

Circuit Court for Harford County
Case No.: C-12-FM-19-000907

UNREPORTED
IN THE APPELLATE COURT*
OF MARYLAND**

No. 1711

September Term, 2021

MEHDI M. MOUBARAK

v.

LAMIA A. ELKOUSSA

Graeff,
Leahy,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 21, 2023

* During the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** This is an unreported opinion. The 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).

Following a six-day trial on the merits, the Circuit Court for Harford County, Maryland, granted a judgment of absolute divorce to Lamia Elkoussa (“Wife”) and Mehdi M. Moubarak (“Husband”). The court also awarded Wife indefinite alimony, attorneys’ fees, a monetary award, and a portion of Husband’s Thrift Savings Plan (“TSP”)¹ and Federal Employees Retirement System (“FERS”) pension.

On appeal, Husband claims that the circuit court committed a “mathematical error” in awarding Wife 55 percent of the entirety of his TSP, rather than 55 percent of the marital portion of the TSP. He presents one question for our review:

- I. “Did the court err in ordering that 55% of the marital and non-marital value of [Husband’s] TSP plan be paid to [Wife] in its judgment of Absolute Divorce and collateral Qualifying Court Order?”

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Due to the limited nature of the issue presented, we summarize only those facts necessary to the resolution of this appeal rather than a comprehensive summary of the testimony and proceedings below. *See Thomas v. State*, 454 Md. 495, 498-99 (2017) (“Because the issue dispositive of this appeal does not require a detailed recitation of the facts, we include only a brief summary of the underlying evidence that was established at trial.”).

¹ A thrift savings plan is “a tax-deferred retirement savings and investment plan that offers Federal employees the same type of savings and tax benefits that many private corporations offer their employees under 401(k) plans.” *Thrift Savings Plan*, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/retirement-center/my-annuity-and-benefits/thrift-savings-plan/> (last visited Jun. 27, 2023).

The parties were married on September 6, 2001, in a religious ceremony in Lebanon, followed by a civil ceremony in Monmouth, New Jersey. The parties relocated from New Jersey to Fallston, Maryland in 2011. Husband has been employed as an engineer for the United States government since 1996. Wife has been a middle school teacher since 2016. The parties have two children together, both of whom were emancipated as of December 3, 2021, the day the trial concluded.

Wife filed a complaint for absolute divorce on May 15, 2019, and Husband responded by filing a counter-complaint for divorce.² The court held a merits trial on July 8-9, November 17-19, and December 3, 2021.

November 19, 2021 Proceedings

On November 19, 2021, the court considered the parties’ arguments regarding the division of the marital assets and delivered an oral opinion setting forth its determination of marital property and support.

In the course of its oral ruling, the court found that “[Husband] is in a much better financial situation than [Wife],” based on his “cash reserves and substantial assets” and his income, which constitutes almost 70 percent of the parties’ net total income. The court remarked that “[Wife] is basically surviving on her pay and overall is not in a very good economic circumstance.” As a result, in deciding that an award of indefinite alimony was appropriate, the court concluded that “the standard of living of the parties is

² The docket entries contained on MDEC caption Wife’s complaint as a “Complaint for Limited Divorce.” That appears to be an error as the complaint clearly states that Ms. Elkoussa requested an absolute divorce from Mr. Moubarak.

unconscionably disparate with great advantage to [Husband],” who the court described as “a very controlling individual” and who was not “forthcoming in providing requested discovery in the proceeding.” The court, therefore, awarded Wife \$1,500 per month in indefinite alimony.

The court also determined that a monetary award in favor of Wife was appropriate. In valuing the marital property subject to division, the court, among other items of property, turned to Husband’s TSP and found that the TSP had a value of \$431,233 as of March 21, 2021. Wife argued that the entirety of the TSP account constituted marital property because Husband took out several loans from the account, which were repaid with marital assets. The court, however, calculated that the value of the TSP at the time of the marriage was \$28,514, and a 2011 loan balance in the amount of \$3,200 reduced the nonmarital balance to \$25,314. The court determined that \$25,314 of the TSP was nonmarital property, and the remaining balance of \$405,919 was marital property.

The court prepared a marital property valuation worksheet which identified each item of marital property and assigned a value for each item. The court calculated the marital property titled in Wife’s name as \$158,000, the overwhelming majority of which derived from the parties’ equity in the marital home, which the court split equally between the parties. The court calculated the value of the marital property titled in Husband’s name as \$761,212. Following a discussion with counsel, the court determined that the TSP would be governed by a qualifying court order, separate from the monetary award. As a result, the court deducted the value of Husband’s TSP of \$405,919 from his portion of the marital

assets titled in his name. The court thus valued the marital property titled in Husband’s name, minus the TSP, at \$355,293 for purposes of calculating the monetary award.

Wife requested that the court award her 65 percent of the TSP, 50 percent of the FERS pension, and a monetary award of \$220,000. Husband requested 60 percent of all marital property, including the TSP and FERS pension. After reviewing the relevant statutory factors, the court granted Wife a monetary award of \$150,000, with \$5,000 to be paid within 10 days. The judge determined that each party was entitled to 50 percent of the FERS pension. With respect to the TSP, the judge determined “that the appropriate share to be awarded to [Wife] is 55 percent[.]”

The judge asked Wife’s counsel to prepare the draft judgment of divorce to be “approved to form” by Husband’s counsel and finalized at the next hearing date. The judge also indicated that he would sign separate qualifying court orders addressing the TSP and FERS pension awards after he signed the final judgment of divorce. The judge and the parties agreed to return to court for a hearing on December 3, 2021 to address any outstanding issues related to those orders.

December 3, 2021 Proceedings

On December 3, 2021, the parties and their counsel appeared in court to review the draft judgment and court orders. The judge asked: “Are both counsel satisfied that these proposed orders are consistent with the decision and ruling that was made by the Court?” Wife’s counsel responded that he was satisfied with the orders. Husband’s counsel also responded that he was satisfied with the orders, but had two questions for the court. First, he asked for clarification regarding the net proceeds from the sale of the marital home.

Husband's counsel then inquired, in relevant part:

[HUSBAND'S COUNSEL]: So as far as the survivor benefits that are granted via this order, **so I believe there's a Thrift Savings Plan and the FERS account. Were those determined – I believe those were determined to have been marital property for the purposes of the judgment. Am I correct on that?**

* * *

And the reason I ask, Your Honor, I believe there's a fee that's associated with the survivor benefit for the FERS account, which I believe is 10 percent, if memory serves. So if it is awarded [as] marital property I guess we're wondering who's responsible for the payment of the survivor benefit if the survivor benefit[] [is] elected under the FERS.

THE COURT: [Wife's counsel], do you have any comments?

[WIFE'S COUNSEL]: In the QDRO that was submitted with the order it's covered that it would come off the top, which would, in effect, mean they're sharing the cost. That was the original draft of the FERS pension order. Here it is. If it's paid off the top then they equally share it.

THE COURT: Okay. Yeah, I'm satisfied. Any other concerns, [Husband's counsel]?

[HUSBAND'S COUNSEL]: No, sir. I just wanted to clarify just to make sure there weren't any [sic]. That's it. Thank you.

THE COURT: I'm going to execute then the proposed judgment of divorce this December 3rd, 2021. And then we have the - - **the other orders you don't have any questions or objections to them, [Husband's counsel]?**

[HUSBAND'S COUNSEL]: No, sir. They look fairly standard. Thank you.

The court entered the Judgment of Absolute Divorce on December 6, 2021. With respect to the TSP, the judgment provided:

ORDERED, that [Husband's] Thrift Savings Plan (TSP) through his employment with the Federal Government is determined to have a value of Four Hundred Thirty-one Thousand Two Hundred Thirty-three Dollars

(\$431,233.00) and the Court determines that the sum of Four Hundred Five Thousand Nine Hundred Nineteen Dollars (\$405,019.00)^[3] of said TSP is marital property, and the sum of Twenty-five Thousand Three Hundred Fourteen Dollars (\$25,314.00) is determined to be non-marital property of [Husband], and it is Ordered, for the reasons set forth and stated upon the record in open Court, by appropriate separate Qualifying Court Order that **[Wife] be awarded Fifty-five Percent (55%) of [Husband’s] total TSP account**, plus or minus experience of the investment through division of the account pursuant to the Qualifying Court Order[.]

The corresponding Qualifying Court Order for the TSP provided, in relevant part:

A. Marital Property. The Employee’s interest acquired in the TSP during the marriage is marital property.

B. Former Spouse’s Share. The Former Spouse’s Share shall be an amount equal to 55% of the Employee’s interest under the TSP as of the date of the Judgment of Absolute Divorce stated in Paragraph 1 hereof (the “Effective Date”), together with earnings, gains and losses applicable to the Former Spouse’s Share from the Effective Date to the Payment Date.

Husband noted an appeal on December 28, 2021.

DISCUSSION

I.

TSP Award

A. *Parties’ Contentions*

Husband contends that the circuit court erred in awarding Wife 55 percent of his total TSP, contrary to the court’s finding that Wife was entitled to 55 percent of the marital share of his TSP. Husband asserts that “[t]he proper percentage for the date of division is: 55% of marital share x 94.1% of total value = 51.7%” and “whether the court signed the

³ This amount appears to be a typographical error, as the court announced in its ruling that the value of Husband’s marital share of the TSP was \$405,919. The court’s worksheet also reflects a value of \$405,919.

[divorce] order inadvertently with errant language or made an award of non-marital property, the ruling requires reversal.”

Wife argues that Husband had ample opportunity to review the proposed judgment and TSP order before the final orders were approved by the court. Wife asserts that the court did not err in awarding Wife 55 percent of Husband’s total TSP because the 55 percent of the total account did not exceed the marital portion of the account. Wife points out that, due to the applicable federal regulations governing qualifying court orders awarding a portion of a TSP account, the court was required to express the award as either a percentage of the total account or a specific dollar amount. Wife further contends that because Husband failed to challenge the phrasing of the TSP award before the circuit court, he failed to preserve this issue for our review.

B. Preservation

It is well established that this Court will not review a contention of error “unless it plainly appears by the record to have been raised in or decided by the trial court” except where “necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” Md. Rule 8-131(a). Rule 8-131(a) derives “from the principle that ‘[w]hen a party has the option either to object or not to object, his failure to exercise the option while it is still within the power of the trial court to correct the error is regarded as a waiver of it estopping him from obtaining a review of the point or question on appeal.’” *Halloran v. Montgomery Cnty. Dep’t of Public Works*, 185 Md. App 171, 201 (2009) (quoting *Basoff v. State*, 208 Md. 643, 650 (1956)). Relatedly, Maryland Rule 2-517 provides that, “[f]or purposes of review by the trial court or on appeal” of a ruling or order

other than an objection to the admission of evidence, “it is sufficient that a party, *at the time the ruling or order is made or sought*, makes known to the court the action that the party desires the court to take or the objection to the action of the court.” Md. Rule 2-517(c) (emphasis added).

A party’s right to challenge a judgment may also be waived by affirmatively consenting to the court’s ruling. *See In re M.H.*, 252 Md. App. 29, 45-46 (2021) (“[T]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.”) (quoting *In re Nicole B.*, 410 Md. 33, 64 (2010)); *Osztreicher v. Juanteguy*, 338 Md. 528, 534-35 (1995) (providing that a party “who does not offer evidence on an issue as to which that party has the burden of proof acquiesces in the adverse judgment entered on that issue.”) (citation omitted); *Parker v. State*, 402 Md. 372, 405 (2007) (explaining that “a party may not obtain appellate review of a judgment to which the party consented.”); *Franzen v. Dubinok*, 290 Md. 65, 69 (1981) (“[A] voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review”).

Here, Husband has not identified any point during the trial where he requested that the circuit court employ the calculation method he now advances or that the method employed by the circuit court was erroneous in any way. Indeed, Husband had the opportunity to raise his concern on at least two different occasions: first, when the circuit court announced its ruling as to the division of the TSP on November 19, 2021; and second, on December 3, 2021, after Husband’s counsel had been given nearly two weeks to review

the proposed order drafted by Wife’s counsel. At the December 3 hearing, Husband’s counsel did not, however, inquire as to the court’s award to Wife of 55% of the total TSP. Moreover, at the conclusion of the trial when the court specifically asked Husband if he had any objections to the orders, Husband’s counsel responded that he did not have any objection, and that the language appeared “fairly standard.”

Because Husband accepted the court’s calculation method contained in the order and failed to make any contemporaneous objection to the TSP provisions as drafted, he waived further review of this issue. *See Gilliam v. State*, 331 Md. 651, 691 (1993) (holding that defendant who did not object to the proposed course of action taken by the court, and apparently agreed with it, “cannot now be heard to complain that the court’s action was wrong”).

C. The Award Was Proper

Even if preserved, there is nothing to suggest that the circuit court abused its discretion in awarding Wife 55% of Husband’s total TSP.

When granting a divorce, the court has the power to “resolve any dispute between the parties with respect to the ownership of personal property.” Maryland Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”), section 8-202(a)(1). For disputed items of property, the judge must first identify which items are marital, and which items are nonmarital. *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019); FL § 8-203. In Maryland, “Marital property” is “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). Next, the court must calculate the value of the marital property. *Abdullahi*, 241 Md. App. at 405; FL § 8-204(a). The third step requires that the

court determine whether the division of marital property according to its title would be inequitable and, if so, the court may grant a monetary award to either party to adjust that inequity. *Abdullahi*, 241 Md. App. at 405-06; *see* FL § 8-205(a).

After considering the factors set forth in FL § 8-205(b),⁴ the court may transfer ownership of an interest in property, including a retirement or deferred compensation plan, from one party to either or both parties, grant a monetary award, or both. FL § 8-205(a). The purpose of the monetary award ““is to provide a means for the adjustment of inequities that may result from distribution of certain property in accordance with the dictates of

⁴ FL § 8-205(b) sets forth the following factors:

- (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.

title.” *Alston v. Alston*, 331 Md. 496, 506 (1993) (quoting *Herget v. Herget*, 319 Md. 466, 471 (1990)). Because the trial court’s valuation and allocation of retirement benefits and pensions are complex tasks, *Abdullahi*, 241 Md. App. at 420-21, trial courts are afforded “broad discretion in evaluating pensions and retirement benefits, and in determining the manner in which those benefits are to be distributed.” *Salkini v. Salkini*, 243 Md. App. 277, 283 (2019) (quoting *Welsh v. Welsh*, 135 Md. App. 29, 54 (2000), *cert. denied*, 363 Md. 207 (2001)). We review a court’s decision to grant a monetary award and the amount of the award for an abuse of discretion. *Flanagan v. Flanagan*, 181 Md. App. 492, 521-22 (2008). Under the abuse of discretion standard, we will not “substitute our judgment for that of the [trial court], even if we might have reached a different result.” *Id.* (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000)).

Here, after reviewing the relevant statutory factors, the court elected to award Wife both a monetary award and an interest in Husband’s TSP and FERS pension.⁵ The court’s marital property valuation worksheet showed that, for purposes of calculating the monetary award, the court considered the marital value of Husband’s TSP to be \$405,919. Then, the court determined “that the appropriate share to be awarded to [Wife] is 55 percent[.]” without expressing whether that figure corresponded to 55 percent of the entire account or 55 percent of the marital portion of \$405,919. Crucially, to be enforceable, a court order dividing a TSP account between spouses must set forth the balance to be divided either by:

⁵ Husband does not challenge the bases of the trial court’s decisions for these awards.

a) a specific dollar amount or b) a fixed percentage *of the account*, not a discrete portion of the account.⁶ 5 C.F.R. §§ 1653.2(a)(3)(i)-(ii).⁷

Accordingly, because the court could not award Wife a designated percentage of the marital portion of Husband’s TSP account, both the final judgment of divorce and the corresponding qualifying court order expressed Wife’s award as a percentage of the entire TSP account. Husband insists that this constituted an abuse of discretion, noting that to effectively award Wife 55% of the marital portion of the TSP, the court was required to award only 51.7% of the entire account. Husband’s mathematical calculation is sound, but he fails to recognize that similar logic works in the reverse. In awarding Wife 55% of the *entire* TSP account, the court effectively awarded Wife approximately 58% of the *marital portion* of the TSP. We fail to discern any abuse of discretion in that decision. Contrary to the allegations in Husband’s argument, the court never stated that its finding that 55% was an appropriate percentage to be awarded to Wife corresponded to 55% of the marital portion of Husband’s TSP account. Accordingly, we cannot conceive of any reason why the court’s discretion was somehow capped at an award of 55% of the marital portion of the TSP account. Rather, the court clarified its position that it was awarding 55% of the entire account (*i.e.*, 58% of the marital portion) in the clear language of the final judgment

⁶ The statutes and regulations governing TSPs are set forth at 5 U.S.C. §§ 8431–8440(f) and 5 C.F.R. §§ 1600.1–1690.15.

⁷ The court found that the TSP had a total value of approximately \$431,233 at the time of the property division. 55 percent of \$431,233 is \$237,178.15. In turn, \$237,178.15 is approximately 58.43 percent of \$405,919, the amount the court determined to be the marital portion of Husband’s TSP account.

of divorce and qualifying court order, each of which Husband reviewed and affirmatively approved.

Certainly, it would be ideal for purposes of our review if the trial judge had further detailed his reasoning for awarding 55% of the total TSP account. Nonetheless, we recognize that a trial court is “not required to set out in detail each and every step of [its] thought process.” *Thomas v. Cty. of Annapolis*, 113 Md. App. 440, 450 (1997) (citing *Kirsner v. Edelmann*, 65 Md. App. 185, 196 n.9 (1985)). When we review a trial court’s rulings, we “must assume that the [trial] court carefully considered all the various grounds asserted [by the parties].” *Thomas*, 113 Md. App. at 450 (citing *Bond v. Nibco, Inc.*, 96 Md. App. 127, 133 (1993)). In so doing, we presume that “trial judges know the law and correctly apply it.” *Attorney Grievance Comm’n v. Jeter*, 365 Md. 279, 288 (2001); *Plank v. Cherneski*, 469 Md. 548, 607 (2020) (quoting *Jeter*, 365 Md. at 288). In balancing the equity between the parties, the court had discretion to account for the marital value of the TSP in designating a percentage of the total account, as it was required to do in order to craft an enforceable qualifying court order. 5 C.F.R. §§ 1653.2(a)(3)(i)-(ii). We perceive no abuse of discretion in the court’s ultimate decision to award Wife 55% of the total TSP account.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**