stock Split

As with Husband’s vesting argument, Husband did not preserve his appellate contention concerning the significance of the stock split at trial. Even had he preserved the issue, there is no factual basis in the trial record for concluding that the court should have found a greater proportion of the stock to be non-marital property as a result of the stock split. No testimony was adduced at trial concerning the stock split or how it may have affected the marital and non-marital portions of Husband’s restricted stock account. The date of the stock split that Husband now identifies in the Morgan Stanley account statement was during the course of the marriage. Accordingly, the stock split would presumably have applied to both the marital and the non-marital portions of Husband’s restricted Alphabet stock account. It is not self-evident that it would affect the proportion of his shares that fell into each category. Husband thus has not shown that he preserved this issue or, in any event, that the court’s determination of marital property was affected by it.

5. Summary

While there is potential merit in some of Husband’s appellate arguments as to a better method for distinguishing marital from non-marital property and valuing that property, that does not mean that the Circuit Court was clearly erroneous in its findings of fact based on the record presented to it or that it abused its discretion in the legal conclusions it drew from those findings. The arguments that Husband presses now were not presented to the Circuit Court at trial. Nor did the Circuit Court exclude any evidence proffered by Husband at trial on any of the arguments that he now embraces. A new mini-trial on those issues would be necessary for Husband to make the record necessary in the first instance to support the points Husband now makes on appeal. The fact that Husband is asking for a remand on these points belies the fact that he seeks a do-over of these financial aspects of the trial based on hindsight as to what might have been better arguments in the first instance.

In any event, on the existing record of this case, it is not at all clear that Husband’s new arguments would result in an increase in the non-marital portion of Husband’s accounts. It was Husband’s burden to demonstrate at trial that the growth of the value of his accounts could be traced to non-marital property. *Golden v. Golden*, 116 Md. App. 190, 205 (1997). He failed to carry that burden.

There is no basis to conclude that the Circuit Court was clearly erroneous or abused its discretion with respect to an issue never presented to it.

C. The Order to Transfer Half of Husband’s Financial Asset Accounts

Husband argues that the Circuit Court abused its discretion when, after determining that a portion of Husband’s Google 401(k) plan and Alphabet stock holdings were non-marital property, it nonetheless ordered him to transfer one-half of each of those accounts to Wife, without distinguishing between marital and non-marital property in the order. Wife concedes that the Circuit Court’s order is inconsistent with its determination of marital and non-marital property. She contends that the Circuit Court intended to order Husband to transfer only the “marital portion” of those accounts to Wife, but admits that the court “unfortunately” omitted the phrase “marital portion” from its order.

We suspect that Wife is correct, as the Circuit Court’s opinion does not contain any explanation for requiring Husband to transfer half of the non-marital portions of Husband’s accounts to Wife. Of course, it would have been preferable for Wife to make this concession in the Circuit Court when Husband raised the issue in his post-judgment motion to alter or amend. Instead, Wife filed a blanket opposition to Husband’s motion and the Circuit Court simply denied the motion.

We shall remand for the Circuit Court to clarify its order.

D. Husband’s Child Support Obligation

1. Starting Point and Guidelines

In a divorce case, the court is to award child support for the period beginning from the time when a party first files a pleading seeking that relief. FL §12-101(a). The court must ordinarily follow the mandatory child support guidelines set forth in statute. FL §12-202(a). There is a “rebuttable presumption” that the figure generated by application of the

guidelines is the “correct amount of child support.” FL §12-202(a)(2)(i).¹⁸ However, if the “combined adjusted actual income” of the parties exceeds an amount specified by statute, a circuit court “may use its discretion” to set the amount of child support. FL §12-204(d). When Wife filed her complaint in this case and requested child support, the statutory maximum for application of the guidelines was \$15,000 per month, or \$180,000 per year. FL §12-204(e) (2020).¹⁹

2. The Parties’ Positions and Submissions in the Circuit Court

Wife requested an award of child support as part of her complaint for divorce filed in May 2021. There appeared to be no dispute that the combined adjusted actual income of Husband and Wife exceeded \$15,000 per month, although there was some disagreement about the precise amount of Husband’s income. In any event, there is no dispute that this is an “above the guidelines” case as to child support. Accordingly, it is also undisputed that the Circuit Court had discretion in its determination of the appropriate amount of child support to be awarded Wife. *Reichert v. Hornbeck*, 210 Md. App. 282, 315-16 (2013).

The court was tasked with determining not only the amount of child support to be paid in the future, but also the amount due for the past period beginning with the filing of Wife’s complaint to the post-trial judgment of divorce. It was undisputed at trial that

¹⁸ The court may deviate from the amount yielded by the guidelines only if it determines that application of the guidelines would be “unjust or inappropriate” in the particular case and makes specific findings as to how its conclusion serves the child’s best interest. FL §12-202(a)(2)(ii),(v).

¹⁹ The General Assembly increased that threshold amount to \$30,000 per month for cases filed after October 1, 2021. *See* Chapter 383, Laws of Maryland 2020.

Husband had made various payments to Wife in the nature of child support after their separation and prior to the divorce and should receive a credit for those payments, although there was some dispute as to the total amount of those payments.

Prior to trial, in August 2022, Wife submitted a proposed computation of a child support award, apparently based on the assumptions that Wife was awarded sole custody, that the parties' combined actual monthly income totaled \$30,750 (Husband's share = \$19,750 (64%); Wife's share = \$11,000 (36%)), and that monthly expenses related to the children amounted to slightly more than \$8,400.²⁰ Wife's computation at that time yielded a child support award against Husband of \$5,412.77.

In her presentation at trial, Wife's counsel revised her analysis to argue that Husband should pay \$7,294 monthly in child support – apparently based on her calculation that Husband actually had a monthly income of \$27,000 during a certain period. By contrast, Husband's counsel asserted that application of a guidelines formula based on software on his computer yielded a child support award of \$2,731 per month, although he did not provide any specific calculations.

At the conclusion of the trial, the court directed the parties to submit draft orders by the end of December 2022 reflecting what each side believed an appropriate judgment should contain. Unfortunately, those submissions do not appear in the Circuit Court record. We do not know if the parties revised their positions as to an appropriate award of child support or how the court's ultimate order related to those proposals.

²⁰ The long form sworn financial statements submitted by the parties at earlier dates similarly estimated monthly expenses incurred with respect to the children totaling \$8,381.

3. The Court’s Award

The court ordered Husband to pay child support to Wife in the amount of \$4,000 per month beginning in January 2023. With respect to the 20 months from May 2021 (when Wife first requested child support) to December 2022 (just prior to the court’s judgment of absolute divorce), the child support arrears amounted to \$80,000. The Circuit Court noted that the parties disputed how much credit Husband should receive against those arrears for payments he voluntarily made after Wife had left the marital home with the children. Based on the evidence submitted at trial, the court accepted Husband’s calculation of the cash payments and transfers he had made to Wife and found that he was entitled to a credit in the amount of \$33,764; the court declined to provide a credit for a number of credit card charges for certain expenses as it was unclear that those expenses were actually for support of the children. After providing for that credit, the court calculated the remaining arrears to be \$46,236 and ordered Husband to pay the arrears at the rate of \$770.60 per month until it was paid in full.

Other than observing that it had discretion in an “above the guidelines” case and making a finding concerning the dispute over the amount of the credit that Husband should receive for past payments against child support arrears, the court did not elaborate on its reasoning in arriving at the monthly child support obligation of \$4,000.²¹ The court’s task was undoubtedly made difficult by the somewhat murky record concerning Husband’s actual monthly income. Husband’s tax records and Google pay award document

²¹ This was in contrast to the court’s very detailed analysis of the factors related to its decision on custody and visitation and the monetary award.

contradicted his sworn financial statement concerning his monthly income and perhaps cast doubt on other figures in that financial statement.

The court required Husband to maintain his employment-related health insurance covering the children and to pay the children’s travel-related expenses in connection with visitation. The order provided that certain extraordinary expenses incurred for the children were to be split by the parties, with Husband paying 65% of those expenses and Wife responsible for the remaining 35%.

4. Husband’s Contentions on Appeal

On appeal, Husband posits that the Circuit Court must have improperly considered – or failed to consider – certain factors in arriving at the amount of the child support obligation. His primary argument is that the Circuit Court did not make specific findings as to the income of Husband and Wife or of the expenses related to the three children. He also asserts that the court should have discounted the amount of child support it awarded because the court effectively gave him shared physical custody of the children – a factor that would reduce the child support award in a guidelines case – and because it required him to pay the children’s health insurance and travel-related expenses.

5. Analysis

It is true that the court did not make findings as to the parties’ respective incomes. However, much of the information provided by Wife was undisputed while that provided by Husband was problematic.

It appears from the record that it was undisputed that Wife’s annual income was a little over \$100,000, as indicated in a sworn financial statement she submitted pursuant to

Maryland Rule 9-203 and as documented in a Google pay award document summarizing her compensation for 2022 and a pay stub reflecting her year-to-date compensation as of November 2022.

By contrast, the information provided by Husband concerning his monthly income was contradicted by exhibits at trial. Husband had submitted a sworn financial statement in early 2022 that reported a gross income of a little more than \$10,000 per month – only slightly more than that reported by Wife. However, that assertion was apparently contradicted by Husband’s tax documents – W-2 statements for 2020 and 2021 and his federal tax return for 2021 – which showed annual income of nearly \$218,000 for 2020 and \$313,000 for 2021. A Google pay award document that summarized his expected compensation for 2022 stated that it would total \$237,000 and a pay stub reflecting his year-to-date compensation as of November 2022 confirmed that rate of compensation – approximately \$20,000 per month.²² In his testimony at trial, Husband contended that the tax documents did not fully convey the extent to which his pay could vary from year to year. During closing argument at trial, Husband presented yet a third version of his actual

²² Husband argues that the Circuit Court must have incorrectly considered as part of his income a “relocation bonus” of \$44,000 that he received in 2021 in connection with his move from Texas to Atlanta. However, the relevant statute includes “bonuses” as part of income for purposes of determining the amount of child support, and the relocation bonus was included in his taxable income for 2021. *See* FL §12-201(b)(3)(iv). The Google pay award documents in evidence demonstrated that a significant part of both Husband’s and Wife’s compensation from Google consisted of annual bonuses. Moreover, it was clear from the documentary evidence submitted to the court that Husband’s 2021 compensation significantly exceeded what he received the year before and the year after. If the court had accorded undue weight to that spike in pay, it surely would have required that Husband pay a greater proportion of extraordinary expenses than the 65%/35% split it included in its order.

income for the year 2020, which he calculated to be \$184,875 (or approximately \$15,400 per month). He arrived at that figure by including salary, annual bonus, and one-third of his restricted stock grants that had been awarded and vested that year, but excluding two years of grants that had not yet vested.²³

It would certainly be reasonable for the Circuit Court to credit Wife's representations concerning income and expenses over those of Husband. In any event, although Husband submitted various, sometimes contradictory, statements and documentation as to his own income, it appeared that his annual income was at least twice, and sometimes thrice, that of Wife. The Circuit Court appeared to recognize that proportion when it directed that certain education and extra-curricular expenses be split proportionately by the parties, with Husband bearing 65% of those expenses and Wife bearing 35%.

On appeal, Husband now reverts to the lower income figure provided in his sworn financial statement, apparently abandoning the more nuanced position he took in his closing argument at trial. He justifies the discrepancy between the income reported in his sworn financial statements and that reported in his tax return and W-2s on the theory that

²³ There is a certain logic to recognizing stock awards as income in the year in which they vest. However, it is a logic that would need to be followed consistently. Thus, any stock awards granted in prior years that vested during 2020 would need to be counted as income for 2020. Husband's trial calculation of income did not address that issue, which would present a circuit court with a complex accounting problem. In any event, this Court has previously held that deferred income should ordinarily be included in calculations of child support for the year in which it is earned rather than for a later year in which it is received, lest the calculation of income be susceptible to manipulation by the party who has such income. *Leineweber v. Leineweber*, 220 Md. App. 50, 59-62 (2014).

the restricted Alphabet stock awards that he received in the relevant years should be disregarded as income for child support purposes even though they are apparently recognized as income for tax purposes. (This explanation does not appear in his sworn financial statements). He argues that the stock awards are property, not income.²⁴ He contends that the General Assembly intentionally excluded stock awards from a list of certain categories of income that appears in FL §12-201.

Husband’s appellate explanation lacks merit for several reasons. First, Husband’s argument is illogical. Income and property are not mutually exclusive categories. For example, cash wages are income for the year in which they are received; the portion of that income that is saved in a bank account is property for however long it remains in that account. Second, Husband misconstrues the applicable statute. For purposes of calculating child support, the statute states that “‘actual income’ means income *from any source*.” FL §12-201(b)(1) (emphasis added). The statute also provides that “‘actual income’ includes [a list of types of income].” FL §12-201(b)(3). In arguing that this list is exclusive, Husband overlooks the fact that the word “includes” in the statute means “by way of illustration and not by way of limitation.” Maryland Code, General Provisions Article, §1-110. Finally, Husband cites no authority that actually supports his argument.²⁵

²⁴ As indicated earlier in this opinion, in the Circuit Court Husband contended that most of the stock awards in question are non-marital property, as they were granted or vested after the parties separated. He no longer makes that particular argument.

²⁵ The two cases cited by Husband concerned very different situations. In *Walker v. Grow*, 170 Md. App. 255, 277-82 (2006), the court held that pass-through income of a Subchapter S corporation that was reported in a minority shareholder’s personal tax return (as part of the statutory scheme to avoid double taxation at the corporate and personal

As to the expenses related to the children, it appears that there is no dispute that those expenses are in the neighborhood of \$8,400 per month – a figure that, per Husband’s sworn financial statement, includes Husband’s payments for health insurance and at least some of the travel expenses.

Husband’s argument that his child support obligation should be discounted because the court’s order on custody and visitation results in him having shared physical custody of the children is based on the fact that, in a guidelines case, the amount of child support is statutorily adjusted downward in situations that meet the definition of “shared physical custody.” FL §12-204(m). Husband notes that the court’s order purported to award Wife “primary physical custody” of the children, but that the effect of the order’s directions concerning custody and visitation actually resulted in Husband having shared physical custody.²⁶ Husband reasons that the court must not have adequately taken account of the number of overnights when it fashioned the child support order.

levels) but that had not actually been received by the shareholder could be excluded in some circumstances from the calculation of “actual income.” In *Reichert v. Hornbeck*, 210 Md. App. 282, 318-27 (2013), the court held that certain stock incentives that a company executive would be entitled to upon separation from the company and conditioned upon his compliance with a non-compete provision should not have been included in the calculation of his current “actual income.” Notably, the stock incentive plan in that case explicitly stated that the stock incentives were not wages received for the services performed by the executive. *Id.* at 323.

In contrast, the restricted Alphabet stock in this case was actually received by Husband, was included as part of his current income in the Google pay award document and was reported as income for tax purposes.

²⁶ Husband calculates that the children would spend a total of 124 overnights with him under the court’s order. Wife disputes Husband’s specific calculation of the number

This argument is highly speculative. The court itself spelled out the circumstances of Husband’s custody of the children in the same order in which it made the child support award. As this was an “above the guidelines” case, the court was not required to calculate a guidelines figure and apply a discount to it.

In our view, given the record before it, the Circuit Court’s child support award was not unreasonable. While the Circuit Court did not explain how it arrived at its \$4,000 per month child support award, it is evident that, to some extent, it split the difference between what each party contended at trial would be an appropriate award. The court awarded approximately \$1,300 more than the amount suggested by Husband at trial, approximately \$1,400 less than the amount advocated by Wife prior to trial and more than \$3,000 less than the amount advocated by Wife at trial.

As another point of reference, if one accepts the not unreasonable conclusion that the parties’ combined income was slightly more than \$30,000 per month, the current guidelines would provide a starting point for an award in a case involving three children of at least \$5,256 per month. *See* FL §12-204(e) (2025).²⁷ The Supreme Court of Maryland, then known as the Court of Appeals, has held that the schedule of child support amounts set forth in the guidelines “establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule.” *Voishan v. Palma*, 327 Md. 318, 331-32 (1992). If one then gives Husband

of overnights assigned to him in the order, but concedes that it exceeds 92, which is the threshold for “shared physical custody.” FL §§12-201(o)(1), 12-204(m)(2)(ii).

²⁷ As noted earlier, these guidelines do not apply directly to this case.

credit for the number of overnights he was awarded, as well as his obligation to pay travel expenses and health insurance, a reduction of that figure to \$4,000 per month from a presumed minimum of \$5,256 per month does not appear unreasonable.

5. Summary

In an oft-quoted passage from a prior decision of this Court concerning child custody in a divorce case, Judge Wilner, then Chief Judge of this Court, reviewed various formulations of the “abuse of discretion” standard and distilled them as follows:

“[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *North v. North*, 102 Md. App. 1, 14 (1994) (en banc).

As our analysis in the prior section of this opinion indicates, it cannot be said that the child support award in this case is “well removed from any center mark” or has “no reasonable relationship” to its objective. Accordingly, in our view, the Circuit Court did not abuse its discretion in its child support award even if we might have come to a different result. In any event, we note that the amount of child support is not set in stone for the future. The statute governing child support allows for modification of the amount awarded if there is a material changes in circumstances. FL §12-104.

III

Conclusion

For the reasons set forth above, we shall remand this case to the Circuit Court to clarify that its order that Husband transfer 50% of his interests in the Google 401(k) plan and his Alphabet stock account to Wife applies only to the portion of those accounts that the court determined to be marital property. We otherwise affirm the Circuit Court's judgment with respect to marital property issues and its award of child support.

CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTION TO MODIFY ITS ORDER CONCERNING THE TRANSFER OF PROPERTY CONSISTENT WITH THIS OPINION; IN OTHER RESPECTS, THE JUDGMENT OF THAT COURT IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.