Circuit Court for Saint Mary's County
Case No. C-18-FM-18-000947

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0987

September Term, 2022

JAMES SIDLER

v.

ANNE KATHRYN ALLOR

Graeff,
Reed,
Taylor, Robert K.
(Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: June 6, 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 Maryland Rule 1-104(a)(2)(B).

On November 12, 2018, an action was initiated when Appellee, Anne Kathryn Allor ("Wife") filed a Complaint for Absolute Divorce, or in the alternative, Limited Divorce against Appellant, James Sidler ("Husband"). The parties appeared before the trial court on April 28, 2022, for a divorce hearing. After lengthy discussions, the parties reached a partial agreement and narrowed the issues for the trial court to decide. On May 26, 2022, the trial court entered a Judgment of Absolute Divorce, from which Husband files this timely appeal.

In bringing his appeal, Husband presents four questions for appellate review, which we reorder and restate as follows:

I. Did the trial court err by concluding that Husband's FERS retirement benefits were not part of the parties' partial agreement?

II. Did the trial court err by awarding rehabilitative alimony to Wife?

III. Did the trial court err by modifying custody in the Judgment of Absolute Divorce?[1]

For the reasons outlined *infra*, we affirm the decision of the trial court.

FACTUAL & PROCEDURAL BACKGROUND

The parties in this divorce action were married on April 25, 2009, and one child was born to the marriage. On November 12, 2018, Wife filed a Complaint for Absolute

[1] Husband identifies the following four questions for appellate review in his brief:

I. Are agreements placed on the record binding on the parties and enforceable?
II. Can a party to a contract ratify a contract by accepting the consideration?
III. Can the court find a martial [sic] change in circumstances and change legal custody, when there is no evidence presented regarding the minor child, or that the parties are unable to reach joint decisions regarding the minor child?
IV. Is it permissible for the court to award a party relief not specifically pled?

Divorce, or in the alternative, Limited Divorce, Custody, Child Support, Alimony and for further relief. On August 22, 2019, the parties appeared before a Magistrate and agreed to a custodial arrangement concerning their minor child, memorialized into a Consent Order, dated November 21, 2019. Pursuant to their agreement, the parties shared joint legal custody and primary physical custody was granted to Wife. Additionally, Husband was ordered to "submit to an alcohol assessment". The trial court also ordered "that neither party shall consume or be under the influence of alcohol in the presence of the minor child."

On October 21, 2020, Wife filed a Motion to Modify Custody and also filed an Amended Complaint for Absolute Divorce, Custody, Child Support, Alimony and for further relief. On April 6, 2021, the parties convened for a hearing on Wife's Motion to Modify Custody and Wife's Petition for Contempt. After not concluding the hearing on that date, the hearing was scheduled to continue on May 12, 2021. However, due to Husband's counsel's trial schedule, the hearing was continued until July 26, 2021. On that day, the hearing proceeded but was continued to August 16, 2021, after the hearing was not concluded. Following the conclusion of the hearing, in an Order dated August 23, 2021, the trial court ordered that Wife continue to have primary physical custody of the minor child and ordered that the parties share joint legal custody with tie breaking authority to Wife.

On April 8, 2021, Wife filed her Second Amended Complaint for Absolute Divorce, Custody, Child Support, Alimony and for further relief. Husband filed his Answer on December 15, 2021. The parties appeared on December 16, 2021, for a hearing on the merits of Wife's Complaint for Absolute Divorce. However, the hearing was continued

due to the illness of one party.

The parties reappeared for trial on the merits on April 28 and 29, 2022. At that time, the parties began negotiations to see if they could settle the case in full or in part. The parties entered into a partial agreement that narrowed the contested issues in the case. The terms of the partial agreement provided that the parties agreed that the custodial arrangement would continue pursuant to the previous Orders of Court. Furthermore, the agreement provided that Husband would purchase Wife's interest in the marital home and pay her a total sum of $56,000.00 via $41,000 in cash and $15,000 from Husband's civilian thrift savings plan (TSP) within six months. Husband agreed to pay Wife's attorney's fees totaling $5,000 by monthly payments of $100.00, beginning on June 1, 2022. The parties also agreed that Wife would receive one half of Husband's larger civilian thrift savings plan (TSP) account.[2] The partial agreement further provided that Wife would receive a one-half marital share of Husband's military pension on an if, as, and when basis. Following the terms of the agreement, the trial court inquired as to whether custody was fully resolved in the case. Counsel for Wife informed the court that custody was agreed to but not support, extraordinary medical expenses, and daycare expenses. Counsel for Husband expressly agreed that the agreement, as placed on the record was accurate. "THE COURT: Mr. Brown is that your client's agreement as what's read into the record by Ms. Jacobson? MR. BROWN: Yes, Your Honor."). The parties proceeded with a contested

[2] Husband has two thrift savings plans, one is a civilian plan, while the other is a military plan. According to the terms of the agreement at the time of trial, Husband's military plan was valued at approximately $15.00. The parties agreed that Wife would receive her one-half interest from the larger of the two accounts.

hearing on the remaining issues of the marriage, namely alimony, child support, extraordinary medical expenses, and daycare expenses.

During the contested hearing, Husband took the stand to testify. Counsel for Wife asked him if his only retirement benefits were the military pension and thrift savings plans already resolved by agreement, to which he responded in the affirmative. Shortly thereafter, Counsel for Wife inquired whether Husband had any retirement assets under FERS (Federal Employees Retirement System). Husband conceded that he was entitled to civil service retirement funds under FERS. Ultimately, Husband argued before the trial court that Wife waived her interest in his FERS benefits as a term within their partial agreement. ("Mr. Sidler takes the position that FERS was part of the settlement agreement that was – specifically said military pension.") Wife countered by arguing that any interest in FERS was not waived and Husband failed to identify these assets within the discovery process. After listening to argument by all sides, the trial court ruled that FERS was properly pled in the Wife's Second Amended Complaint and further concluded that the Wife did not waive her interest in the FERS benefits.

Husband argued in his closing argument that Wife was not entitled to receive rehabilitative alimony because she did not plead it. In her closing, Wife argued that the Second Amended Complaint included a request for alimony in the prayer for relief and it was within the power of the trial court to award it. The trial court ruled that Wife was entitled to rehabilitative alimony in the amount of $1,000 per month for a term of thirty-six (36) months. The trial court also granted Wife fifty percent (50%) of the marital share of Husband's FERS on an if, as and when basis. The trial court signed the Judgment of

Absolute Divorce on May 26, 2022, that memorialized the terms of the agreement and included the court's rulings. Following the Judgment, on June 6, 2022, Husband filed a Motion to Reconsider and Amend Order and Request for Hearing. The trial court denied Husband's Motion to Reconsider on August 8, 2022. On August 22, 2022, Husband timely filed this appeal to the Judgment of Absolute Divorce.

STANDARD OF REVIEW

As outlined by Md. Rule 8-131, "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c); *see also Gen. Motors Corp. v. Schmitz,* 362 Md. 229, 233 (2001); *Spector v. State*, 289 Md. 407, 433 (1981). The Supreme Court of Maryland has held that "[t]he appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Gen. Motors Corp.*, 362 Md. at 233-234 (quoting *Ryan v. Thurston*, 276 Md. 360, 390 (1975)). However, when the trial court's ruling "involves an interpretation and application of Maryland statutory and case law," appellate courts are required to "determine whether the lower court's conclusions are legally correct, under a *de novo* standard of review." *Nesbit v. Gov't Employees Ins. Co.,* 382 Md. 65, 73 (2004).

DISCUSSION

I. *FERS Retirement Benefits*

A. Parties' Contentions

Husband argues that the parties entered into a binding agreement on April 28, 2022. Husband further argues that once the parties reached a binding partial separation agreement then the trial court did not have the authority to modify it. Husband contends that contrary to the trial court's ruling, Wife was aware of Husband's FERS benefits. Specifically, Husband asserts "[a]t all times during the (over four (4) hour) negotiation occurring on April 28, 2022, [Wife] knew or should have known about the FERS retirement, because it was disclosed four (4) months prior in the draft settlement agreement and a week before trial on the updated pay stub provided." Husband asks that we vacate the award of Wife's interest in the FERS civilian retirement benefits.

Wife responds that the trial court properly concluded that Husband's FERS benefits were not part of the parties' partial agreement. She contends that Husband failed to disclose these benefits during the discovery process despite specific interrogatories aimed at ascertaining any and all retirement benefits. Wife argues in the alternative that Husband committed fraud by failing to disclose a material fact. Wife does not seek to set aside the agreement but rather asks the Court to affirm the trial court findings that the partial agreement did not include the FERS benefits, that Wife did not waive any interest in her marital share, that Husband failed to alert Wife of her interest in FERS, and there was no agreement as to FERS.

B. Analysis

First, we will begin with a review of the specific factual scenario underlying the FERS benefits issue. As discussed *supra*, after the parties put their partial agreement on the record, they proceeded with trial on the remaining contested issues. During husband's testimony on cross-examination, counsel for Wife asked him, "And the only two retirements you have are pension and TSPs?" To which, he responded "Yeah." Shortly thereafter, the issue of the FERS benefits arose for the first time at trial.

> THE COURT: Okay. Let me see if there's anything else sir. Any questions based on mine, Ms. Jacobson?
>
> MS. JACOBSON: I do have a follow-up, Your Honor. Realizing he's a government employee, and I just asked him if he had any other retirements.
>
> FURTHER QUESTIONS
> MS. JACOBSON: Sir, to the extent you are also entitled to a FERS, which is another governmental retirement, did we have this conversation?
>
> MS. JACOBSON: I mean, she would be entitled to her one-half marital share, and I'm not waiving that because we didn't know it exists because it wasn't provided.
>
> THE COURT: Do you think talking to counsel without leave of the Court is proper?
>
> MS. JACOBSON: I do not, Your Honor. I apologize.
>
> THE COURT: Thank you. Ask your questions.
>
> MS. JACOBSON: I presume that if there was another pension plan out there, you would agree that your wife would be entitled to her one-half marital share of that. Is that correct?
>
> MR. BROWN: Objection, calls for a legal conclusion.
>
> THE COURT: Yeah, he wouldn't know the Bang's formula. Would you agree, if you have another pension, she may have a marital share of that?

Isn't that true, sir? Isn't that your understanding?

THE WITNESS: Probably, yeah.

THE COURT: Okay.

THE WITNESS: I thought that we'd already done that.

THE COURT: Well, do you have something under FERS?

THE WITNESS: Yeah, that's my civil service retirement.

MS. JACOBSON: So, may I speak to counsel, Your Honor, about this issue?

THE COURT: You may.

MS. JACOBSON: And may I just approach him now?

THE COURT: Sure.

THE WITNESS: I didn't hide it.

Following this exchange, Husband argued that the FERS benefits "was part of the settlement agreement that was – specifically said military pension." Wife argued that the FERS were not part of the partial agreement "because he never gave me the information because he failed in his discovery horrendously." The court stated:

> It appears that it is not part of the settlement that was put on the record. And as I said ten minutes ago, if it's properly pled, and she can prove her interest in that, then I believe it is something she's allowed to litigate rather than part of the agreement, or waived, let's say.

When trial resumed the next day, the trial court heard argument from both sides concerning the FERS issue. Ultimately, the trial court found that Wife properly pled her share of the FERS benefits. Specifically, the court stated:

> I conclude that FERS is properly pled. Not only was it in discovery, it is requested in the Complaint…I further conclude the agreement between the

> parties did not include the first FERS, the Federal Employee Retirement system. There was not an agreement that she would waive that. And the [Husband] failed to alert the [Wife] that he had interest in a FERS. Now, you would expect that it might be known, but you cannot demand that it be known. It came up during the testimony of the [Husband] called by the [Wife]. And I conclude that there is no agreement on the [Wife]'s interest in the [Husband]'s FERS, Federal Employees Retirement System, and, accordingly she may proceed on that subject.

In its ruling after the trial on the merits, the trial court concluded that "[t]he FERS is absolutely marital property and her interest in that is one-half of the 156 months they've been married."[3]

Husband advances three arguments why his FERS benefits were part of the parties' partial settlement agreement and why the trial court's award should be vacated. First, Husband asserts that the presence of his interest in FERS benefits were disclosed to opposing counsel "at a minimum of three (3) times." Next, Husband contends that Wife waived her interest by agreeing to the partial agreement and limiting the issues for trial. Finally, Husband argues that Wife ratified the partial agreement by accepting $41,000.00 from Husband. We shall consider these contentions in order.

First, we will address the issue of whether the FERS benefits were disclosed.

[3] The Judgment of Absolute Divorce, entered on May 26, 2022, ordered:

> [T]hat [Wife] be and is hereby awarded fifty (50%) percent of the martial [sic] share of the [Husband]'s federal employee retirement system pension (FERS) on an if, as and when basis. [Wife]'s entitlement shall also include any pre-retirement, post-retirement, death benefit, survivor or other similar benefit available, along with any future cost of living adjustments. [Wife] is likewise granted the full survivor benefit, with such to be borne solely by [Wife]. To the extent [Husband]'s benefit is in any way reduced by the cost of [Wife]'s survivor benefits, [Wife] shall reimburse [Husband] for such benefit costs within fifteen (15) days of evidence of such cost.

Husband argues that the FERS benefits were disclosed in various pages in both his initial document production and again in an updated document production.[4] He also asserts that the FERS retirement benefits were explicitly stated in a proposed settlement agreement that was sent to Wife's counsel. Section 9.4 of the parties' Proposed Settlement Agreement says "[w]ife shall be entitled to her marital share of Husband's military and civilian pensions on an if, as, and, when basis."

In response to the disclosure argument, Wife recounts the significant roadblocks that she faced to get information during the discovery process. The trial court issued two Orders to Compel Husband to provide discovery responses.[5] Despite being ordered to provide complete discovery responses by the trial court, Wife contends that Husband still failed to meet his discovery obligations. According to Wife, she propounded discovery on Husband that requested Husband to "[s]tate all property…[s]uch property shall include, but not be limited to, real estate, stocks, bonds, or other securities, bank accounts, cash, tangible personal property, automobiles, boats, pension plans or funds, **retirement benefits** and insurance policies." (emphasis added). During discovery, Wife also requested

[4] The documents where Husband claims to have disclosed the FERS retirement benefits are quarterly statements of Husband's Thrift Savings Plan and a Civilian Leave and Earnings Statement. On the TSP quarterly statement, in small print on the right upper side of the page appears "Retirement Coverage: FERS." As for the Civilian LES document, item 19 reads, "Cumulative Retirement FERS: 7322.37." These lines of text are neither conspicuous nor readily apparent without close inspection of the documents.

[5] On August 15, 2019, the trial court issued an Order granting Wife's Motion to Compel and for Sanctions. The court ordered Husband to file "full and complete responses to discovery within seven (7) days." On September 22, 2021, the trial court granted Wife's Second Motion to Compel and for Sanctions and ordered complete discovery responses within ten days.

information about any retirement benefits that Husband was entitled to through a request for the production of documents. She argues that no responses indicated that Husband was entitled to FERS benefits.[6] Finally, Wife contends that Husband failed to list his interest in FERS benefits in the Joint Statement of Marital and Non-marital Property in contravention of Md. Rule 9-207.

The goal of the discovery process is to provide each party with all of the relevant facts in the case. *Androutsos v. Fairfax Hosp.,* 323 Md. 634, 638 (1991). The disclosure of all relevant facts aids the parties "to prepare their claims and defenses, thereby advancing the sounds and expeditious administration of justice." *Baltimore Transit Co. v. Mezzanotti*, 227 Md. 8, 13 (1961). As the Supreme Court wrote, "[m]odern discovery statutes or rules are intended to facilitate discovery, not to stimulate the ingenuity of lawyers and judges to make the pursuit of discovery an obstacle race." *Barnes v. Lednum*, 197 Md. 398, 407-07 (1951) (quoting *Hickman v. Taylor*, 329 U.S. 507 (1946)).

Despite Husband's arguments that he disclosed his interest in FERS retirement benefits, the record indicates that he failed to affirmatively identify this property during the discovery process. Husband did not disclose these benefits in his Responses to Interrogatories or in the Joint Statement of Marital Property, despite the presence of two Orders to Compel. Husband may have subsequently provided documents that contained references to his FERS benefits, albeit days before trial on the merits. However, this does

[6] Husband's Response to the aforementioned interrogatory was "I contend that I have a $50,000.00 interest in the property known as 545 Benforest Drive, Severna Park, Maryland. Maryland monies were used for the repayment of said loan."

not adhere to the spirit of the discovery rules. Neither does mention of a "civilian pension" in a Proposed Settlement Agreement discharge Husband of his earlier failures to abide by his discovery requirements. For these reasons, we decline to accept Husband's argument that the presence of his FERS retirement benefits were disclosed to Wife. We also decline to find that the failure to disclose the presence of the FERS benefits rises to the level of fraud by Husband or Husband's counsel.

Next, we will turn to Husband's contention that Wife waived any interest in his FERS benefits by agreeing to the parties' partial agreement. As the Supreme Court of Maryland has previously noted, "separation agreements…are generally favored by the courts as a peaceful means of terminating marital strife and discord so long as they are not contrary to public policy." *Turner v. Turner*, 147 Md. App. 350, 403 (2002) (quoting *Gordon v. Gordon*, 342 Md. 294, 300-01 (1996)). This concept has also been codified in Maryland's statutory scheme. "A husband and wife may make a valid and enforceable deed or agreement that relates to alimony, support, property rights, or personal rights." Md. Code Ann., Family Law ("FL") § 8-101(a). Upon review, a separation agreement is "subject to the same general rules governing other contracts." *Rauch v. McCall*, 134 Md. App. 624, 637 (2000), *cert. denied*, 362 Md. 625 (2001).

Separation agreements that do not demonstrate any blatant injustice are "presumptively valid." *Blum v. Blum*, 59 Md. App. 584, 596 (1984) (internal citations omitted). Therefore, "where a contract is plain as to its meaning, there is no room for construction and it must be presumed that the parties meant what they expressed." *Pumphrey v. Pumphrey*, 11 Md. App. 287, 290 (1971). Husband argues that due to the

presumptive validity given to settlement agreements, the trial court did not have the authority to alter the agreement. He further argues that the existence of the FERS benefits was disclosed to Wife and her acceptance of the partial agreement included a waiver as to her interest in the FERS benefits.[7] However, having already concluded that Husband did not disclose the existence of the FERS benefits to Wife, this argument does not have merit.

It is unreasonable to find that a party can waive her interest in property that had not been disclosed to her. Husband is correct in his contention that if parties agree to resolve some of the issues in a case, then the parties have implicitly agreed to waive argument as to the issues covered by the agreement. However, this waiver does not extend to issues that were not known to one of the parties or were not disclosed. We conclude that Wife did not waive her interest in the FERS retirement benefits because it had not been disclosed to her and it was not contemplated in the partial settlement agreement. Instead, it was an issue outside of the agreement and therefore proper for the trial court to adjudicate as one of the

[7] Husband cites to *Nationwide Mut. Ins. Co. v. Voland*, 103 Md. App. 225 (1995) to stand for the proposition that he had no duty to volunteer the existence of the FERS retirement benefits during the parties' negotiations. Husband's reliance on *Voland* is misplaced in the instant case. In *Voland*, following an automobile accident, the plaintiff filed suit against the defendant-driver. 103 Md. App. at 227. The plaintiff filed an Amended Complaint that named his own insurance carrier, Nationwide, as a defendant for denying his insurance claim. *Id.* As the case progressed, Voland ultimately settled his claim with the defendant-driver but did not inform his own insurance carrier about the settlement. *Id.* at 227-28. The plaintiff later settled his own claim against his insurance carrier. *Id.* at 228. However, Nationwide refused to pay Voland according to their settlement terms after they discovered that he had settled his claims against the defendant-driver without their consent. *Id.* The Court held that Voland's failure to disclose his settlement to Nationwide did not constitute misrepresentation or fraud. *Id.* at 236. This case is plainly distinguishable on the basis that Husband had the duty to disclose the FERS benefits during the discovery process after specific requests by Wife.

remaining issues of the marriage. The trial court properly ruled that the agreement did not include the FERS benefits and there was no agreement that Wife would waive her interest.

Finally, we will address Husband's argument that Wife ratified the agreement by accepting payment in the form of $41,000.00. Husband asserts that Wife ratified the agreement by accepting a payment of $41,000.00 representing one-half of the equity of the marital home. This provision was one aspect of the parties' resolution of their marriage and constituted part of the agreed upon monetary award that would be paid to Wife. The total monetary award was in the amount of $56,000.00. Husband argues that because Wife has ratified the agreement by accepting the payment she cannot "assert that there was no agreement." Wife does not contend that there was no partial agreement or seek recission of the parties' agreement. Instead, Wife asserts that she acted in accordance with the trial court's ruling and accepted the payment in accordance with the Judgment of Absolute Divorce.

Husband cites to various cases that stand for the proposition that a party to the agreement must either accept the agreement in whole or reject in whole. As the Supreme Court of Maryland has stated, "[a party] is not permitted to confirm the settlement by claiming its benefits, and repudiate the authority by which it was effected. [A party] must either adopt or reject it – ratify the whole, or no part thereof." *Smith v. Merritt Sav. & Loan, Inc.*, 266 Md. 526, 536-37 (1972). This is well settled law within Maryland. However, the factual situation in this case is different than a typical ratification case. As the trial court concluded, the parties' agreement to resolve certain issues resulting from their marriage was valid and is represented exactly as the parties agreed in the Judgment of Absolute

Divorce. The issue of the FERS retirement benefits that arose later at trial is wholly independent from the parties' agreement. As we discussed *supra*, the existence of the FERS benefits was not properly disclosed to Wife before their partial agreement and was not contemplated in the partial resolution of the case. Just as Wife did not implicitly waive her interest in the FERS benefits, she did not commit error by accepting the payment. Wife does not seek to set aside the agreement or argue that it was in error. Instead, by accepting the payment of $41,000.00, Wife acted in accordance with the decision of the trial court and the specific decrees of the Judgment of Absolute Divorce. As to the issue of whether Wife ratified the agreement, we hold that Wife properly accepted the payment of $41,000.00 according to the parties' agreement as to the monetary award.

In conclusion, as to the FERS issue, we affirm the decision of the trial court. Specifically, we conclude that the trial court did not err by finding that FERS was properly pled and the parties' agreement did not include Husband's FERS retirement benefits. Therefore, the trial court properly awarded Wife's marital share of the FERS retirement benefits to her.

II. *Circuit Court's Award of Rehabilitative Alimony*

A. Parties' Contentions

Husband argues that the trial court lacked the authority to order him to pay rehabilitative alimony to Wife. He posits that Wife failed to include a request for rehabilitative alimony in the operative Second Amended Complaint. In support of this proposition, Husband points this Court to *Huntley v. Huntley*, 229 Md. App. 484 (2016). Wife responds that her request in the Second Amended Complaint was for "alimony,

pendente lite and permanently."[8] She contends that this prayer for relief put Husband on notice of a claim for alimony. Alternatively, Wife argues that her prayer for general relief gave the trial court authority to grant rehabilitative alimony.[9]

B. Standard of Review

Upon review by the appellate courts, trial courts conducting divorce proceedings are given great deference regarding their findings and judgment. *Tracey v. Tracey*, 328 Md. 380, 385 (1992). Specifically, an alimony award by the trial court "will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong." *Id.* (citing *Brodak v. Brodak*, 294 Md. 10, 28-29 (1982)).

C. Analysis

Since the adoption of the Maryland Alimony Act in 1980, alimony may be awarded either for a fixed term, referred to as "rehabilitative alimony" or for an undefined amount of time, referred to as "indefinite alimony". *Walter v. Walter*, 181 Md. App. 273, 281 (2008). "Because the purpose of alimony is the 'rehabilitation of the economically dependent spouse,' Maryland favors the provision of rehabilitative alimony for a fixed term to assist the dependent spouse in becoming self-supporting." *Kaplan v. Kaplan*, 248 Md.

[8] In Wife's Second Amended Complaint for Absolute Divorce, Custody, Child Support, Alimony and for further relief, prayer for relief (b) reads in full: "[t]hat Defendant be ordered to pay a reasonable sum of money as alimony, pendente lite and permanently."

[9] In Wife's Second Amended Complaint for Absolute Divorce, Custody, Child Support, Alimony and for further relief, prayer for relief (l) reads in full: "[t]hat she be granted such other and further relief as the nature of this cause may require."

App. 358, 371 (2020) (quoting *St. Cyr v. St. Cyr*, 228 Md. App. 163, 184–85 (2016)).

In determining alimony, the court must look to Md. Code Ann., Fam. Law ("FL") § 11-106(b), which states:

> (b) In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:
>
> (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
>
> (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
>
> (3) the standard of living that the parties established during their marriage;
>
> (4) the duration of the marriage;
>
> (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
>
> (6) the circumstances that contributed to the estrangement of the parties;
>
> (7) the age of each party;
>
> (8) the physical and mental condition of each party;
>
> (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
>
> (10) any agreement between the parties;
>
> (11) the financial needs and financial resources of each party, including:
>
> (i) all income and assets, including property that does not produce income;
>
> (ii) any award made under §§ 8-205 and 8-208 of this article;
>
> (iii) the nature and amount of the financial obligations of each party; and
>
> (iv) the right of each party to receive retirement benefits; and
>
> (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

Id. In the case *sub judice*, after considering all of the factors under FL § 11-106(b), the trial court ruled that Wife was entitled to $1,000.00 per month in rehabilitative alimony for the duration of three years.

In the instant case, the trial court took great care to methodically make findings of fact for each factor under FL § 11-106(b). As for the first factor, the court found that Wife "is unable to [be self-supporting] at this time or any time in the near future." For factor two, the court ruled that the testimony showed that "one or two years is not enough time for [Wife] to find a job that can pay for her and [the minor child]." The trial court found that the parties had a "disparate" lifestyle during the marriage where Wife gave up luxuries such as vacations while Husband took various trips but overall "money was tight". The duration of the marriage was 156 months or 13 years. For the fifth factor, the court ruled that Husband earned a substantial income and Wife was the minor child's primary caregiver and paid most of the household bills. In summary, the court noted that "[s]he ran the household." The court ruled that the circumstances that contributed to the estrangement of the parties was a lack of intimacy between the parties. At the time of the trial on the merits, both parties were 45 years old. As to factor eight, the court recounted that Husband had a number of ailments that led to him receiving disability, but he continued to work. Whereas "Wife has rheumatoid arthritis, among other things." The court found that Husband had the ability to meet his own needs and contribute to Wife's needs as evidenced in his expendable income. The trial court ruled that although the parties reached a partial agreement, they did not agree on alimony.

Next, for the financial needs and resources of each party, the trial court generally noted that "[h]ers are limited" while Husband's needs and resources were "pretty generous." Specifically, the court recounted that Wife "doesn't have many assets" whereas Husband "has the house that is rent bearing." The trial court also duly considered the

monetary award of $56,000 in total, pursuant to the parties' agreement, and the entitlement of both parties to retirement benefits. Finally, the trial court ruled that factor twelve did not apply. The trial court ultimately "concluded under the totality of the circumstances given her income, her disabilities, her husband's income, that $1,000 per month for three years is appropriate."

At trial, Husband argued that he would be prejudiced, and his due process rights would be violated if the court awarded rehabilitative alimony. He further argued that he was not on notice of a specific request for rehabilitative alimony. Husband argued in the alternative, that if the trial court disagreed with the pleading argument, then Wife was not entitled to rehabilitative alimony. On appeal, Husband frames the issue pursuant to his pleading argument.

After hearing Husband's argument regarding pleading, the trial court concluded, "[i]t is not my view that this pleading precludes [Wife] from arguing for, asking for, or the Court awarding rehabilitative alimony." The court continued that "[a]nd if it did, [Husband] would not like which side of the scale I had to come down on, because the disparity is substantial." The trial court signaled that if given the choice between awarding permanent alimony or no alimony, the court would award permanent alimony to Wife.

In support of the decision to award rehabilitative alimony, the trial court cited to *Whittington v. Whittington*, 172 Md. App. 317 (2007) and *Innerbichler v. Innerbichler*, 132 Md. App. 207 (2000). The trial court recounted that "[t]he trial court has broad discretion in awarding alimony, which may include both rehabilitative and indefinite components." In *Whittington*, we reviewed an award of indefinite alimony under the unconscionable

disparity standard. 172 Md. App. at 340. We noted that a trial court is "not required to award indefinite alimony (or rehabilitative alimony)." *Id.* at 339. Furthermore, trial courts are empowered to "award no alimony, rehabilitative alimony, or upon a proper finding of unconscionable disparity, indefinite alimony." *Id.* at 339-40. We clarified that "the law does not make any of the factors listed in [FL] section 11-106(b) determinative or mandate that they be given special weight. The decision to award alimony and, if so, for what period of time, is fact-intensive and not subject to a formulaic resolution." *Id.* at 341. In *Whittington*, the Court ultimately vacated the trial court's award of indefinite alimony because the trial court failed to exercise discretion and apply FL § 11-106. *Id.* at 339. In *Innerbichler*, we considered two aspects of the trial court's divorce decree, specifically, the monetary award and the award of indefinite alimony. 132 Md. App. at 214. We ultimately affirmed the trial court's decision as to both issues. *Id.* at 248. In reaching that decision, we recited the prevailing caselaw that denotes the broad discretion that trial courts have in determining alimony. *Id.* at 246. Also, on appeal, the trial court's determination of alimony is given due deference by the reviewing court. *Id.*

Next, we will consider Husband's reliance on *Huntley v. Huntley*, 229 Md. App. 484 (2016). In *Huntley*, Ms. Huntley filed a Complaint for Absolute Divorce that sought alimony, a monetary award, and a share of her husband's retirement benefits. 229 Md. at 486. In Mr. Huntley's Answer, he denied her entitlement to a monetary award and requested that alimony be denied. *Id.* Until the onset of trial, Mr. Huntley never filed a claim for a marital share of his wife's retirement benefits. *Id.* At trial, the court denied his request for a marital share of Ms. Huntley's retirement benefits because he had never

included that request in any pleadings. *Id.* at 486-87. On appeal, we affirmed the trial court's decision to deny Mr. Huntley's late request for a share of Ms. Huntley's retirement benefits. *Id.* at 490. We reasoned that "the authority of the court to act in any case is still limited by the issues framed by the pleadings." *Id.* at 494 (quoting *Gatuso v. Gatuso*, 16 Md. App. 632, 636 (1973)).

This Court dealt again with the issue of pleading in the context of a divorce proceeding in *Lasko v. Lasko*, 245 Md. App. 70 (2020). In *Lasko*, Ms. Lasko requested in her Answer for the trial court to distribute the parties' marital property and a general request for all further relief allowed by law. 245 Md. App. at 79.[10] Mr. Lasko contended that Ms. Lasko failed to make an explicit request for a monetary award and, therefore, the trial court did not have the authority to award it. *Id.* at 74. On appeal, we held that Ms. Lasko's Answer "sufficiently set forth a claim for a monetary award under the Family Law Article, and as a result, [Mr. Lasko] was on notice that he was subject to the possibility of the grant of a monetary award". *Id.* at 83.

We find that the case *sub judice* is more akin to *Lasko* than *Huntley.* Unlike in *Huntley*, in this case, Wife did make a request for alimony in her initial Complaint for Absolute Divorce, her Amended Complaint, and in the operative Second Amended

[10] The specific language that Ms. Lasko used in her Answer is as follows: "[t]hat the Court determine, at the time of the entry of its Judgment, which of the property owned by the parties is marital property and value of the same". *Lasko,* 245 Md. App. at 320-21. Ms. Lasko's general request for relief stated "[t]hat Defendant [Amanda] be granted all relief to which she may be entitled pursuant to the Family Law Article of the Annotated Code of Maryland." *Id.*

Complaint. As the predecessor cases to *Huntley* and *Lasko* emphasized, Wife framed the issue of alimony in her pleadings to put Husband on notice that it would be at issue in the case. *See Gatuso v. Gatuso*, 16 Md. App. 632, 633 (1973) (stating that the 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"); *Ledvinka v. Ledvinka*, 154 Md. App. 420, 428 (2003) (holding that the trial court "exceeded its authority in setting aside the conveyance when no cause of action sufficient to put appellant on notice that the property was in dispute was pleaded in this case.") Throughout every step in the life of the case, Husband was on notice that alimony was at issue. In fact, Husband was well prepared to address the court on the issue of alimony at the divorce trial.[11] Furthermore, although not dispositive of the issue, Wife's general request for relief lends further support to her argument that alimony was properly pled.

Therefore, after applying due deference to the trial court's decisions on alimony and based on the past precedent of this Court, we hold that the issue of rehabilitative alimony was properly pled. Accordingly, the trial court did not err by awarding rehabilitative alimony to Wife.

III. *Custody*

A. Parties' Contentions

In his opening brief, Husband argues that the trial court improperly concluded that there was a material change in circumstances to warrant a modification of custody.

[11] A luxury that Wife did not have concerning the FERS Retirement Benefits at the time of trial.

Husband further contends that there was no testimony of any behavior that adversely affected the parties' minor child. Nevertheless, Husband contends that "[n]otwithstanding the court acknowledging that the issues complained of by [Wife] were resolved and none of which really affected him, the court modified custody and awarded the [Wife] sole legal custody." In his Reply Brief, Husband "corrects the misstatement that [Wife] was awarded sole legal custody when she was awarded joint legal with tie-breaker authority" and reserves his initial argument that there was no material change in circumstances. Finally, Husband asks this Court to "vacate the award of joint legal custody with tie-breaker."[12]

Wife contends that custody is not properly before this Court. Wife argues that the parties have shared custodial rights of their minor child since November 21, 2019. Specifically, Wife argues that the parties entered into a Consent Order that awarded joint legal custody of the minor child. Furthermore, Wife argues that when the parties appeared before the Court for their divorce trial on April 28, 2022, Husband conceded that custody was not at issue for the trial court to determine. Wife asks this Court to uphold the decision of the trial court.

B. Analysis

Before addressing the parties' arguments on the custody of their minor child, we will first recount the history of the case. Wife filed for Absolute Divorce in 2018 and requested full custody of the minor child. On November 21, 2019, the parties consented to joint legal custody of their minor child, physical custody to Wife, and visitation to

[12] In his initial brief, Husband asked this Court to "vacate the award of sole legal custody."

Husband. The Consent Order further ordered the Husband participate in an alcohol assessment and that neither party consume alcohol in the presence of the minor child. Approximately one year later, Wife filed a Motion to Modify Custody and Visitation that alleged that Husband was under the influence of alcohol around the minor child in contravention of the Consent Order. Wife requested sole legal custody of the minor child and supervised visitation for Husband. The parties appeared for a hearing on Wife's Motion to Modify on April 6, 2021. The hearing was not concluded on that date and continued to May 12, 2021. After counsel had a conflict, the hearing was further continued until July 26, 2021. Again, the hearing was not concluded on that date and continued to August 16, 2021.

On that date, after finishing the hearing, the trial court gave a thorough recitation of his findings and determined that there was a material change in circumstances to warrant a modification in custody. The trial court recited the evidence and testimony from the hearing that documented a contentious relationship between the parties. Specifically, the trial court found that "[Husband] continues to drink around [the minor child]" and ruled that tie-breaking authority goes to Wife. The trial court entered an Order on August 23, 2021, that memorialized its decision and ruled that Wife continued to have primary physical custody and the parties have joint legal custody with tie breaking authority to Wife.

As stated *supra*, the parties appeared on April 28, 2022, for a hearing on the merits of their divorce. On the first day of that hearing, the parties reached a partial agreement. In the recitation of that agreement, counsel for Wife stated, "[i]t is my understanding that the parties agree that custody has already been resolved by way of the previous Order of Your

Honor." At the conclusion of the agreement, the court asked counsel for Husband, "is that your client's agreement as what's read into the record?" Counsel for Husband responded, "[y]es, Your Honor." During closing argument, counsel for Husband stated, "custody has already been determined." Following closing argument from both sides, the trial court gave his ruling as to the merits of the parties' divorce. The court stated that "the custody of [the minor child] is resolved" and later reiterates "custody is settled…[a]ccess has been decided." At no point over the two-day divorce hearing, did either party argue that custody was not settled or should be modified.

Following the hearing, the trial court entered the Judgment of Absolute Divorce, on May 26, 2022. The trial court ordered that "pursuant to the partial agreement of the parties which was placed on the record on April 28, 2022, custody of the parties' child was previously resolved in this case by Order dated August 23, 2021 and the same shall remain in full force and effect." The Judgment of Absolute Divorce makes no further mention of custody.

A review of the record shows that custody was fully litigated by the time of the divorce hearing on April 28, 2022. Furthermore, the parties explicitly agreed that custody was not at issue at the trial on the merits. Therefore, we affirm the trial court's decision to continue the custodial arrangement as memorialized in the Order of August 23, 2021.

CONCLUSION

Accordingly, we affirm the decision of the trial court.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.