

Circuit Court for Prince George's County
Case No.: CAD20-15784

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 750

September Term, 2022

JASON HARVEY

v.

TIFFANY HARVEY

Arthur,
Tang,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: March 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).

On June 27, 2022, the Circuit Court for Prince George's County entered a Judgment of Absolute Divorce, ending the marriage of Jason Harvey, appellant/cross-appellee, and Tiffany Harvey, appellee/cross-appellant. The parties had been married for five years, one month, and seven days. In the Judgment of Absolute Divorce, the court, among other things, granted a monetary award in favor of Mr. Harvey and against Ms. Harvey in the amount of \$31,000. On appeal, Mr. Harvey presents several questions for our review, which, as stated in his brief, are as follows:

1. Did the trial court commit legal error when it failed to equitably divide the assets of the parties?
 - A. Did the trial court commit legal error when it failed to properly apply the monetary award three-step process pursuant to Maryland Family Law § 8-201?
 - B. Did the trial court commit legal error and abuse[] it's [sic] judicial discretion by failing to determine the value of the marital property?
 - C. Did the trial court commit legal error and abuse[] it's [sic] judicial discretion [by] failing to provide a reason for the ordered property allocation and monetary award determination?
2. Did the trial court commit legal error when it failed to apply the eleven factors of Maryland Family Law § 8-205?

In her cross-appeal, Ms. Harvey presents three questions for our review, which, as stated in her brief, are as follows:

1. Can the Court review assignments of error (i.e. issues) when an appellant relies on conclusory statements, and makes no reference to the record?
2. Did the trial court review the necessary factors required under Md. Code Ann., § 8-205[?]
3. Did [Ms. Harvey] make a proper plea in her supplemental complaint to entitle her to a marital share of [Mr. Harvey's] 401K?

For the following reasons, we shall vacate the judgment of the circuit court and remand the case for further proceedings.

BACKGROUND

On May 20, 2017, Jason Harvey married Tiffany Harvey. One child was born of the marriage on May 15, 2018. On August 1, 2020, the parties separated and began living in separate residences. On August 26, 2020, Ms. Harvey filed a Complaint for Limited Divorce in the Circuit Court for Prince George’s County. On July 6, 2021, the court signed a Judgment of Limited Divorce, which provided, among other things, that the parties shall have joint legal custody and shared physical custody of their child.

On August 13, 2021, Ms. Harvey filed a Supplemental Complaint for Absolute Divorce. On September 13, 2021, Mr. Harvey filed an answer to Ms. Harvey’s supplemental complaint, as well as a Counter-Complaint for Absolute Divorce. On December 10, 2021, Ms. Harvey filed an Amended Supplemental Complaint for Absolute Divorce. On May 5, 2022, a trial was held before the circuit court on the issues raised in the parties’ complaints.

Before the hearing, the parties filed a Joint Statement Concerning Marital and Non-Marital Property pursuant to Md. Rule 9-207(b) (the “9-207 Statement”). On their 9-207 Statement, the parties stipulated that the following items were marital property: (1) real property at 10511 Sarah Landing Drive, Cheltenham, MD, titled to Ms. Harvey, (2) real property at 3119 Federal House, Waldorf, MD, titled to Mr. Harvey, (3) one USAA bank account and two Navy Federal bank accounts, titled to Ms. Harvey, (4) a PNC bank account, titled to Mr. Harvey, (5) a 2013 Cadillac CTS, titled to Mr. Harvey, (6) a 2019

Lexus RX to which each party claimed title,¹ (7) Mr. Harvey’s 401k, and (8) Ms. Harvey’s military pension and Federal Employee Retirement System (“FERS”) pension. Ms. Harvey’s Thrift Savings Plan (“TSP”) was the only item of property listed on the 9-207 Statement that the parties were not in agreement as to whether it was marital or non-marital property.² There was no jointly held property.

At the conclusion of the trial on May 5, the trial court rendered an oral opinion, which stated in relevant part as follows:

That then brings us to the question of marital property. And, of course, all of us know that there are certain factors that the Court is required to consider when attempting to find a ruling as to the distribution of any marital property.

The Court is required to consider the contributions, monetary and non-monetary, of both parties to the well-being of the family. And it’s not a surprise each party has a very different view of the non-financial contributions of the other party. Somewhere in the middle probably lies the truth, but the Court was not in the home during the course of the marriage and can’t say who did the dishes more, who did the vacuuming more, who did more child care.

On the issue of child care of a young person I think that it is probably natural that Ms. Harvey did some things more. Again, that’s not as a disparagement to any father, it’s just with a young baby there are certain things that the mom has to do and that the dad maybe physically cannot do. And that has some impact.

But that is not to say that there were not equally valuable non-monetary contributions to the household by both parties. And again, both parties testified that the other didn’t do quite as much as they thought, but the Court will accept that both of them contributed non-monetarily to the family.

It is clear also from the testimony of both parties that the monetary contributions of Mr. Harvey were less than those of Ms. Harvey. But that clearly was one -- the Court did not hear any testimony from Ms. Harvey

¹ Although on the 9-207 Statement Ms. Harvey indicated that the 2019 Lexus was titled to Mr. Harvey, at trial Ms. Harvey’s counsel stated that the 2019 Lexus was titled to her.

² On the 9-207 Statement Mr. Harvey claimed title to the TSP; however, in his brief, Mr. Harvey stated that such claim was in error.

that that was objectionable to her or that that was a surprise to her, or that was something that she found untenable. It is not at all unusual for one person to make more money than another; whether it's the husband making more, the wife making more. The chances of two spouses making the exact same amount of money and being completely financially equal in a relationship, I'm sure is somewhere between slim and none.

But again, there is no indication that there was any objection to the natural agreement, whether they sat down and said, hey, I agree, it's okay for you to make less money than me, or, hey, I agree, it's okay for you to make more money than me. The fact that the relationship began on that footing, remained on that footing throughout the relationship, shows me that there was an acceptance of that and no objection to it.

And the fact that Mr. Harvey's monetary contributions may have been smaller, again doesn't diminish his contributions overall -- especially considering it was not objectionable in the course of the marriage.

The value of all property, interests of each party. The Court has considered and will get to each of those things in due turn.

Economic circumstances of each party at the time that the award is to be made. Again, it is clear that Mr. Harvey does not make as much money as [Ms. Harvey]. However, there's absolutely no evidence that shows that Mr. Harvey is in any financial circumstance that leaves him destitute or unable to support himself or unable to thrive as he moves forward.

And, in fact, since the time of the separation, Mr. Harvey has established himself in his own residence, purchased by him. And we'll get to that in a moment as well.

Circumstances that contributed to the estrangement of the parties. At the end of the day, it again seems from both sides that they probably just stopped getting along. Whether that meant that they grew apart, whether that meant that having a child changed the dynamic in the relationship, I really don't know. But there is not something here -- I had a divorce yesterday where there was abuse. That's not something that we have here today and I'm thankful for that. We don't have either party being abusive towards the other, either physically or emotionally or mentally.

We do not have any testimony that shows that there was serial cheating on either side. There was, I guess, some indication that perhaps there was -- there were relationships after the point of the separation, but during the marriage while they were in the home together, there's no indication that there was any such thing.

And therefore, I think that there is not one party who contributed more or less to the estrangement. It happens sometimes. And if it didn't, then I suppose I would be out of a third of my job. And again, that's not to disparage or make light of it. I'm sorry for the dissolution of your

relationship, but it doesn't seem that anyone is more or less at fault than the other.

The duration of the marriage. As of today, I think that we are -- I did the math - - four years, 11 months and 16 days. Of course, there's also been a period of both physical separation and limited divorce, but this is not something -- this is not a marriage that is a lifetime thankfully. Both of these parties have the majority of their life still in front of them and this is not a situation where we are dissolving a 40, 50, 55, 60 year old marriage, where there might be some more commingling of issues. I'm not going to say that it's -- I'm not going to call it a short marriage, it's just not a full-life marriage, and that's okay, too.

Age of each party. I know that I heard testimony that Ms. Harvey is 40 and Mr. Harvey is 38, and so they are of similar age. That is not having an age discrepancy where one person is significantly older or significantly younger and that impacts their ability to thrive and move forward in their lives.

And again, as I said, they still have the majority of their life still in front of them and hopefully they will thrive and help their son to do the same.

Physical and mental condition of each party. There is no indication that either party has any challenges, either physically or mentally.

And I neglected to say this at the beginning, but, [Counsel for Ms. Harvey], I'm going to ask you to prepare the order. And I should have said it at the beginning, but I say it before we get into the meat and potatoes of the property.

[COUNSEL FOR MS. HARVEY]: Yes, ma'am.

THE COURT: How and when specific marital property or interest in property was acquired, including the effort expended by each party in accumulating it. Again, I'm going to go item by item and we will deal with that in a moment. But obviously, as we are going to go through those items, it is a factor that the Court is of course considering.

Contribution by either party to the acquisition of real property held by the parties. Any award of alimony -- we don't have any alimony issues here at all, so although the Court is required to consider the factor, the Court considers it as a non-relevant factor. And then any other factor that the Court considers necessary or appropriate.

And so let's go through, as required, each of the items of property. The law is very clear that when the Court does that, the Court must make a three-leveled evaluation: The first question is, is it marital property; the second question is, what is its value or is it valued according to the evidence; and then the third question is what should the Court do with it.

The first -- let me deal first, though it out of order, because it appears on the 9-207 joint statement, the 401k of Mr. Harvey. As the Court

indicated in the course of the testimony, that was not specifically pled by Ms. Harvey. And the case law is clear that though there were general requests for rulings and distributions of property, specifically, *Huntley vs. Huntley*, 229 Md. App. 484, 2016, in order for retirement to be considered in the course of distribution of marital property, it must be specifically pled. It was not.

So while that 401k may well be at least partially marital property, it is not before the Court in reference to any issue of distribution, as it wasn't requested by Ms. Harvey.

Bringing us next to the property at 10511 Sarah Landing Drive, Cheltenham, Prince George's County, Maryland, that is titled in the name, according to testimony, of Ms. Harvey. I believe that the testimony was clear that the mortgage also is solely in Ms. Harvey's name. There was absolutely testimony that Mr. Harvey contributed at least half of the mortgage during the time that they were residing together at that address.

However, Mr. Harvey is asking for a distribution in his favor. But the Court really wasn't given a whole heck of a lot of anything to determine value of the house. There was testimony, but one party testified to one thing, another party testified to another thing. Mr. Harvey testified that he believed that it's currently valued somewhere above \$600,000. Ms. Harvey testified that it is valued significantly less than that. There was reference -- and I do think that there was an Exhibit in reference to the loan, but that really doesn't give the Court -- I don't recall having heard any testimony about the purchase price.

And really what we're talking about with any distribution of the home, we're talking about any increase in value, and whether there's a marital share of the increase in value. Not the current value, because there is a mortgage and, therefore, whatever the amount of the mortgage is, it needs to get subtracted to whatever the amount of the value of the house is. But the Court hasn't been given sufficient information from which to decide what the current value is, what the mortgage is, what the purchase price was, to make an evaluation of whether it has increased or decreased in value.

Now, I can say that even with a layman's understanding of real estate right now, it's probably unlikely that that decreased in value. But the Court wasn't given any real information from which to value the marital property.

And that brings me next to the house at 3119 Federal House. But let me make clear that it was -- even if Mr. Harvey didn't contribute financially to the mortgage, the mortgage was paid during the course of the marriage by marital funds that were earned by Ms. Harvey. So there's no question that it is -- the Sarah Landing home is marital property. The question is how do I value it. And that's where I become stumped.

Next, the address at 3119 Federal House, Waldorf, Charles County, Maryland, which is titled solely in the name of Mr. Harvey. It is the Court's understanding from the testimony that there is a mortgage that also is in the name solely of Mr. Harvey. And again, Ms. Harvey testified that she thinks that it's valued at a certain amount; Mr. Harvey testified that it's valued at a certain amount. I don't know what the purchase price was. And there has been insufficient evidence from which the Court can really make a good evaluation of what the increase or decrease in equity might be in the house.

In reference to the two houses, therefore, the Court feels that the equitable distribution is for the Sarah Landing home to remain titled in the name of [Ms. Harvey], and the Federal House home to remain titled in the name of Mr. Harvey. And the Court finds that equitably those two awards offset each other.

Bringing us next to bank accounts. We had testimony that Ms. Harvey has a USAA checking account with Navy Federal -- a checking account, a Navy Federal savings account. Mr. Harvey has a PNC bank account.

[Counsel for Mr. Harvey] argues that there was some dissipation of at least one of those accounts by Ms. Harvey and pointed in her argument to the fact that Ms. Harvey testified that she took funds from that account to pay for some repairs or improvements or whatever in the house at Sarah Landing. Well, that means that it was applied to marital property during the course of the marriage.

And, therefore, the Court finds that there was no dissipation, it wasn't for Ms. Harvey's sole benefit and use, she didn't take a vacation by herself for \$20,000; she didn't buy an airplane well, that really wouldn't be dissipation. She didn't take a vacation by herself. She didn't buy gifts for other people. There was no testimony as to any of those things. The only testimony was that if, in fact, there was any money taken out of any of those accounts, it was used for the home, which again the Court found was marital property. And, therefore, it was not dissipated in any way, shape or form.

The Court finds that Ms. Harvey's USAA checking account, Ms. Harvey's Navy Federal account, Ms. Harvey's Navy Federal savings account, should all remain titled with Ms. Harvey. And equally finds that Mr. Harvey's PNC bank account should remain with him. And the Court finds that they offset each other for equitable distribution between the two.

That brings us then next to the cars. And again, there was testimony about what the cars were worth. There was testimony that Mr. Harvey has a 2013 Cadillac. There was testimony that Ms. Harvey has a 2019 Lexus. There was testimony, I guess about the value of each of them. There was testimony that the Cadillac does not have any lien on it, there was

testimony that the Lexus has a lien that is close to or equal to the testified value.

And the Court finds, therefore, that, again, in distributing -- the Court finds that they are marital property and of course if I didn't say it clearly the Court finds that all those bank accounts are also marital property. But the Court finds that the Cadillac is marital property, the Court finds that the Lexus is marital property. The Court finds that any value of them offsets the other. And in order, therefore, to have equitable distribution of those, the 2013 Cadillac will remain titled to Mr. Harvey solely, the 2019 Lexus will remain titled to Ms. Harvey solely.

That brings us then to the FERS pension and any other military pension that may exist. And there is no question that that is marital property, to the extent that there were contributions that are attributable to the time of the marriage.

The Court finds that again it appears that the parties were in agreement as to what each of them would do professionally and those decisions were made implicitly, explicitly by the parties during the course of the marriage.

Particularly as to the military pension, but as to the FERS as well, the Court feels that any equity requires that no award be made to Mr. Harvey.

That brings us to the last item and that's the TSP. On the 9-207 that is listed as something that the parties were not in agreement on as to whether it is marital or non-marital. There is no question and even Ms. Harvey's own witness talked about what is and isn't part of marital property.

So, though it's listed as a disagreement as to marital property, the testimony brought out in Ms. Harvey's case shows quite plainly that there is an admission and an agreement that it is, to an extent, marital property. And the Court does find that it is marital property, to the extent that there were contributions made during the course of the marriage.

That is one that the Court does find there needs to be some equitable distribution of. And the Court finds that looking at it equitably, it is appropriate for the Court to look at the amount at the time of separation.

And let me explain why I'm doing that. It is quite clear that at the time of separation, the parties really decided that they were going to live wholly and separately apart.

I don't know whether Mr. Harvey has any side work or not. I think that there are indications that says he does. Whether he does, whether he doesn't, there really wasn't a whole lot put before the Court. But even that one Exhibit, I believe it was Plaintiff's No. 11, the Facebook posting, where Mr. Harvey acknowledges that he is holding himself out for hire.

I don't know that I feel completely comfortable saying that I believe 100 percent that that posting was not successful in any way, shape or form, or that it was the only attempt in the course of the marriage from the start of the marriage until this day that that attempt was made.

I don't know if there were payments in cash, I don't know if there was any -- anything. But I do believe that, again, Ms. Harvey clearly knew about it, there was implicit or explicit agreement as to that during the course of the marriage. But then when they separated I think that we're in a different stead. And when we look at the distribution of the TSP or any marital award in reference to the TSP, I think that it's appropriate to look at it as it was valued at the time of the separation.

At the time of the separation, according to the evidence, the value was \$61,793.23. Give me a moment. The Court is therefore going to award a monetary award to Mr. Harvey from Ms. Harvey in the amount of \$31,000 to account for equitable distribution of the marital share of the TSP.

I am going to say that that \$31,000 must be paid within three years of today, at a payment plan at Ms. Harvey's choosing. However, that payment plan may not amount to anything less than \$10,000 per year. [Counsel for Mr. Harvey], you look -- did I not say that well?

[COUNSEL FOR MR. HARVEY]: I am -- with TSPs I thought that typically it would be handled as a QDRO, to avoid tax implications on that issue. But, I mean, you said what you meant, but I just thought it would be handled using a QDRO.

THE COURT: Okay. Are you asking --

[COUNSEL FOR MR. HARVEY]: I mean, do you just want -- so you're saying it's a monetary award of \$31,000?

THE COURT: Yes.

[COUNSEL FOR MR. HARVEY]: Okay, all right. Just -- I was just checking. Thank you.

THE COURT: Yes. So it's not a distribution of the TSP, but in order to be equitable in reference to the TSP, it is a monetary award in the amount of \$31,000 payable over the next three years, beginning today, at a payment schedule at Ms. Harvey's choosing. However, again, it shall be no less than \$10,000 per year.

On June 27, 2022, the trial court entered a Judgment of Absolute Divorce that was consistent with the above oral opinion. Both parties filed timely appeals of the court's judgment. We shall provide additional facts as necessary to the resolution of the questions presented in these appeals.

STANDARD OF REVIEW

“Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). “The value of each item of marital property is also a question of fact.” *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). This Court will not disturb such factual findings unless it is clearly erroneous, meaning that the trial court’s findings are not supported by substantial evidence. *Innerbichler*, 132 Md. App. at 229-230. A decision to grant a monetary award and the amount of such an award is reviewed for abuse of discretion. *Richards v. Richards*, 166 Md. App. 263, 272 (2005). Any determination of a question of law made by the trial court is reviewed under a *de novo* standard of review. *Flanagan*, 181 Md. App. at 521.

DISCUSSION

I. QUESTIONS RAISED BY MR. HARVEY’S APPEAL

1. Did the trial court commit legal error when it failed to equitably divide the assets of the parties?

Mr. Harvey’s argument for this question, in its entirety, is as follows:

“[A]lthough the law does not require a court to divide marital property equally between parties, the division of such property must be fair and equitable.” *Long v. Long*, 129 Md. App. 554, 577-78 (2000). While, it has somewhat become the practice of trial courts to equally divide the marital property in long term marriages; equal distribution of assets is not required. “The court, after a consideration of the factors listed in F.L. § 8-205, may decree an unequal division and state the reasons for such allocation.” *Caccamise v. Caccamise*, 130 Md. App. 505, 521 (2000).

This recitation of legal principles is not a proper argument, and thus there is nothing for this Court to resolve for this question.

A. Did the trial court commit legal error when it failed to properly apply the monetary award three-step process pursuant to Maryland Family Law § 8-205?

Md. Code, Family Law § 8-201 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.

In a divorce proceeding, if a party requests a monetary award, a trial court is required to undertake a three-step process to determine whether to grant a monetary award:

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

Flanagan, 181 Md. App. at 520-21 (citations and quotation marks omitted). In this context, “value” means the fair market value of the property. *See Abdullahi v. Zanini*, 241 Md. App. 372, 413 (2019). Maryland law requires “equitable” division of marital property, not “equal” division. *Alston v. Alston*, 331 Md. 496, 508 (1993). “The Maryland Legislature specifically rejected the notion that marital property should presumptively be divided equally.” *Id.* The party who asserts an interest in marital property “bears the

burden of producing evidence of the identity and value of the property.” *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993). “Generally, the burden of proving a fact is on the party bearing the affirmative of the issue.” *Id.*

In the instant case, before making a determination as to each item of property, the trial court acknowledged that the three-step process was required:

And so let’s go through, as required, each of the items of property. The law is very clear that when the Court does that, the Court must make a three-leveled evaluation: The first question is, is it marital property; the second question is, what is its value or is it valued according to the evidence; and then the third question is what should the Court do with it.

i. *Step One – Disputed Property*

As to the first step in the process, the parties stipulated on the 9-207 Statement that every item of property in dispute, besides the TSP, was marital property. In its oral opinion, the trial court found that the parties’ real property, bank accounts, vehicles, and pensions were marital property, as the parties had stipulated on the 9-207 Statement. In resolving the parties’ disagreement as to the TSP, the court found that the TSP was part marital and part non-marital property. The court stated:

On the 9-207 that is listed as something that the parties were not in agreement on as to whether it is marital or non-marital. There is no question and even Ms. Harvey’s own witness talked about what is and isn’t part of marital property.

So, though it’s listed as a disagreement as to marital property, the testimony brought out in Ms. Harvey’s case shows quite plainly that there is an admission and an agreement that it is, to an extent, marital property. And the Court does find that it is marital property, to the extent that there were contributions made during the course of the marriage.

Mr. Harvey argues that the trial court “failed to identify the parties’ marital and non-marital property[.]” The court, however, clearly decided what property was marital

and what property was non-marital. More importantly, Mr. Harvey presents no argument, in the alternative, that the court erred in making such determination. Therefore, Mr. Harvey’s argument fails.

ii. *Step Two – Valuation of Marital Property*

Mr. Harvey also argues that the trial court “failed to value the property[.]” We disagree and shall explain.

a. *Real Property*

In determining the value of the parties’ real property, the trial court found that (1) for the property located at 10511 Sarah Landing Drive, “the [c]ourt hasn’t been given sufficient information from which to decide what the current value is, what the mortgage is, what the purchase price was, to make an evaluation of whether it has increased or decreased in value[.]” and (2) for the property located at 3119 Federal House,

[a]nd again, Ms. Harvey testified that she thinks that it’s valued at a certain amount; Mr. Harvey testified that it’s valued at a certain amount. I don’t know what the purchase price was. And there has been insufficient evidence from which the Court can really make a good evaluation of what the increase or decrease in equity might be in the house.

As the party requesting a monetary award, Mr. Harvey had the burden of “producing evidence of the identity and value of the property.” *Noffsinger*, 95 Md. App. at 281. The trial court found that there was insufficient evidence from which it could value each of the parties’ homes, and thus Mr. Harvey failed to satisfy his burden of production. Accordingly, there is no merit to Mr. Harvey’s claim that the trial court erred by failing to value the parties’ real property.

b. Bank Accounts

As to the parties' bank accounts, the trial court first rejected Mr. Harvey's claim of dissipation by Ms. Harvey, finding that, if any money was removed by Ms. Harvey from the bank accounts, that money was used for marital purposes. The court went on to find that the values of the parties' respective bank accounts were essentially equal and thus "they offset each other for equitable distribution between the two." Mr. Harvey makes no argument that the court's valuation of the bank accounts as having an equal value was in error. Therefore, because the court did value the bank accounts, Mr. Harvey's argument fails.

c. Vehicles

For the vehicles owned by each party, the trial court stated that there was testimony as to the value of the vehicles and that the 2019 Lexus has a lien "that is close to or equal to the testified value." The court then held that the values of the vehicles offset each other. Similar to the bank accounts, Mr. Harvey makes no argument that the court's valuation of the vehicles as equal was in error, instead only arguing that the court failed to value the vehicles at all. Because the court did value the vehicles, Mr. Harvey's argument fails again for lack of support in the record.

d. Pensions

Mr. Harvey argues that the trial court failed to determine the value of Ms. Harvey's FERS and military pensions. Valuation and division of pensions is governed by Md. Code, Family Law § 8-204(b), which states:

(1) The court need not determine the value of a pension, retirement, profit sharing, or deferred compensation plan, unless a party has given notice in accordance with paragraph (2) of this subsection that the party objects to a distribution of retirement benefits on an “if, as, and when” basis.

(2) If a party objects to the distribution of retirement benefits on an “if, as, and when” basis and intends to present evidence of the value of the benefits, the party shall give written notice at least 60 days before the date the joint statement of the parties concerning marital and non[-]marital property is required to be filed under the Maryland Rules. If notice is not given in accordance with this paragraph, any objection to a distribution on an “if, as, and when” basis shall be deemed to be waived unless good cause is shown.

(Emphasis added.)

Mr. Harvey does not argue that he gave notice of an objection to a distribution of the pensions on an “if, as, and when” basis, nor did he present any evidence of the value of Ms. Harvey’s pensions. Therefore, the court was not required to value Ms. Harvey’s FERS and military pensions.

e. *TSP*

At the May 5, 2022 hearing, Marc Pushkin, an actuary, testified as an expert on Ms. Harvey’s behalf. Mr. Pushkin stated that he had conducted an analysis to calculate the marital and non-marital portions of Ms. Harvey’s TSP. According to Mr. Pushkin, as of March 31, 2022, the value of the marital portion of the TSP was \$102,696.27 and the value of the non-marital portion was \$119,785.48. Mr. Pushkin testified, however, that as of May 2, 2022, three days before the hearing, the value of the marital portion of the TSP was \$94,136.50 and the value of the non-marital portion was \$109,655.27, for a total value of \$203,791. Finally, Mr. Pushkin testified that on September 30, 2020, two months

after the parties’ separation, the value of the marital portion of the TSP was \$61,793.23 and the value of the non-marital portion was \$88,475.

In its oral opinion, the trial court implicitly valued the marital portion of the TSP as of May 2, 2022, in accordance with Mr. Pushkin’s testimony, but then used his valuation as of the date of separation for the purpose of determining an appropriate monetary award. Mr. Harvey makes no argument that the court’s valuation of the TSP was in error; instead he again argues that the court failed to value the marital property. Because the court did value the TSP, based on the testimony of an expert witness, Mr. Harvey’s argument is without merit.

iii. *Step Three – Monetary Award*

Mr. Harvey argues that the trial court “failed to depict or even state how it arrived at the monetary award amount of \$31,000, and failed to explain their [sic] reason for the allocation of property.” We again disagree.

Because the values of certain items of marital property offset each other, the trial court decided that “equitable distribution” did not necessitate a monetary award regarding those items. As to the TSP, the court stated as follows:

At the time of the separation, according to the evidence, the value was \$61,793.23. Give me a moment. The Court is therefore going to award a monetary award to Mr. Harvey from Ms. Harvey in the amount of \$31,000 to account for equitable distribution of the marital share of the TSP.

The court explicitly stated that the reason for the monetary award was to “account for equitable distribution of the marital share of the TSP[,]” and then reached the amount of \$31,000 by dividing in half the value of the marital portion of the TSP at the time of

the parties' separation. Therefore, contrary to Mr. Harvey's arguments, the trial court did identify the parties' marital property, value the marital property, and explain its reasoning in granting a monetary award of \$31,000.

B. Did the trial court commit legal error and abuse its discretion by failing to determine the value of the marital property?

Mr. Harvey's argument for this question, in its entirety, is as follows:

The clearly erroneous standard is applied to the court's determination of the net value of marital property. Maryland Rule 8-131(c); *Brown v. Brown* [sic] 195 Md. App. 72, (2010) [sic]. Factual findings not supported by substantial evidence are clearly erroneous. *Richards v. Richards* [sic] 166 Md. App. 263, 271 (2005). Here the trial court did not make a determination regarding the value of any of the marital property detailed in the parties['] 9-207. A failure to apply the appropriate standard correctly is clear error.

We addressed all of the issues raised here in the previous section. As discussed above, the trial court clearly determined the value of the parties' marital property that required valuation under the statute.

C. Did the trial court commit legal error and abuse its discretion by failing to provide a reason for the ordered property allocation and monetary award determination?

i. *First Argument*

Mr. Harvey's first argument for this question is as follows:

The parties' Joint 9-207 Statement [] reflected their stipulation that [Ms. Harvey's] military pension and FERS pension were entirely marital assets. [Mr. Harvey's] assertion that [Ms. Harvey] has a FERS [p]ension and military pension and both pensions were in fact marital property went uncontested in the parties['] joint marital property statement. As did [Mr. Harvey's] assertion that the pensions should be divided on an if, as, when basis. [] In Section 3 of the Joint Marital Property Statement, [Ms. Harvey] asserted that the parties were no[t] in agreement as to her Thrift Savings Plan being marital or non-marital property, and she provided no basis for

the assertion. [Ms. Harvey] did however assert a value for the [T]hrift [S]avings [P]lan in the amount of \$203,791. [Mr. Harvey’s] assertion, which erroneously asserts that the Thrift Savings Plan is titled to him, asserted a similar value of \$233,791. [] Although [Ms. Harvey] did not make any affirmative request for relief, it is clear by the erroneously ordered monetary award amount that the court attempted to account for [Ms. Harvey’s] failure, and refused to distribute the contested retirement accounts at all. This is clear legal error, and the court provided no justification for failing to divide the contested retirement assets.

Mr. Harvey fails to point to any evidence in the record to support his claim that the trial court attempted to compensate for Ms. Harvey “not mak[ing] any affirmative request for relief[]” of Mr. Harvey’s 401k by reducing Mr. Harvey’s monetary award, and we have found none. The trial court explicitly stated that the purpose of the monetary award was “to account for equitable distribution of the marital share of the TSP[]” and made no mention of Mr. Harvey’s 401k.

ii. *Second Argument*

Mr. Harvey’s second argument is that the trial court failed to determine the value of Ms. Harvey’s pensions or divide them on an “if, as, and when” basis and should have either “issue[d] a monetary award to [Mr. Harvey] to compensate for [Ms. Harvey] keeping both pensions and her much larger Thrift Savings Plan account, or if there was a similarly valued asset in [Mr. Harvey’s] name, it could be offset by the pension.”

Appellate courts in Maryland have generally “shown great respect for the judgments of trial courts in choosing methods for valuing pension benefits in divorce proceedings.” *Zanini*, 241 Md. App. at 420-21 (quoting *Imagnu v. Wodajo*, 85 Md. App. 208, 215 (1990)). The “if, as, and when” basis for distribution of retirement benefits involves a calculation whereby the marital portion of the benefits is “a fraction of which

the number of years and months of the marriage [] is the numerator and the total number of years and months of employment credited toward retirement is the denominator[.]” *Dziamko v. Chuhaj*, 193 Md. App. 98, 112 (2010) (alterations in original) (quoting *Bangs v. Bangs*, 59 Md. App. 350, 356 (1984)). The share of the retirement benefits of the non-member spouse is determined by “applying an agreed-upon fixed percentage to it. That fixed percentage then is applied to any future payments received under the pension plan.” *Id.* If no notice is given that the value of a spouse’s pension is at issue in divorce action, any objection to an “if, as, and when” distribution is waived. *See Zanini*, 241 Md. App. at 422.

This Court in *Zanini* summarized the application of the “if, as, and when” analysis as follows:

In the absence of value of the pensions, **or agreement of the parties**, the court could not properly set off one pension against another. The division of the parties’ pensions, therefore, must be pursuant to the *Bangs* “if, as[,] and when” analysis[.] . . . On remand, the court should apply that analysis and then assess how that . . . relate[s] to the monetary award.

Id. at 422-23 (emphasis added).

Here, as stated above, Mr. Harvey did not object to an “if, as, and when” distribution of Ms. Harvey’s pensions, and thus the trial court was not required to value the pensions. *See* Md. Code, Family Law § 8-204(b). Indeed, on the parties’ 9-207 Statement, Mr. Harvey indicated that the value of the pensions should be distributed on an “if, as, and when” basis. In its oral opinion, the court stated as follows:

That brings us then to the FERS pension and any other military pension that may exist. And there is no question that that is marital

property, to the extent that there were contributions that are attributable to the time of the marriage.

The Court finds that again it appears that the parties were in agreement as to what each of them would do professionally and those decisions were made implicitly, explicitly by the parties during the course of the marriage.

Particularly as to the military pension, but as to the FERS as well, the Court feels that any equity requires that no award be made to Mr. Harvey.

Upon our search of the record, we could find no evidence of any agreement between the parties that they waived their respective rights in the other's pensions and/or retirement assets upon divorce, and neither party has pointed us to the existence of such agreement. Although the parties may have kept their assets and incomes separate during the marriage, *Zanini* directs that such agreement must specifically relate to the pensions. Because there was no agreement between the parties to remove Ms. Harvey's pensions from the division of marital property, the division of Ms. Harvey's pensions must be pursuant to the *Bangs* "if, as, and when" analysis. *See Zanini*, 241 Md. App. at 422-23.

iii. *Third Argument*

Mr. Harvey's last argument is that

[t]he Trial Court ordered that [Ms. Harvey] retain the entire value of her TSP and her pensions without any legal authority to do so. Instead of offsetting [Mr. Harvey's] interest in [Ms. Harvey's] retirement accounts, or even requiring a retirement order dividing the assets, the Trial Court unilaterally allowed an inequitable distribution of the assets. [] Of note, the court offers no explanation of how it arrived at the \$31,000 monetary award in applying the Family Law § 8-205(b) factors. However, it is self-evident that the trial court used no legal justification in making its ruling regarding [t]he monetary award in this matter. There is no Maryland authority that permits a monetary award to be based upon a spouses' [sic] failure to seek relief regarding a type of marital property.

As stated above, and contrary to Mr. Harvey’s repetition of the same arguments, the trial court did offer an “explanation of how it arrived at the \$31,000 monetary award in applying the Family Law § 8-205(b) factors.” Further, there simply is no evidence that the court granted a \$31,000 monetary award “based upon a spouses’ [sic] failure to seek relief regarding a type of marital property.”

Nevertheless, Mr. Harvey asserts that the “trial court used no legal justification in making its ruling regarding [t]he monetary award in this matter.” Here, the trial court based the granting of a monetary award solely on a division of Ms. Harvey’s TSP, having found that the division of the other marital property by title was roughly equal in value, except for the parties’ real property where Mr. Harvey failed to adduce sufficient evidence of each property’s value.³

At trial, Mr. Pushkin determined that the value of the marital portion of the TSP was \$61,793.23 at the time of the parties’ separation and \$94,136.50 at the time of the May 5, 2022 hearing. The evidence also showed that the parties had fully severed their relationship and assets at the time of separation. Mr. Harvey quickly purchased a new home and stopped contributing to the mortgage and utility payments of the marital home, and the parties divided all of the personal property in the marital home. Even during the marriage, the parties kept their finances separate and never had a joint bank account. The trial court, while implicitly recognizing that the value of the marital portion of the TSP was \$94,136.50 at the time of the hearing, determined that, due to the parties’ complete

³ Separate and apart from the monetary award, Ms. Harvey’s pensions will be divided on remand on an “if, as, and when” basis.

severance of their marriage at the time of separation, the balance of the equities required only that Mr. Harvey be compensated for the marital portion of the TSP through the date of separation. Based upon the facts set forth above and our own review of the record, we conclude that the trial court had ample “legal justification” for granting Mr. Harvey a monetary award of \$31,000 for the TSP. *See Malin v. Mininberg*, 153 Md. App. 358, 430 (2003) (stating that it is “well settled that the trial court has broad discretion in determining whether to grant a monetary award and, if so, in what amount.”).

2. Did the trial court commit legal error when it failed to apply the eleven factors of Maryland Family Law § 8-205?

A. Arguments of the Parties

Mr. Harvey argues that the trial court “disregarded almost every factor outlined in Family Law § 8-205(b)[,]” which resulted in him receiving a “monetary award of \$31,000, for his interest in the family home, [Ms. Harvey’s] military pension, [Ms. Harvey’s] Federal Pension, and [Ms. Harvey’s] Thrift Savings [P]lan with an asserted value of \$204,791.” Mr. Harvey contends that, even if the court had correctly applied the eleven § 8-205(b) factors, “there is no basis in Maryland jurisprudence that warrants such a disproportional division of marital property.” In addition, Mr. Harvey contends that “[n]ot only was it inequitable for the trial court to split the assets of the parties solely by title, without regard for the inequities served by such an action, it violated Maryland law.” Therefore, Mr. Harvey argues, “ordering an inequitable distribution of the marital assets, and labeling it a monetary award, constituted legal error.”

In response, Ms. Harvey contends that the trial court “met the articulation standard required of it when it denied [Mr. Harvey’s] request for a monetary award.” According to Ms. Harvey, the court advised the parties of its familiarity with the § 8-205(b) factors and “place[d] its reasonings on the record for each item listed on the parties’ joint property statement.” As to her military pension, civilian pension, and TSP, Ms. Harvey reiterates the court’s reasoning and argues that Mr. Harvey’s assertion that the court failed to provide a reason for its division of property “is unfounded and contradicted by the record itself.”

B. Analysis

Under the third step in the three-step process of determining whether to grant a monetary award, a trial court must consider the eleven factors listed in Md. Code, Family Law § 8-205. *See Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 280 (2021). The factors enumerated in § 8-205 are:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;
- (3) the economic circumstances of each party at the time the award is to be made;
- (4) the circumstances that contributed to the estrangement of the parties;
- (5) the duration of the marriage;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
- (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;

(10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and

(11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

See Flanagan, 181 Md. App. at 520.

“Although the court is not required to recite each factor in making a monetary award, appellate courts must be able to discern from the record that these factors were weighed.” *Hart v. Hart*, 169 Md. App. 151, 166–67 (2006). In *Hart*, this Court overturned a monetary award because of the trial court’s “failure to mention the term monetary award, [§ 8-205], or any of the statutory factors that must be considered with respect to every monetary award.” *Id.* at 166. Similarly, in *Flanagan*, this Court vacated a monetary award because the trial court did not “adequately explain the basis for its monetary award” and because “the award resulted in appellee’s entitlement to almost 90% of the value of the marital property.” 181 Md. App. at 522. We stated that “‘a trial judge’s failure to state each and every consideration or factor’ does not, without demonstration of some improper consideration, ‘constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.’” *Id.* at 533 (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003))

In *Wasyluszko*, on the other hand, the trial court granted a monetary award that resulted in the appellant retaining 54 percent of the marital property, while the appellee kept 46 percent. 250 Md. App. at 282-83. This Court held that the monetary award “does

not create such a lopsided result that a specific explanation of the court’s calculation is needed beyond consideration of the FL § 8-205(b) factors. *Id.* We held, therefore, that the trial court did not abuse its discretion by failing to “fully enunciate how its consideration of the statutory factors resulted in the particular monetary award in favor of” the appellant. *Id.*

Here, the trial court listed all of the factors that it was required to consider under the statute and analyzed each factor in detail. The court then considered each item or category of marital property, to wit, real property, bank accounts, vehicles, pensions, and the TSP, and decided whether there was an inequity in the division by title, and, if so, the amount of a monetary award to rectify such inequity. We see no error or abuse of discretion in the court’s consideration of the FL § 8-205(b) factors or in the application of the factors to the determination of a monetary award of \$31,000. Nevertheless, because the court failed to divide Ms. Harvey’s pensions on an “if, as, and when” basis, the monetary award must be vacated. On remand, the court shall consider whether to grant a monetary award, and the amount thereof, in light of the transfer of an interest in Ms. Harvey’s pensions to Mr. Harvey.⁴ *See* FL § 8-205(a).

⁴ As explained in the next section, the trial court also will be required to consider Ms. Harvey’s interest in the marital portion of Mr. Harvey’s 401k as a part of the granting of any monetary award.

II. QUESTIONS RAISED BY MS. HARVEY’S CROSS-APPEAL

1. **Can the Court review assignments of error (i.e. issues) when an appellant relies on conclusory statements, and makes no reference to the record?**
2. **Did the trial court review the necessary factors required under Md. Code Ann., § 8-205?**

Ms. Harvey’s first two questions are not proper bases for a cross-appeal, because they do not challenge any of the trial court’s rulings. Nevertheless, they have been addressed above in our analysis of Mr. Harvey’s questions in his appeal.

3. **Did Ms. Harvey make a proper plea in her supplemental complaint to entitle her to a marital share of Mr. Harvey’s 401K?**

A. Facts

In her Amended Supplemental Complaint for Absolute Divorce, Ms. Harvey prayed for, among other things, the following relief:

- E. That this Court determine at the time of the entry of its Judgment of Absolute Divorce which property owned by the parties in any fashion is marital property;
- F. That this Court determine at the time of the entry of its Judgment of Absolute Divorce the value of any property found to be marital property;
- G. That [Ms. Harvey] be granted at the time of the entry of the Judgment of Absolute Divorce, a monetary award adjusting the equities and rights of the parties in said marital property;
- H. That this Court pass an Order reducing to judgment any monetary award granted to [Ms. Harvey];

- J. That the Court grant to [Ms. Harvey] all relief permitted by Maryland statutes for such cases made and provided and all relief set forth in the appellate decisions of the Maryland Appellate Courts and in the common law of Maryland[.]

In the court’s May 5, 2022 oral opinion, the court discussed Ms. Harvey’s claim for a monetary award regarding the marital portion of Mr. Harvey’s 401k, as follows:

The first -- let me deal first, though it out of order, because it appears on the 9-207 joint statement, the 401k of Mr. Harvey. As the Court indicated in the course of the testimony, that was not specifically pled by Ms. Harvey. And the case law is clear that though there were general requests for rulings and distributions of property, specifically, *Huntley vs. Huntley*, 229 Md. App. 484, 2016, in order for retirement to be considered in the course of distribution of marital property, it must be specifically pled. It was not.

So while that 401k may well be at least partially marital property, it is not before the Court in reference to any issue of distribution, as it wasn’t requested by Ms. Harvey.

B. Arguments of the Parties

Ms. Harvey argues that she properly requested a share of the marital portion of Mr. Harvey’s 401k retirement plan. According to Ms. Harvey, if a 401k plan is marital property, a trial court has the ability to transfer ownership of an interest in the 401k or order a monetary award. Ms. Harvey asserts that the trial court misinterpreted *Huntley v. Huntley*, 229 Md. App. 484 (2016), to conclude that Ms. Harvey had not requested a share of Mr. Harvey’s 401k. Although *Huntley* stated “that a litigant cannot request relief at trial that he or she did not request in his or her pleadings[,]” Ms. Harvey argues that here she did make a request for a monetary award. Finally, Ms. Harvey contends that the “court misconstrued [her] request for a monetary award with a request for an ownership transfer[.]” and that the court’s ruling was inconsistent with Ms. Harvey’s amended supplemental complaint.

C. Analysis

Due process requires that “a party to a proceeding is entitled to both notice and an opportunity to be heard on the issues to be decided in a case.” *Blue Cross of Maryland, Inc. v. Franklin Square Hosp.*, 277 Md. 93, 101 (1976). A trial court “has no authority, discretionary or otherwise, to rule upon a question not raised as an issue by the pleadings, and of which the parties therefore had neither notice nor an opportunity to be heard.” *Gatuso v. Gatuso*, 16 Md. App. 632, 633 (1973). This requirement applies in the family law context. *Huntley*, 229 Md. App. at 493.

In *Huntley*, Lydia Huntley, the appellee, filed a Complaint for Absolute Divorce requesting that the trial court award her alimony, a monetary award, and a share of the retirement benefits of Charles Huntley, the appellant. 229 Md. App. at 486. In Mr. Huntley’s answer, the only relief requested was that the court grant a divorce and deny alimony to Ms. Huntley. *Id.* at 494. Mr. Huntley never filed a counter-complaint requesting an equitable division of Ms. Huntley’s retirement benefits. *Id.* At trial, the court denied Mr. Huntley’s request to grant him half of Ms. Huntley’s retirement benefits on the ground that Mr. Huntley had not requested such relief in his pleadings. *Id.* at 488.

This Court held that the trial court did not abuse its discretion when it refused to award Mr. Huntley a share of Ms. Huntley’s retirement benefits. *Id.* at 490. We stated that the trial court is “‘limited by the issues framed by the pleadings,’” and Mr. Huntley failed to make a request for such award in his pleadings. *Id.* at 494 (quoting *Gatuso*, 16 Md. App. at 636). We held that, although Ms. Huntley “‘admitted to the existence and

value of her retirement benefits, such admissions d[id] not constitute [Mr. Huntley’s] request in a *pleading* that the court divide such benefits.” *Id.* (emphasis in original).

Subsequently, this Court distinguished *Huntley* in *Lasko v. Lasko*, 245 Md. App. 70 (2020). In *Lasko*, Amanda Lasko, the appellee, requested in her answer that the trial court determine “which of the property owned by the parties is marital property and the value of the same[.]” and that she “be granted all relief to which she may be entitled pursuant to the Family Law Article of the Annotated Code of Maryland.” *Id.* at 79. Although Andrew Lasko, the appellant, argued that the trial court lacked the authority to grant a monetary award to Ms. Lasko because she failed to make such request in her pleadings, the court found that Ms. Lasko’s answer was sufficient to allow the court to grant her a monetary award. *Id.* at 74. On appeal, this Court stated that

[t]he critical factual distinction between *Huntley* and the instant case is that [Mr. Huntley] did not request in his answer any affirmative relief regarding a monetary award or the transfer of an interest in [Ms. Huntley’s] retirement benefits. By contrast, [Ms. Lasko] not only affirmatively requested that the court determine and value the marital property, but also included in her answer a request to be granted “all relief to which she may be entitled pursuant to the Family Law Article.”

Id. at 82. We held, therefore, that Ms. Lasko’s answer “sufficiently set forth a claim for a monetary award under the Family Law Article.” *Id.* at 83.

The instant case is not only closer to *Lasko* than *Huntley*, but is more specific in the relief requested than what the appellee sought in *Lasko*. Ms. Harvey made specific requests that the trial court (1) determine which property is marital property, (2) determine the value of any property found to be marital property, (3) grant Ms. Harvey a monetary award to adjust the “equities and rights of the parties in said marital

property[.]” and (4) grant her “all relief permitted by Maryland statutes for such cases made and provided and all relief set forth in the appellate decisions of the Maryland Appellate Courts and in the common law of Maryland[.]”

By contrast, the appellee in *Lasko* did not mention a monetary award in her answer, instead making a general request for “all relief to which she may be entitled pursuant to the Family Law Article[.]” 245 Md. App. at 82. We held that such general request was sufficient for the trial court to grant a monetary award to the appellee. *Id.* at 83. Although Ms. Harvey made no mention of Mr. Harvey’s 401k in her request for relief, she was not required to do so. *See id.* at 82-83. Therefore, we hold that the trial court erred in holding that Ms. Harvey did not properly request a monetary award regarding Mr. Harvey’s 401k in her pleadings.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
VACATED AND THE CASE REMANDED
TO THAT COURT FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE DIVIDED
EQUALLY BETWEEN THE PARTIES.**