

Circuit Court for Prince George's County
Case No. CAD22-19749

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1045

September Term, 2023

PAMELA R. FIELDS

v.

KEITH FIELDS

Graeff,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: June 4, 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).

Appellant, Pamela R. Fields (“Wife”), and appellee, Keith Fields (“Husband”), were divorced in the Circuit Court for Prince George’s County. Wife appeals the court’s monetary award to Husband of one half the equity in the parties’ marital home and \$3,000 for attorney’s fees.

Representing herself in this Court, she presents two “issues”¹ for our review, which we have rephrased² as follows:

1. Did the circuit court err in granting the monetary award to Husband?
2. Did the circuit court err in granting Husband’s counsel’s request for attorney’s fees?

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

On June 8, 2012, Wife closed on a home titled in her name in Brandywine, Maryland (“the property”) for \$180,000. When she did it, the parties were engaged to be married, and the \$1,000 down payment on the property was made by a check drawn from the parties’ joint savings account. Husband testified that the house was purchased in Wife’s name,

¹ As originally phrased, Wife’s issues presented were:

1. The lower court erroneously judged the [former marital property] as mar[it]al property from the judg[ement] on June 26, 2023 . . . and to provide a monetary award 114,000 from the equity in the property.
2. The lower court error in granting attorney fees of 3,000 on the judgment for absolute divorce.

² Wife was represented by counsel at trial in circuit court.

instead of jointly, to secure a better interest rate because his credit “wasn’t that strong[.]” They married on September 1, 2012. A thirty-year mortgage covered the purchase price.

Sometime in 2015, the parties opened a joint checking account that was used to pay the household bills and the mortgage payments. Both parties made monthly transfers into the joint account from their personal checking accounts.

Other relevant facts will be included in the discussion of the issues.

DISCUSSION

I.

Wife contends that the court erred in determining that the property was marital under Md. Code, FAM. LAW (“FL”) § 8-201(e)(3)(i) because, according to Wife, she “acquired” the property “before the marriage.” Husband responds that the court did not err in determining that the property was marital and that the court properly exercised its discretion in granting the monetary award representing fifty percent of the equity in the property.³

³ The court’s judgment of absolute divorce incorporated by reference “the reasons stated on the record” by the court “on June 23, 2023[.]” Our review of Wife’s challenges to the monetary award and the award of fees is somewhat constrained because she did not supply the Court with a transcript of that oral opinion. *See* Md. Rule 8-411(a)(2) (requiring appellants to provide this Court with “a transcription of any portion of any proceeding relevant to the appeal”). Wife did order an audio recording of the proceedings that took place on June 23, 2023, but it appears that the recording was not made part of the record on appeal. An audio recording of the proceeding, absent a written transcript, does not comply with Md. Rule 8-411. Rather than dismiss for that reason, we believe the otherwise available record is sufficient to review the court’s marital property determination and the award of attorney’s fees. In doing so, we see no reason not to assume that the court knew the law and applied it based on its factual findings and credibility assessments. *See Green v. State*, 259 Md. App. 341, 361 n.11 (2023) (noting that the circuit court is presumed to know the law and apply it correctly).

This Court has described the standard of review for the division of marital property and monetary awards as follows:

First, we utilize the “clearly erroneous” standard to the court’s determination of what is, and what is not, marital property because “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); *see also* Md. Rule 8-131(c). Factual findings that are supported by substantial evidence are not clearly erroneous. *Collins v. Collins*, 144 Md. App. 395, 409 (2002). Second, as to the court’s decision to grant a monetary award, and the amount thereof, we apply an abuse of discretion standard of review. *Gallagher v. Gallagher*, 118 Md. App. 567, 576 (1997). Within that context, “we may not substitute our judgment for that of the fact finder, even if we might have reached a different result.” *Innerbichler*, 132 Md. App. at 230.

Richards v. Richards, 166 Md. App. 263, 271-72 (2005) (cleaned up).

Marital property is defined as “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). Marital property generally does not include assets “(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.” FL § 8-201(e)(3).

“In determining marital and nonmarital property, Maryland follows the ‘source of funds’ theory[.]” *Dave v. Steinmuller*, 157 Md. App. 653, 663, *cert. denied*, 383 Md. 570 (2004). The “source of funds” theory provides:

“when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital. Thus, a spouse contributing nonmarital property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital and marital investment in the property. The remaining property is characterized as marital property and its value is subject to equitable distribution. Thus, the spouse who contributed nonmarital funds, and the

marital unit that contributed marital funds each receive a proportionate and fair return on their investment.”

Pope v. Pope, 322 Md. 277, 281-82 (1991) (quoting *Harper v. Harper*, 294 Md. 54, 80 (1982)).

Applying the source of funds theory in Maryland involves “defin[ing] the term ‘acquired[.]’ . . . as the on-going process of making payment for property.” *Harper*, 294 Md. at 80. Under the “ongoing process” theory,

if a couple has a mortgage or deed of trust on their property, each time a payment is made, a bit more equity is acquired in the property—more ‘marital’ property is acquired to the extent that payment of marital funds goes to lessen the indebtedness, and there is an increase in the equity owned by the couple.

Cynthia Callahan & Thomas C. Ries, *Fader’s Maryland Family Law* § 13-8(e) (7th ed. 2023).

Here, Husband testified and presented evidence that the source of funds used for the mortgage payments was the parties’ joint checking account, which was funded through both parties’ personal checking accounts. He presented documentation reflecting such transfer from his individual checking account. He indicated that he tried to get statements earlier than 2016 but was told that would be “too far back” and that Wife provided no discovery documentation. To be sure, Wife testified that, for the first three years of the marriage, she paid the mortgage out of her “single checking account[.]” but she presented no documentation to support her claims and no evidence of any equity change during that

period of time.⁴ The record thus supports a finding that, although the property remained titled in Wife’s name, its acquisition was a joint venture and the mortgage payments were primarily made from marital funds and that the equity acquired during the marriage was marital property.

For these reasons, we are not persuaded that the circuit court erred or abused its discretion in granting the monetary award to Husband.

II.

Wife claims that the court erred in ordering her to pay Husband \$3,000 for attorney’s fees. In May 2023, the court granted in part Husband’s motion to compel discovery and for sanctions under Md. Rule 2-432. In that order, the court ruled “that at the discretion of the trial judge, sanctions may be levied against [Wife] should [Wife] fail to respond within the time specified” in the order. At trial on June 6, 2023, Wife’s counsel stated as follows:

So, Your Honor, I entered into the matter late.

* * *

On May the 17th there was a settlement conference here in the court that could not move forward before [the court] because [Wife] had not produced the documents that were requested of her; i.e., tax documentations, retirements and things of that nature.

* * *

[W]e asked of our client to produce the documents.

Even up until last night I made myself available, even in the wee hours of the night, on my personal phone to present the [Md. Rule] 9-207 [joint

⁴ As a sanction for her failure to produce requested documents prior to that trial date, the court precluded testimony regarding any of those documents. Wife does not appeal that sanction.

statement of marital and non-marital property] as requested by the courts, and I simply got an okay as a response and no further answers.

My client then emailed a joint statement 9-207 filled out without assistance of counsel, and as I told her this morning, I don't have any documentations to corroborate whether the numbers presented are accurate.

Your Honor, I honestly do not have an answer as to why [Wife] has sought to circumvent the discovery process.

As noted, the court at trial sanctioned Wife by precluding her from testifying about the documents that she failed to provide before trial:

So my ruling at this point is anything that she didn't provide she cannot testify to here today. I am restricting her testimony because, again, it was asked on more than one occasion. [The court] continued the case so he could get the information. She didn't provide it.

Under Md. Rule 2-433, if it “finds a failure of discovery,” the court, “after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable costs and expenses, including attorneys’ fees, caused by the failure,” unless the court finds “that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust.” Md. Rule 2-433(a)(3). In Maryland, the trial judge “is entrusted with the role of administering the discovery rules and, as such, is vested with broad discretion in imposing sanctions when a party fails to comply with the rules.” *Att’y Grievance Comm’n of Maryland v. Kreamer*, 404 Md. 282, 342 (2008).

Here, the record reflects Wife had an annual income exceeding \$87,000 plus overtime and holiday pay, a house with \$228,000 in equity, and \$3,000 in a bank. Husband’s income was \$65,000 annually. The discovery violations caused delays in trial

and increased his attorney's fees. Given Wife's failure to timely provide discovery in this matter, the record indicates that the court properly exercised its discretion by requiring Wife to pay \$3,000 of Husband's attorney's fees.

In short, we reject Wife's contention that the circuit court erred or abused its discretion in granting Husband's request for attorney's fees in this case.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**