Circuit Court for Montgomery County
Case No. 157209FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 334

September Term, 2021

MICHAEL LEVENGOOD

v.

SASKIA INWOOD

Beachley,
Shaw Geter,
Wells,

JJ.

Opinion by Beachley, J.

Filed: December 23, 2021

The principal issue in this case is whether the Circuit Court for Montgomery County erred in granting appellee Saskia Inwood ("Wife") a $25,000 monetary award against appellant Michael Levengood ("Husband"). Husband also challenges the court's award of $25,000 to Wife as a contribution to her attorney's fees.

Although we shall vacate and remand the attorney's fees award, we otherwise affirm.

FACTUAL BACKGROUND

The parties married on September 16, 2016, but separated just over two years later on October 29, 2018. The parties separated because of an incident in October 2018 wherein Husband filmed himself having sexual intercourse with Wife while she was unconscious, and broadcast the video over the internet. As a result of this incident, Husband was criminally charged and pleaded guilty to second-degree rape.

Husband filed a complaint for absolute divorce on November 1, 2018; Wife answered and filed a counter-complaint for divorce. A three-day trial concluded on January 13, 2021, after which the circuit court took the matter under advisement. The bulk of the trial testimony concerned the grounds for divorce (including Husband's criminal offense against Wife), and Husband's retirement accounts. Prior to the marriage, Husband had a 401(k) plan through his employer, which he rolled over to another account shortly after the marriage. He consistently asserted that the rollover 401(k) funds maintained their character as non-marital property. While Husband was incarcerated, he cashed out his 401(k) and placed the net funds after taxes and penalties in his attorney's escrow account.

He then authorized his attorney to pay from her escrow account large sums to his father and ex-wife.

On April 6, 2021, the circuit court issued a written opinion and corresponding judgment of absolute divorce. The trial court found that because Husband commingled the pre-marital 401(k) funds with contributions he made during the marriage, those funds constituted marital property. The court further found that Husband dissipated marital property by making payments to his father and ex-wife. Relevant to this appeal, the court awarded Wife a $25,000 monetary award and a $25,000 contribution toward her attorney's fees.

In this appeal, Husband raises eight questions, which we have rephrased and consolidated:

1. Did the court err in characterizing Husband's retirement funds as marital property?

2. Did the court err in determining that Husband dissipated marital assets?

3. Did the court err by not considering the parties' personal property in its monetary award analysis?

4. Did the court err in granting Wife a monetary award of $25,000?

5. Did the court err in awarding Wife $25,000 as a contribution to her attorney's fees?

As previously noted, we answer the first four questions in the negative. We must vacate and remand the attorney's fees award, however, to allow the court an opportunity to correct its factual findings and to fully explain its reasoning for any such award. We shall provide additional facts as necessary.

I. THE TRIAL COURT DID NOT ERR IN CHARACTERIZING HUSBAND'S RETIREMENT FUNDS AS MARITAL PROPERTY

We begin with Husband's flagship argument—that the court erred in finding that he commingled his pre-marital retirement funds with other retirement funds that he acquired during the marriage. As we shall demonstrate, the court did not err in this regard.

We begin our analysis with the relevant statute, Md. Code (1984, 2019 Repl. Vol.), § 8-201(e) of the Family Law Article ("FL"), which defines marital property as follows:

> (e) (1) "Marital property" means the property, however titled, acquired by 1 or both parties during the marriage.
>
> (2) "Marital property" includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.
>
> (3) Except as provided in paragraph (2) of this subsection, "marital property" does not include property:
>
> (i) acquired before the marriage;
>
> (ii) acquired by inheritance or gift from a third party;
>
> (iii) excluded by valid agreement; or
>
> (iv) directly traceable to any of these sources.

"Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property. Findings of this type are subject to review under the clearly erroneous standard embodied by Md. Rule 8-131(c)[.]" *Collins v. Collins*, 144 Md. App. 395, 408–09 (2002) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000)). We review the ultimate decision to grant a monetary award for an abuse of discretion. *Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019).

The parties do not dispute the court's finding that Husband had approximately

$160,000 in retirement funds at the time of the marriage. The account statement for the period October 1, 2016, to December 31, 2016—the statement closest to their September 16, 2016 marriage—shows that Husband withdrew $160,269.65 from his Bank of America 401(k) account. The records verify Husband's testimony that he transferred his pre-marital Bank of America 401(k) funds to a retirement account he opened at M&T Bank. The M&T Bank Retirement Savings Account statement for October 1, 2016, through December 31, 2016, confirms that $160,269.65—the exact amount withdrawn from the Bank of America 401(k)—was deposited to the "Rollover" portion of the M&T Retirement account. We have no difficulty concluding that, at that point, the $160,269.65 in the "Rollover" portion of the M&T Retirement account maintained its identity as Husband's non-marital property. We note that, in addition to the "Rollover" portion of the M&T Retirement account, there was a separate subaccount designated "Employee Pre-Tax," which included employee retirement contributions during the marriage. Husband acknowledged that the "Employee Pre-Tax" subaccount constituted marital property, and that account is therefore not at issue.

The M&T Retirement statement for the next three months from January 1, 2017, through March 31, 2017, reflects the following:

	Beginning Balance (1/1/17)	Money In/ Money Out	Gain/Loss	Ending Balance (3/31/17)
Employee Pre-Tax	$2,273.89	$4,321.14	$249.40	$6,844.43
Rollover	$169,349.62	0.00	$10,319.39	$179,669.01

Thus, it is clear that Husband's marital "Employee Pre-Tax" account, which included $4,321.14 in contributions during the three-month period, was valued at $6,844.43. Husband made no additional contributions to the "Rollover" subaccount, but it nevertheless increased in value to $179,669.01. Again, at that point the "Rollover" subaccount remained non-marital, being directly traceable to Husband's pre-marital Bank of America 401(k) account. There are no M&T Retirement statements in the record for the period between April 1, 2017, and December 31, 2017, but the statements for January 1, 2018, through September 30, 2018, verify that, while Husband continued to contribute to the "Employee Pre-Tax" subaccount, he made no contributions to the "Rollover" subaccount. By September 30, 2018, the "Employee Pre-Tax" subaccount had grown to $27,328.44 and the "Rollover" subaccount had increased to $225,267.48. Once again, as of September 30, 2018, Husband's "Rollover" subaccount at M&T continued to maintain its character as his non-marital property.

The next transactions in the M&T Retirement account strike the fatal blow to Husband's argument that the "Rollover" subaccount remained non-marital property. On November 27, 2018, Husband withdrew $50,000 as a loan against the M&T Retirement account. The account statement shows that the $50,000 loan was debited from funds in both the "Employee Pre-Tax" (marital) subaccount and the "Rollover" (non-marital) subaccount. That same account statement shows that Husband made four loan repayments in December 2018, totaling $908.54. We presume that these loan repayments came from Husband's marital funds because there is no evidence that Husband used other non-marital

property to make the loan payments.[1] The outstanding loan balance as of December 31, 2018, was $49,331.04, meaning that Husband had reduced the loan principal by $668.96 with his four loan repayments in December 2018.

No M&T Retirement statements were produced for the nine-month period between January 1, 2019, and September 30, 2019. However, the statement for the period between October 1, 2019, and December 31, 2019, is significant in that there is no entry for "Outstanding Loan Balance" as there had been on the account statement ending on December 31, 2018. Thus, one can reasonably infer that Husband paid the $49,331.04 loan balance that existed as of December 31, 2018, in full sometime between January 1, 2019 and September 30, 2019. The record does not reveal the precise date the loan was paid off, nor Husband's source of funds to pay off the loan. Absent evidence to the contrary, we presume that Husband used marital funds to repay the outstanding loan. And because at least some of Husband's marital funds paid off the loan against the "Rollover" subaccount, the funds in the previously non-marital "Rollover" account thereupon became at least partially marital property. Accordingly, the "Rollover" subaccount was partly marital property when Husband closed the M&T Retirement account on October 14, 2019, and transferred the "Rollover" funds to TD Ameritrade Account #3593. And when Husband received a net check after taxes of $91,925 from TD Ameritrade on September 21, 2020, to close Account #3593, those funds were likewise partially marital. Because Husband

[1] At oral argument, Husband's counsel conceded that there was no evidence that Husband made loan payments from non-marital funds.

failed to prove what, if any, portion of TD Ameritrade Account #3593 constituted non-marital property, he did not meet his burden to trace the property to a non-marital source. *See Richards v. Richards*, 166 Md. App. 263, 276 (2005) ("[T]he party seeking to demonstrate that particular property acquired during the marriage is nonmarital must trace the property to a nonmarital source." (alteration in original) (quoting *Noffsinger v. Noffsinger*, 95 Md. App. 265, 283 (1993))). The trial court therefore did not err in characterizing the $91,925 that Husband received from the liquidation of TD Ameritrade Account #3593 as marital property.

II. THE TRIAL COURT DID NOT CLEARLY ERR IN FINDING THAT HUSBAND DISSIPATED MARITAL ASSETS

The court found that Husband dissipated marital assets related to his liquidation of the TD Ameritrade retirement accounts. Husband does not dispute that he withdrew $222,500.75 from his TD Ameritrade retirement accounts in October 2019. Nor does he dispute that $109,075 was withheld for federal and state taxes and penalties, resulting in a net payout to him of $113,425.75. From those net proceeds, Husband acknowledged that $91,925 from the liquidation of TD Ameritrade Account #3593 was remitted to his attorney's escrow account. Husband then directed his attorney to pay: (i) $44,000 to Husband's father, representing the repayment of loans that the father had allegedly made to Husband, and (ii) approximately $19,000 to Husband's ex-wife to pay child support arrears that Husband claimed had accrued.

Although none of the above facts are disputed, Husband challenges the court's determination that he dissipated $29,753 in marital property. Specifically, Husband

challenges the court's determinations that he paid his father $10,753 more than the amount of loans proven and that he inappropriately paid his ex-wife $19,000 in child support arrears because there was no child support order or obligation. In Husband's view, "there is no evidence that supports a finding of dissipation."

We stated the principles governing marital property dissipation in *Hiltz v. Hiltz*, 213 Md. App. 317, 349 (2013):

> Wrongful dissipation occurs when one spouse uses marital property for his or her own benefit for purposes unrelated to the marriage, at a time when the marriage is undergoing an irreconcilable breakdown. It matters not, however, that one spouse has, post-separation, expended some of the marital assets. But what is critically important is the *purpose* behind the expenditure.
>
> Both the burden of persuasion and the initial burden of production for demonstrating an act of wrongful dissipation are on the party making the allegation. The burden of persuasion remains with the party alleging the dissipation until he or she "establishes a *prima facie* case that the monies have been dissipated, i.e., **expended for the principal purpose of reducing the funds available for equitable distribution[.]**" Thereafter, the burden shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate.

(Citations omitted) (quoting *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 311 (1994)). "Proof that a spouse made sizeable withdrawals from bank accounts under his or her control is sufficient to support the finding that the spouse had dissipated the withdrawn funds." *Omayaka v. Omayaka*, 417 Md. 643, 657 (2011) (citing *Ross v. Ross*, 90 Md. App. 176, 191, *vacated on other grounds*, 327 Md. 101 (1992)).

Here, the court found that Husband "took and expended marital property for his own benefit for a purpose unrelated to the marriage during the time of this litigation, and certainly during a time the marriage was undergoing an irreconcilable breakdown." The

court further found that Husband "removed money from retirement accounts with the intention of removing much of it from the purview of this court."

Husband claims that the $44,000 payment to his father represented a legitimate loan repayment and therefore did not constitute dissipated marital property. Husband provided documentary support for his testimony that his father paid a total of $33,247.35 to Husband's attorneys. The court accepted Husband's position that these payments constituted loans from his father, and therefore did not treat these funds as dissipated property. However, Husband's testimony that his father provided additional loans amounting to $10,753 was not supported by any other evidence. Indeed, Husband's testimony did not provide the specific amount of money his father loaned to him other than the payments to his attorneys, and did not indicate any dates on which these loans occurred. Consequently, Husband's evidence before the court failed to prove that Husband's father loaned him a total of $44,000. The court's finding that Husband only proved loans amounting to $33,247.35 is not clearly erroneous, and therefore the court properly determined that $10,753 constituted dissipated marital property.

Regarding Husband's child support payment, the court found, "[Husband's] contention that he was making catch up child support payments of $19,000 is not credible. There is no credible evidence that any such debt existed, and in fact, it is clear it did not." The court further stated:

> With respect to the payments made to his ex-wife, [Husband] contends he has a self-imposed child support obligation for a child of a prior marriage of $1,200 a month, that he stopped paying at some point by agreement of the parents, and that he decided to use his 401(k) funds to pay a lump sum amount as catch up. There is no documentary support for this

obligation, no court order, and no supporting evidence.

Finally, the court found that Husband "gave the $19,000 to his ex-wife, not to pay a child support obligation, as none existed, but to remove the funds from the purview of the court." The court therefore concluded that "the $19,000 was dissipated and is extant marital property."

We have no difficulty with Husband's contention that a child support "obligation" can be established by competent evidence of a contractual agreement between parents in the absence of a court order. *See Lacy v. Arvin*, 140 Md. App. 412, 429–30 (2001). Here, however, the only evidence Husband provided showing the existence of a child support agreement was his own testimony,[2] and the court did not find his testimony to be credible.

[2] Husband argues that the court erred in excluding Venmo documents and testimony from his ex-wife that may have proven that he had a child support obligation. A hearing took place on December 4—four days prior to trial—concerning Wife's motion to strike the appearance of Husband's counsel. During this hearing, Husband's counsel was asked, "So at this point are you planning on having them [Husband's ex-wife and father] come to court to testify, or do you feel the information will come through [Husband]?" Husband's counsel responded, "That's correct." Immediately following that exchange, Wife's counsel made several statements indicating his understanding that Husband's counsel had no intention of calling Husband's ex-wife as a witness. In this context, Husband's counsel's silence indicated an implicit endorsement of Wife's counsel's interpretation that Husband's ex-wife would not be a witness. On the first day of trial, Husband attempted to call the ex-wife as a witness. The court excluded the ex-wife as a witness because, "When you are before the [c]ourt, regardless of what it's about, when counsel makes the representation that a witness won't be called, as far as I'm concerned, you've amended the pre-trial statement orally." We perceive no abuse of discretion in the court's decision to hold Husband's counsel to her word that she would not be calling Husband's ex-wife as a witness.

Husband also sought to admit screenshots from Venmo showing payments to his ex-wife from August 25, 2017, through August 13, 2019. Wife objected to their admission,

This Court gives "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Rule 8-131(c). "Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 250 (2021) (quoting *State v. Smith*, 374, Md. 527, 533-34 (2003)). We therefore perceive no clear error in the court's finding that Husband's payment of $19,000 to his ex-wife represented dissipated marital property because Husband failed to convince the court of a contractual obligation for child support.

In summary, the evidence before the court indicated that Husband made substantial payments to his father and ex-wife using marital funds, and Husband failed to prove that he used those funds for a marital purpose. Furthermore, the timing of Husband's decision to repay his father and ex-wife—two months before trial and while Husband was still incarcerated—created a reasonable inference that he made those payments with the intent to reduce marital assets. We conclude that the court did not err in finding that Husband dissipated $29,753 in marital property, nor did it err when it used that figure in the monetary award calculus.

III. THE TRIAL COURT DID NOT ERR BY NOT CONSIDERING PERSONAL PROPERTY IN ITS MONETARY AWARD ANALYSIS

Husband next contends that the court erred because it failed to "make a finding

asserting that the Venmo documents should have been produced in response to her subpoena requesting "All documents that demonstrate the source of funds used to pay your child support obligation." Because these documents were not provided to Wife until the day before trial, the court excluded "any Venmo statements and any testimony about Venmo." In light of this late disclosure, we do not perceive any abuse of discretion in excluding those documents.

regarding which property was marital and did not value all of the property" set forth on the "Joint Statement of Parties Concerning Marital and Non-Marital Property" (the "Joint Statement"). In its written opinion, the court found:

> The parties' Joint 9-207 statement was almost entirely unhelpful to this court, as neither party submitted testimony or evidence, apart from the unsupported statements on the Joint 9-207, as to the existence of marital personal property, ownership of the property (most of which [Husband] says is owned by him and [Wife] says is owned by her), or value of the property (much of which one party says has $0 value and the other party claims a value).
>
> [Husband] contends that the court should assume the marital property is joint. [Wife] contends that without evidence of same, the court cannot and should not make that assumption. The court is without any evidence to resolve the disputes about marital personal property.

We agree with the trial court. We initially note that the first section of the Joint Statement—the section that was supposed to delineate the property that the parties agreed was "marital property"—contains more than ten items that the Wife did not agree was marital property. These disputed items should have been listed in section three of the Joint Statement ("The parties are not in agreement as to whether the following property is marital or non-marital"), yet the parties failed to include *any* disputed items in section three of the Joint Statement.[3] More problematic is that, except for a 2016 Honda Civic and their retirement plans, the parties disagreed as to the ownership of the other approximately 75

[3] We also note that the second section of the Joint Statement, which is supposed to contain items the parties agree to be non-marital, contains an additional 52 items that Husband claimed was non-marital and Wife claimed was marital property.

items of personal property—consisting mostly of household goods and furnishings—set forth in the first section of the Joint Statement. Husband claimed he owned these items while Wife claimed that she owned them. At trial, Husband changed his position, stating that he believed the listed personal property was jointly-owned. Complicating matters further, the parties disagreed as to the fair market value of virtually every item of personal property set forth in the first section of the Joint Statement. Our review of the record confirms that the parties did not produce any evidence concerning the ownership or value of these personal property items and, accordingly, the court correctly determined that it was "without any evidence to resolve the disputes about marital personal property." *See Court v. Court*, 67 Md. App. 676, 688 (1986) (holding that "the evidence presented to the chancellor was insufficient to allow him to determine initially whether the household furnishings and goods were marital assets"), *superseded on other grounds, Flanagan v. Flanagan*, 181 Md. App. 492, 532 (2008).[4, 5]

[4] The parties agreed that the Honda Civic was titled to Husband, and Wife makes no claim that this vehicle should have been included in the monetary award calculus. As to their retirement plans, we have addressed Husband's retirement accounts in Section I. of this opinion, and note that Husband expressly waived any claim to Wife's retirement account. Finally, the parties agreed that they owned their marital home as tenants by the entirety and neither party challenges the court's order that the home be sold with an equal division of the proceeds.

[5] Although Husband does not fully develop this argument in his brief, he noted that the court did not address the $250,000 entry on Wife's financial statement for "Stocks/Investments." We note that there was no corresponding entry on the parties' Joint Statement and, accordingly, the court was entitled to rely on the items identified by the parties on the Joint Statement filed pursuant to Rule 9-207.

IV. THE COURT DID NOT ERR IN GRANTING WIFE A MONETARY AWARD

Husband next contends that the court erred in granting Wife a monetary award because she "did not request a monetary award in her pleadings." We summarily reject Husband's argument because Wife expressly requested the following relief in her counter-complaint: "That [Husband] be Ordered to pay [Wife] a monetary award to adjust for the extreme inequity and cruelty she endured in this marriage." Wife additionally requested the court to "make a determination of all marital property of the parties" and grant her a "monetary award" to be "reduced to a judgment."

The court ultimately awarded Wife a $25,000 monetary award based on its determination that the parties' marital property "subject to distribution" amounted to $58,488, consisting of :

$29,753	(dissipated marital property)
$28,735[6]	(funds in Husband's attorney's escrow account)
$58,488	

We affirmed the court's assessment of dissipated marital property in Section II. of this opinion, and Husband makes no appellate argument that the court improperly considered the escrow funds as marital property.[7] Based on these findings, we fail to see how the

[6] The court made a ten dollar error here. The escrow funds totaled $28,725.

[7] Although Husband references the $28,725 held in escrow in the dissipation section of his brief, the court did not find that these funds were dissipated. Instead, the court concluded that the escrow funds constituted marital property subject to a monetary award. The only substantive reference to the $28,725 held in escrow appears in a footnote in Husband's argument concerning attorney's fees. Because Husband did not argue that the

court's monetary award was inequitable.

V. THE TRIAL COURT'S AWARD OF ATTORNEY'S FEES TO WIFE SHALL BE VACATED AND REMANDED

Finally, Husband challenges the court's $25,000 award to Wife as a contribution to her attorney's fees. He argues that the court erred by failing to consider the mandatory statutory factors.[8] Before a court may award attorney's fees in this context, it must consider three factors: (1) the financial resources of the parties, (2) the financial needs of the parties, and (3) "whether there was substantial justification for prosecuting or defending the proceeding." FL § 7-107(c); FL § 8-214(c). Husband specifically argues that, with regard to the first two factors, the court failed to consider his "desperate financial circumstances," and Wife's "superior financial position." Husband additionally asserts that the court's conclusion regarding the "substantial justification" factor was premised on an erroneous interpretation of the pre-trial record.

We recite the court's discussion of attorney's fees in its entirety:

> [Wife] requests the entirety of her fees. This court finds that [Wife] is entitled to contribution toward her attorneys' fees, as it is [Husband] who is largely responsible for the fees having been incurred in the first place. This court cannot find that [Husband's] pursuits and defenses in this litigation are substantially justified in all respects. [Husband] insisted on making his innocence and [Wife's] culpability a central issue in this litigation. From the beginning, he asserted that it was [Wife] whose actions were criminal, not

court erred in finding that the money in escrow was available for equitable distribution, we will not consider that issue. *Thompson v. State*, 229 Md. App. 385, 400 (2016) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." (quoting *Wallace v. State*, 142 Md. App. 673, 684 n. 5 (2002))).

[8] The court did not indicate whether it was applying FL § 7-107 or FL § 8-214. Nevertheless, both statutes are worded identically and are read *in pari materia*. *Henriquez v. Henriquez*, 413 Md. 287, 305 (2010).

> his own. It was [Husband] who made sexually explicit assertions that he later insisted should be shielded. [Husband] has made 3 times more court filings than [Wife]. Many of [Husband's] requests for relief were denied.
>
> The court also has considered that [Wife] has some funds from which she can pay toward her attorneys' fees and it is not appropriate under these circumstances to award [Wife] the entirety of her fees. The court awards [Wife] the amount of $25,000 to be paid by [Husband] as a contribution toward [Wife's] attorneys' fees, which amount shall be immediately reduced to judgment.

First, the record supports the court's conclusion that some of Husband's "pursuits and defenses in this litigation" were not substantially justified. Nevertheless, the court made specific findings that Husband "made 3 times more court filings" than Wife and that "[m]any of [Husband's] requests for relief were denied." The record actually demonstrates that Husband filed two times as many motions as Wife (21 versus 10), and that fewer than a quarter of Husband's motions were denied, while more than half of Wife's motions were denied. It is therefore apparent that the attorney's fee award is based, at least in part, on erroneous fact-findings.

In addition, except for the reference that Wife "has some funds she can pay toward her attorneys' fees," the court did not otherwise address the parties' financial needs and resources in the "Attorney's Fees" section of its opinion. Earlier in its opinion, the court discussed the financial circumstances of the parties, noting that:

- Husband had no income and monthly expenses of $1,882.
- Wife earned $3,811 per month and had monthly expenses of $5,615, resulting in a monthly deficit of $1,804.
- Wife had unsecured debt of $27,128.

- Husband had unsecured debt of $77,300, some of which might have been paid using 401(k) funds.

But it is unclear whether the court gave adequate consideration to these facts in its ruling on attorney's fees. We see no analysis by the court concerning how Husband could be expected to pay Wife $25,000 in attorney's fees in light of his lack of income at the time of trial and outstanding indebtedness, including his own attorney's fees.

We conclude that, even though there may be a basis for an attorney's fee award in this case, a remand is necessary to allow the court to reconsider its attorney's fee award. On remand, the court should take into consideration its erroneous factual findings related to Husband's court filings and, if the court intends to make an attorney's fee award, provide further explanation why the financial circumstances of the parties equitably merit such an award. *See Reichert v. Hornbeck*, 210 Md. App. 282, 368 (2013) ("Although the circuit court is vested with a high degree of discretion in making an award of attorney's fees, the trial judge must **consider and balance**" the required statutory factors. (Emphasis in original) (citation and quotation marks omitted)).

JUDGMENT FOR ATTORNEY'S FEES IN FAVOR OF APPELLEE VACATED. JUDGMENT OF CIRCUIT COURT FOR MONTGOMERY COUNTY OTHERWISE AFFIRMED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS RELATED TO APPELLEE'S REQUEST FOR ATTORNEY'S FEES. APPELLANT TO PAY 75% AND APPELLEE TO PAY 25% OF COSTS.