Circuit Court for Montgomery County
Case No. C-15-FM-22-000879
Case No. C-15-FM-22-000802

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1829

September Term, 2023

SHAWN ALAN MOOD

v.

EILEEN BRIDGET MOOD

Arthur,
Beachley,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 24, 2025

*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).

The Circuit Court for Montgomery County granted a judgment of absolute divorce to Eileen Bridget Mood ("Wife") and Shawn Alan Mood ("Husband"). The court granted Wife alimony, child support, a monetary award, and attorney's fees.

In this appeal, Husband presents five issues by way of an informal brief. For clarity, we have rephrased those issues as the following questions presented:

1. Did the court err in ruling that Wife was not voluntarily impoverished?
2. Did the court err in awarding alimony to Wife?
3. Did the court err in awarding child support to Wife?
4. Did the court err in its determinations about whether and to what extent certain property is marital property?
5. Did the court err in granting a monetary award to Wife?
6. Did the court err in awarding attorney's fees to Wife?[1]

For the reasons to follow, we hold that the court erred in its valuation of real property in Fenwick, Delaware, and in its monetary award analysis. Because the erroneous computation formed the basis for a monetary award, and further because the court erred in its monetary award analysis, we must vacate the monetary award. And because the court's determinations as to alimony, child support, monetary awards, and

[1] Husband listed the issues as follows:

Issue 1: Bias Regarding Child Support and Alimony.
Issue 2: Bias on Voluntary Impoverishment/Imputed Income.
Issue 3: Bias on Division of Real Estate.
Issue 4: Bias in Legal Fees.
Issue 5: Determination of Non-Marital Assets.

counsel fees involve overlapping evaluations of the parties' financial circumstances, we choose to vacate the remainder of the judgment as well.

BACKGROUND

Overview

The parties were married on August 18, 2001. At the time of the trial in 2023, Wife was 55 years old, and Husband was 57 years old.

Four children were born as a result of the marriage. At the time of the trial, the oldest child (born in 2003) was a college student. The second child was born in 2005, the third in 2007, and the fourth in 2009.

The parties separated on January 20, 2022. On February 18, 2022, Wife filed for divorce. On April 19, 2022, Husband filed a counterclaim for divorce.

In their respective pleadings, each party asked the court to determine custody, classify and value marital property, enter a monetary award, and grant attorney's fees. Wife requested alimony and the use and possession of the family home.

On November 22, 2022, the parties entered into a consent custody order, which resolved the issues of legal custody and parenting time with the parties' minor children. Under that consent order, Wife has about 71 percent of the parenting time.

The trial took place over three days. The court heard testimony from the parties. The court also heard testimony from Wife's father.

At trial, Husband disputed Wife's claim for alimony. Both parties disputed the classification and division of marital property as it related to Wife's request for a monetary award.

Based on the evidence, which we discuss in greater detail below, the court issued an oral opinion on August 22, 2023. After receiving counsel's memoranda on additional issues, the court entered the judgment of absolute divorce on November 14, 2023.

In the judgment, the court classified, valued, and distributed marital property, and awarded child support to Wife. In addition, the court granted Wife's request for alimony of $2,500.00 per month for seven years, when she will become eligible for social security benefits; a monetary award in the amount of $161,299.22, equaling half of what the court found to be the equity in one item of marital property; and $30,000.00 in attorneys' fees, payable in three installments of $10,000.00, over three years.

Evidence at Trial

Wife testified that she holds a Bachelor of Science degree in Nursing, a Bachelor of Science degree in Political Science, and a master's degree as a Pediatric Nurse Practitioner. At the time of the trial, Wife was employed as a pediatric nurse practitioner, working three days per week and one weekend a month. Wife treats about 25 to 30 patients per day.

Wife testified that she was the primary caretaker for the children and that she bore the following responsibilities: bringing the children to their doctors' appointments, school appointments, tutoring appointments, and orthodontics appointments, and assisting the parties' third child with college applications and visits.

In addition to her role as the children's primary caretaker, Wife supported Husband's career.

Husband testified that, "for most of the first 15 years" of the marriage, he traveled overseas for work multiple times per year and that "[m]ost of those trips" lasted "anywhere between a week and 10 days." During two years of the marriage, Husband worked for a company with offices in Washington, D.C., and Connecticut, and traveled "back and forth each week[.]" In the last six to seven years before the trial, Husband traveled less frequently, going to board meetings outside of the Washington, D.C., area for only two or three days and only "about three times a year[.]"

In addition to his work responsibilities, Husband taught evening classes at a university for a couple of years.

Husband's career caused the parties to relocate twice. The parties moved to Florida after they were married in 2001. The parties relocated to the District of Columbia metropolitan area so that Husband could start a new job in 2004.

At the time of the trial, Husband earned $302,784.00 per year, working in human resources at an international nonprofit company based in the District of Columbia. Wife earned $103,000.00 per year. The parties' children attended private schools, and the family vacationed internationally. Wife testified that Husband's income had allowed her to perform childcare and maintain part-time employment.

Husband's counsel introduced photographs that showed Wife and her brother-in-law visiting a hot spring together in Colorado. Although the court declined to rule that Wife had had a sexual affair with the brother-in-law, the court found that Wife had an "emotional affair" with him. The court also found that "this marriage was in trouble long before that."

At trial, the parties disputed the classification and distribution of real property acquired during the marriage. The parties had the following pieces of real property: the marital home in Bethesda; a rental property in Lewes, Delaware; and a rental property in Fenwick Island, Delaware.

The court ruled that the fair market value of the Bethesda property was $1,800,000.00, the mortgage balance was $630,447.22, and the balance on the home equity line of credit was $99,664.49. Husband agreed that Wife should have use and possession of the Bethesda property "[f]or a limited period of time." The court ruled that Wife would have use and possession of the Bethesda property for two years, i.e., until September 2025, and that the house would then be sold.

The trial court ordered that Husband pay 70 percent of the mortgage, interest, taxes, insurance, and upkeep on the Bethesda property until it is sold, and that Wife pay the rest. Upon the sale of the Bethesda property, the parties will evenly divide the proceeds that remain after the mortgage, line of credit, and costs of sale have been paid.

Wife and Husband purchased the Lewes property in January 2018. Wife's father gave Wife $100,000.00, and Wife testified that she used $76,767.00 of that gift as a down payment on the property. The court found that the Lewes property is marital property, but that the down payment was non-marital. The court ordered that the Lewes property be sold, that the down payment be returned to Wife upon the sale, and that the remaining proceeds be divided equally.

The parties disputed whether the Fenwick property was marital property. Husband had made a down payment of $65,000.00 to purchase the property in July 2021. He

testified that the down payment stemmed from "the LatPro proceeds" in his personal bank account. After the second day of trial, the court directed the parties to submit written argument about whether the "LatPro proceeds" were marital property.

It appears that Husband had worked for LatPro, Inc., before the parties were married. On June 19, 2000, LatPro granted Husband stock options that would have vested annually over the next three years, on June 19, 2001, June 19, 2002, and June 19, 2003. Under the stock option agreement, 217,500 shares were subject to the option at $.50 per share. The agreement stated that, upon the termination of Husband's employment "for any reason," "any Options which ha[d] not been exercised as of the effective date of the termination" would "immediately be forfeited" and would "no longer be exercisable[.]"

Husband's employment with LatPro ended in September 2001, about a month after the parties' marriage began. At that time, Husband had a vested option to purchase 69,166 shares. He had not exercised the option.

In January 2002, after the parties were married, Husband signed a share subscription agreement, in which he agreed to purchase 247,471 shares of LatPro's stock for the price of $1,979.77 ($.008 per share). The agreement recites that he accepted the shares "in lieu of" the stock option agreement, that the option agreement was "terminated effective immediately," and that he had no further right to purchase shares under the option agreement.

In 2021, a company bought all of LatPro's outstanding shares, including Husband's. Husband received approximately $290,000.00 for his shares.

Husband testified that the $65,000.00 down payment on the Fenwick property stemmed directly from the LatPro proceeds. Husband further testified that "[a]bout $215,000 of the [remaining] $219,000 was eventually moved to" a jointly titled account.

Husband claimed that he also used a $120,000.00 gift from his brother and a $40,000.00 gift from his father to purchase the Fenwick property. To substantiate his claim, Husband produced gift letters from his father and brother. Because Husband produced no other evidence to trace the Fenwick property to those alleged, the court was unpersuaded that he had used the gifts to purchase that property.

The court found that the LatPro proceeds were marital because they stemmed, not from the option agreement, but from "a different agreement," i.e., the share subscription agreement, which "came to fruition after the marriage." In addition, the court found that the Fenwick property was marital property titled in Husband's sole name, that its market value was at $868,000.00, and that it had a mortgage balance of $545,401.55.

The court determined that it could not order the sale of the Fenwick property, because it was titled solely in Husband's name. Consequently, the court granted Wife a monetary award of $161,299.22, which equals half of what the court found to be the equity in the property as of the trial date. The court ordered that the monetary award be paid from Husband's share of the proceeds from the sale of the Lewes property. If Husband's share of the proceeds was less than the amount of the monetary award, the

court ordered that the balance should be transferred to Wife from one of his retirement accounts.[2]

Lastly, the court ordered Husband to pay $30,000.00 in attorney's fees to Wife's counsel.

We shall add additional facts as they become pertinent.

DISCUSSION

I.

The court determined that it could not order the sale of the Fenwick property, because it is located in Delaware and is titled in Husband's name alone. Consequently, the court granted Wife a monetary award of $161,299.22, which equals half of what the court found to be the equity in the property as of the trial date. Husband challenges the monetary award because, he argues, the court incorrectly valued the Fenwick property.

We review the decision to grant a monetary award, and the decision about the amount thereof, for abuse of discretion. *See*, *e.g.*, *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021); *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000); *accord Malin v. Mininberg*, 153 Md. App. 358, 430 (2003). An appellate court will not overturn a monetary award unless the decision is clearly erroneous. *See Malin v. Mininberg*, 153 Md. App. at 430.

[2] It is unclear how this transfer could occur—or how it could occur while preserving the tax-deferred status of the retirement account—unless the transfer were facilitated by a qualified domestic relations order.

The parties did not make it easy for the court to value the Fenwick property. Wife's counsel argued that Husband did not get an appraisal because he contended that it was his separate property and, thus, that the court did not need to know its value. Wife, however, did not obtain an appraisal either, even though she initiated the divorce proceedings and asked the court to classify and value marital property and enter a monetary award.

Owners of property are "'presumed to be familiar with its value so that [their] opinion of its value is admissible as evidence.'" *Brown v. Brown*, 195 Md. App. 72, 119 (2010) (quoting *Hale v. Hale*, 74 Md. App. 555, 567 (1988)). Husband testified that the Fenwick property "would probably sell for about $750,000." Wife gave the property a higher valuation—"about" $860,000.00—but her opinion is presumably entitled to no weight because she is not the record owner. In any event, the court did not rely on Wife's opinion in determining the value of the Fenwick property.

Instead, in legal argument on the last day of trial, Wife's attorney submitted what she called a "market study." The "market study," which was never authenticated, appears to be nothing more than a two-page printout from the real estate website Redfin.com. The "market study" contains a real estate listing for a property in Selbyville, Delaware. According to Wife's attorney, the property featured in the "market study" is not the Fenwick property itself, but one that, the attorney asserted, is comparable to the Fenwick property. She argued:

> [W]hen you look at what we did was we went and we looked at what's a comp, and this is the closest comp that we could find, which is pretty much the same house as he has. Although actually, his house—the house that he

> has has more bedrooms. It has four bedrooms. But that's as close as we could get. And so we'd as[k] the Court to use that as the value of the house and subtract the mortgage.

The "market study" reported that the allegedly comparable property had been listed for sale at the price of $868,000.00. The court used that value in calculating the amount of Wife's equity in the Fenwick property.

There are any number of reasons why the court should not have used the "market study" to determine the value of the Fenwick property. The "market study" was not admitted into evidence—in fact, it was not even mentioned until the evidentiary portion of the proceedings had ended. The sole basis for concluding that the "market study" concerns a property comparable to the Fenwick property is the argument of counsel, which is not evidence. And even if the property is comparable, which there is no evidentiary basis to find, a listing price is by no means the same as the value of a property—the listing price is often higher than the value of the property, but in some cases it may actually be lower.

For these reasons, the court erred in its determination of the value of the Fenwick property. Because that determination was integral to the monetary award, we must vacate the monetary award.[3]

[3] In addition to challenging the valuation of the Fenwick property, Husband claims that the court erred in declining to include the cost of selling that property in its calculation of the monetary award. He points out that the court included sales costs within its calculation of the distribution of the proceeds from the sale of the Lewes property. Under the court's order, however, the parties are required to sell the Lewes property, but Husband is not required to sell the Fenwick property. Thus, the court had

"[A] court's determinations as to alimony, child support, monetary awards, and counsel fees involve overlapping evaluations of the parties' financial circumstances." *St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016). "The factors underlying such awards 'are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other.'" *Id.* (quoting *Turner v. Turner*, 147 Md. App. 350, 400 (2002)). "'Therefore, when this Court vacates one such award, we often vacate the remaining awards for reevaluation.'" *Id.* (quoting *Turner v. Turner*, 147 Md. App. at 400).

In this case, we opt to vacate the remaining awards for reevaluation. "Until the circuit court completes the proceedings required by this opinion, the existing orders for alimony and child support will continue to have 'the force and effect of a *pendente lite* award.'" *Id.* (quoting *Simonds v. Simonds*, 165 Md. App. 591, 613 (2005)).

For guidance on remand, we shall address the other issues that Husband has raised in his brief.[4]

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no need to consider the cost of selling the Fenwick property in setting the monetary award.

[4] Because this case must return to the circuit court, we note, for guidance on remand, that the court appears not to have followed the required procedure for making a monetary award. "When a party requests a monetary award, a trial court must complete a three-step process before determining whether to grant such an award." *Wasyluszko v. Wasyluszko*, 250 Md. App. at 279. "First, the court must categorize each disputed item of property as marital or non-marital." *Id.* "'Second, the court must determine the value of all marital property.'" *Id*. (quoting *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019)). "Finally, the court 'must decide if the division of marital property according to title would be unfair,' and if so, it 'may make a monetary award to rectify any inequality created by the way in which property acquired during marriage happened to be titled.'"

II.

Husband contends that the court erred in determining that Wife had not voluntarily impoverished herself. According to Husband, Wife's part-time schedule warranted the imputation of income to her.

"When an action has been tried without a jury," we "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). "We review the court's findings as to a party's earning capacity under the clearly erroneous standard." *St. Cyr v. St. Cyr*, 228 Md. App. at 180. "Under that standard, '[i]f there is any competent evidence to support the factual findings [of the trial court], those findings cannot be held to be clearly erroneous.'" *Id.* (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)) (citation and quotation marks omitted).

Voluntary impoverishment occurs when "a parent has made the free and conscious choice, not compelled by factors beyond the parent's control, to render the parent without

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Id. at 279-80 (quoting *Abdullahi v. Zanini*, 241 Md. App. at 405-06). "As part of this final step, the court must consider the eleven factors enumerated in FL § 8-205(b)[.]" *Id.* at 280.

Instead of determining the value of "all" marital property as a predicate to the decision whether to grant a monetary award to rectify any inequality created by the way in which the property is titled, the court appears to have focused on three discrete pieces of real property and treated each of them separately. In addition, the parties appear to have had other items of marital property (e.g., retirement accounts, cars, and bank accounts), but we cannot tell from the materials before us how or whether the court accounted for them.

adequate resources." Maryland Code (1984, 2019 Repl. Vol., 2023 Supp.), § 12-201(q) of the Family Law ("FL") Article.

"[C]hild support may be calculated based on a determination of potential income" if a parent is voluntarily impoverished. FL § 12-204(b)(1)(i). "If there is a dispute as to whether a parent is voluntarily impoverished," the court must "make a finding as to whether, based on the totality of the circumstances, the parent is voluntarily impoverished[.]" FL § 12-204(b)(2)(i).

Here, Husband did not argue that Wife could find a better-paying job. Instead, he argued that she should work more hours. The court disagreed. It observed that she is the primary caregiver of three teenagers and thus that it is "highly reasonable for [Wife] to be working three days [per week.]" The court emphasized that Wife had maintained the same employment for over a decade, and that she neither changed her employment nor reduced her hours because of the divorce proceedings.

Husband claims that the court placed improper emphasis on the consistency of Wife's work schedule during the divorce proceedings. According to Husband, "while [Wife's] work schedule was three days a week at the time of separation, throughout the marriage it had also included periods of no work to full-time work depending on changing circumstances of the parties' marriage and financial situation." Wife testified, however, that she had maintained the same work schedule for "about six years," since the parties' oldest son started attending high school. Before then, Wife testified, she worked two days per week. Because the court had the right to credit Wife's testimony, we reject

Husband's contention that the court placed inappropriate emphasis on Wife's consistent work schedule in concluding that she had not voluntarily impoverished herself.

Husband relies on *Petitto v. Petitto*, 147 Md. App. 280 (2002), to support his argument about voluntary impoverishment. *Petitto* does not aid his case. In *Petitto*, this Court upheld a finding of voluntary impoverishment of a highly educated parent who worked only "six weeks a year" as an Air Force reservist (*id.* at 292), "did not specify any reason that she was unable to work" additional time (*id.* at 312), and appeared to have made no effort to find additional employment. *Id.* at 316.

The evidence in this case is a little different. Here, Wife worked three days per week and one weekend day per month. Wife testified that her childcare obligations prevented her from working additional hours. As the trial court noted, Husband did not have a "vocational expert saying what other hours [Wife] would be working" or what additional pay she could obtain. Nor was there any "evidence that she could get extra hours" at her current job.

For these reasons, the court was not clearly erroneous in rejecting Husband's claim that Wife was voluntarily impoverished.

III.

Husband challenges the award of alimony. He argues that the court ignored some of the factors in FL § 11-106(b), which governs the amount and duration of alimony.

"When reviewing a trial court's award of alimony, an appellate court will not reverse the judgment unless it concludes that 'the trial court abused its discretion or rendered a judgment that was clearly wrong.'" *Digges v. Digges*, 126 Md. App. 361, 386

(1999) (quoting *Crabill v. Crabill*, 119 Md. App. 249, 260 (1998)); *accord Brewer v. Brewer*, 156 Md. App. 77, 98 (2004). "[W]e review the trial court's factual findings for clear error" and review the "ultimate award" "for abuse[] of discretion." *Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014) (cleaned up).

When deciding whether and how to award alimony, the court must consider 12 statutory factors enumerated in FL § 11-106(b).[5] "'[A]lthough the court is not required to

[5] Those factors are:

(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:

use a formal checklist, the court must demonstrate [its] consideration of all necessary factors.'" *Simonds v. Simonds*, 165 Md. App. 591, 604-05 (2005) (citing *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 143 (1999)).

Husband argues that the court's ruling ignored four factors under FL § 11-106(b): 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; the contributions, monetary and nonmonetary, of each party to the well-being of the family; the circumstances that contributed to the estrangement of the parties; and the financial needs and financial resources of each party. We address the court's consideration of each factor.

First, the court reviewed the parties' financial statements and ruled that Husband "can meet his needs" while paying alimony. Thus, Husband is incorrect in asserting that the court did not address 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.

> (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.

FL § 11-106(b).

Second, the court found that Husband made "the lion's share of the financial contributions" to the family and that Wife made "the lion's share of the nonmonetary contributions." Thus, Husband is incorrect in asserting that the court did not consider the contributions, monetary and nonmonetary, of each party to the well-being of the family.

Third, the court found that Wife had an "emotional affair" with Husband's brother-in-law, but that the "marriage was in trouble long before" that "affair." Noting that Husband had left the family for periods of time, the court specifically stated that it could not define the extent to which each of the parties was responsible for their estrangement, but that "they both could have done better." Thus, Husband is incorrect in asserting that the court did not consider the circumstances that contributed to the estrangement of the parties.

Finally, the court analyzed the parties' financial statements, observed that Husband's salary is nearly three times greater than Wife's salary, and recognized that Wife is the primary caretaker for the three school-age children. Thus, Husband is incorrect in asserting that the court did not consider the financial needs and financial resources of each party.

In summary, the court considered all of the factors in FL § 11-106(b) in its ruling. *Simonds v. Simonds*, 165 Md. App. at 604-05. Although we discern no error in the court's alimony analysis, the court will be required to reevaluate alimony on remand.

IV.

Husband raises two challenges to the trial court's child support order. First, he argues that the order "should be recalculated using an imputed income for [Wife]

working full time." Second, he argues that the court erred in requiring him to pay 70 percent of the children's tuition and extraordinary medical expenses and 70 percent of the cost of their extracurricular activities.

Because the parties' "combined adjusted actual income" exceeds $30,000.00 per month, this is an above-guidelines case, in which the statutory schedule of basic child support obligations does not apply. *See* FL § 12-204(d). In an above-guidelines case "the court may use its discretion in setting the amount of child support." *Id.*; *see Malin v. Mininberg*, 153 Md. App. at 410. In using its discretion, "the court may employ any 'rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it.'" *Walker v. Grow*, 170 Md. App. 255, 290 (2006) (quoting *Malin v. Mininberg*, 153 Md. App. at 410). In the exercise of its discretion in this case, the court used a software application, SASI-CALC, to extrapolate from the guidelines and to compute a child support award of $3,829.00 per month.

Husband challenges the computation on the ground that the court should have imputed additional income to Wife. His argument is essentially the same as his argument that the court erred in finding that Wife was not voluntarily impoverished. We reject Husband's argument for the same reasons that we concluded that the court was not clearly erroneous in rejecting his contentions about voluntary impoverishment.

We also reject Husband's arguments in support of his contention that the court erred in requiring him to pay 70 percent of the children's tuition and extraordinary medical expenses and 70 percent of the cost of their extracurricular activities.

In an above-guidelines case, the court, in its discretion, can order the parents to contribute to their children's tuition payments in proportion to the parents' income. *See Frankel v. Frankel*, 165 Md. App. 553, 577, 581-82 (2005). Thus, the court did not abuse its discretion in ordering Husband to contribute to his children's tuition payments in an amount proportional to his share of the parents' overall income.

"[D]iscretionary activities such as camp, music lessons, tutoring, and gifted and talented programs" are not added to the child support obligation in cases that are subject to the guidelines. *Horsley v. Radisi*, 132 Md. App. 1, 26 (2000). "In an above guidelines case, however, the court may consider such activities in determining the proper amount of child support." *Walker v. Grow*, 170 Md. App. at 288. Thus, the court was authorized to fashion a child support order that apportioned expenses for the children's extracurricular activities.

In cases that are subject to the guidelines, FL § 12-204(h)(2) requires that "extraordinary medical expenses" be "added to the basic child support obligation" and be "divided between the parents in proportion to their adjusted actual incomes." In an above-guidelines case, such as this, a court may extrapolate from the guidelines in fashioning its award of child support. Thus, the court did not abuse its discretion in dividing the cost of "extraordinary medical expenses" in proportion to the parents' adjusted actual incomes.

In summary, the court did not abuse its discretion in computing Husband's child support obligation or in requiring him to pay a proportionate share of the children's

tuition, their extraordinary medical expenses, and the cost of their extracurricular activities.[6]

IV.

Husband challenges the court's treatment of the gifts that the parties claim to have used to purchase the Lewes property and the Fenwick property. In particular, he challenges the court's finding that a portion of the Lewes property is not marital property (because the court was persuaded that the down payment came from a gift to Wife from her father). He also challenges the court's finding that the Fenwick property is marital property (because the court was unpersuaded that the purchase was funded with gifts to Husband from his father and brother). Finally, he challenges the finding that the LatPro proceeds, which he used to fund the purchase of the Fenwick property, were marital property.

"'Marital property' means the property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). In general, "marital property" does not

[6] In his brief, Husband argues that his alimony and child support obligations, together with obligations to pay most of the debt service, taxes, and insurance for the Bethesda property, exceed his monthly income (by which he appears to mean his net income from employment after the payment of State and federal taxes). By his calculations, his alimony and child support obligations total over $175,000.00 a year. On remand, the court should consider Husband's contention that he is unable to meet his own needs while discharging his court-ordered obligations. *See Walter v. Walter*, 181 Md. App. 273, 284-85 (2008). In this regard, however, we note that the child support obligations will decline to zero as the children age—and they may already have ended as to one child (the child born in 2005) and will end shortly as to another (the child born in 2007). In addition, the obligation to service the debt and pay the taxes and insurance on the Bethesda property will end when the property is sold, which should occur sometime after the property is placed on the market in September of this year.

include property "acquired before the marriage" (FL § 8-201(e)(3)(i)), property acquired by "gift from a third party" (FL § 8-201(e)(3)(ii)), or property "directly traceable to any of these sources." FL § 8-201(e)(3)(iv).

"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). We review a court's factual findings for clear error. *See Richards v. Richards*, 166 Md. App. 263, 271-72 (2005). "Factual findings that are supported by substantial evidence are not clearly erroneous." *Id*. at 272.

As to the Lewes property, Husband objects to the court's finding that Wife made a down payment of $76,767.00, which she obtained from a gift that she received from her elderly father. The court found that Wife made the down payment with non-marital assets. Consequently, it ordered that, upon the sale of the Lewes property, Wife should receive the first $76,767.00.

In assailing that finding, Husband argues that Wife's elderly father, who testified by telephone from his home in South Carolina, initially denied that he had given her money to buy a house. Husband adds that, once Wife's father had amended his testimony and said that he had indeed given her the money, he said that the house was in Maryland, not in Delaware. Husband acknowledges that Wife received a check from her father in August of 2017, but asserts that there is no documentation to trace those funds to the purchase of the Lewes property in January of 2018.

On the basis of the evidence before it, the court certainly could have concluded that the down payment on the Lewes property did not derive from non-marital funds that

Wife had obtained from her father. Similarly, the court could have said that it was unpersuaded that the down payment derived from non-marital funds. The court, however, was not obligated to reach either conclusion. The court heard, and evidently credited, Wife's testimony that she had used the proceeds from her father's check to make the down payment on the Lewes property. Wife's attorney introduced a copy of that check into evidence, as Husband acknowledges. Wife testified that her elderly father was "confused" about the location of the property, because "[h]e doesn't understand the geography here." And when asked if the down payment should be returned to Wife, Husband testified that "it was a true gift" and that "at least the portion that was used to buy the house, which is a little bit less than $100,000[,]" should be returned to her.

In short, the court had a factual basis for its conclusion that the down payment on the Lewes property derived from non-marital funds and should be returned to Wife upon the sale of the property. The court did not commit clear error in reaching that conclusion.[7]

As for the Fenwick property, Husband objects to the court's rejection of his testimony that he funded the purchase using $160,000.00 in gifts from his father and brother. He argues that the court was inconsistent in crediting Wife's account about her use of the gift from her father in purchasing the Lewes property, but not crediting his

[7] Because this case must return to the circuit court for further proceedings, we note, for guidance on remand, that the value of Wife's non-marital contribution to the purchase of the Lewes property is to be determined in accordance with the formula set forth in *Grant v. Zich*, 300 Md. 256, 276 n.9 (1984). We also note that the value of Wife's non-marital contribution to the purchase of the Lewes property should be considered in the court's overall monetary award analysis.

account about the use of the gifts from his family members to purchase the Fenwick property. He notes, in particular, that the court found that he had not adequately traced the gifts to the funds used to purchase the Fenwick property.

On the evidence before it, the court certainly could have found that Husband used non-marital gifts to fund the purchase of the Fenwick property and, thus, that some or all of the property is non-marital. Again, however, the court was not required to make that finding. Here, Husband had evidence of the gifts, but no evidence—other than his own testimony, which the court evidently declined to credit—that he had used the gifts to purchase that particular property. In those circumstances, the court was simply unpersuaded that he had used the gifts as he claimed to have done. It is almost impossible for judges to be clearly erroneous when they are simply not persuaded of something. *Bricker v. Warch*, 152 Md. App. 119, 137 (2003). The court was not clearly erroneous in finding Husband's proof to be insufficient.

In his reply brief, Husband challenges the court's finding that the LatPro proceeds, which he used to fund the purchase of the Fenwick property, were marital property. "[A]ppellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief." *Gazunis v. Foster*, 400 Md. 541, 554 (2007). We exercise our discretion to consider the issue because Husband is self-represented.

The court did not err in ruling that the LatPro proceeds were marital property. The proceeds derived not from the option agreement, which predated the marriage, but from the share subscription agreement, which "came to fruition after the marriage."

As conceded in Husband's memorandum to the circuit court, "[w]eeks after the marriage began, [Husband] terminated his employment at LatPro, [and] *in consideration thereof*, [Husband] subscribed to the shares of the LatPro common stock." (Emphasis added.) In the share subscription agreement, Husband "accept[ed] the Shares in lieu of that certain Stock Option Agreement dated June 19, 2000 between [LatPro] and [Husband]." The share subscription agreement provided that "the Option Agreement be and is hereby terminated effective immediately and that [Husband] shall not have any right to purchase any Company securities pursuant to the Option Agreement or the Plan after the date hereof, regardless of whether any such rights were vested under the Option Agreement."

In advocating that the LatPro proceeds are not marital property, Husband relies on *Dave v. Steinmuller*, 157 Md. App. 653 (2004). In that case, this Court explained that "[a] spouse who owns nonmarital property is permitted to preserve its nonmarital status even if it *changes in character or form* during the marriage, as long as the spouse can trace the asset acquired during marriage directly to a nonmarital source." *Id.* at 664 (emphasis added).

Unlike the non-marital stock portfolio that increased in value in *Dave*, Husband's stock options did not "change[] in character or form during the marriage" into the share subscription. *Id.* Instead, the stock options were "forfeited" upon Husband's termination from LatPro, and the share subscription agreement "terminated" the stock option agreement. Moreover, Husband paid, after the marriage, $1,979.77 for the 217,500 shares. There is no evidence that the $1,979.77 was Husband's non-marital property.

The court was clearly correct, not clearly erroneous, in finding that the LatPro proceeds—used to purchase the Fenwick property—are marital property. FL § 8-201(e)(1).

In summary, the court did not commit clear error in its findings concerning these discrete findings of marital and non-marital property.

VI.

The court awarded $30,000.00 in attorneys' fees to Wife, payable over three years in three installments of $10,000.00 each. Husband challenges the award.

"We review an award of attorney's fees in family law cases under an abuse of discretion standard." *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017) (citing *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002)). We will not reverse an award of attorney's fees unless the court exercised its discretion arbitrarily "or the judgment was clearly wrong." *Petrini v. Petrini*, 336 Md. 453, 468 (1994).

A court may award attorney's fees to a party in a divorce action or in an action for alimony after considering "(1) the financial resources and financial needs of both parties" and "(2) whether there was substantial justification for prosecuting or defending the proceeding." FL § 7-107(c); FL § 11-110(c).

When a parent applies for a decree concerning the custody, support, or visitation of a child, a court may award to either party "the costs and counsel fees that are just and proper under all the circumstances[.]" FL § 12-103(a). But before awarding fees in such cases, the court must consider: "(1) the financial status of each party; (2) the needs of

each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b).

The court here expressly considered the statutory criteria when awarding attorney's fees to Wife. On the subject of the parties' financial status, the court found that Husband's present earnings, and likely future earnings, are "far superior" to Wife's. On the subject of the parties' needs, the court found that "[t]hey both have needs," but that Wife's "are far greater" than Husband's. Lastly, the court found that Wife had spent $129,000.00 on attorney's fees and that Husband did not have substantial justification to litigate the case through trial.

The court's findings are not clearly erroneous. In particular, the court was not clearly wrong in finding that Husband lacked substantial justification in pursuing certain aspects of the case. Husband, for example, was demonstrably incorrect in asserting that the LatPro proceeds were anything other than marital property. Although we are vacating the award of fees because of its integral relationship with the monetary award, we conclude that the court did not err in requiring Husband to pay a fraction of Wife's attorneys' fees.[8]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN

[8] Throughout his briefs, Husband contends that the trial judge exhibited bias against him. We have carefully reviewed the record for any evidence that the trial judge's determinations were motivated by bias. No such evidence exists. We understand that Husband is dissatisfied with the outcome of the trial. Dissatisfaction is inherent in litigation. The record shows that the trial judge performed his duties impartially and fairly without any bias or prejudice.

PART. JUDGMENT WITH RESPECT TO MONETARY AWARD, ALIMONY, CHILD SUPPORT, AND ATTORNEY'S FEES VACATED; ALIMONY AND CHILD SUPPORT PROVISIONS TO REMAIN IN FORCE AND EFFECT AS PENDENTE LITE ORDERS PENDING FURTHER ORDERS OF THE CIRCUIT COURT; JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE EVENLY DIVIDED.