

Circuit Court for Anne Arundel County
Case No. C-02-FM-21-003497

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1851

September Term, 2023

ROCKWELL PHILLIPS

v.

JESSICA PHILLIPS

Zic,
Kehoe, S.,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: February 28, 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 Maryland Rule 1-104(a)(2)(B).

This matter arises from a divorce and child custody matter in the Circuit Court for Anne Arundel County. Jessica Phillips, appellee, filed a complaint for absolute divorce against Rockwell Phillips, appellant. Following a four-day merits trial, the court entered a judgment of absolute divorce that awarded Ms. Phillips marital property and a monetary award. The court also ordered, pursuant to the parties' agreement, shared physical and joint legal custody of the parties' children. On appeal, Mr. Phillips challenges the distribution of marital property.

Mr. Phillips presents the following issues for our review, which we have rephrased and recast as follows:¹

¹ In his brief, Mr. Phillips phrases the issues as:

1. Did the Court err in the calculation of the total marital award in the amount of \$290,048.44 when it used the parties' financial information from the date of separation instead of their financial information at the time of trial as required by Maryland Code, Family Law, § 8-205(b)[]?
2. Did the Court err when calculating the total marital award in the amount of \$290,048.44 when it 1) neglected to properly determine the equity in the marital home by failing to accurately calculate the outstanding mortgage, forbearance amount, HELOC, HIL and closing costs at the time of the hearing; 2) failed to credit Appellant's premarital contribution to the down payment; 3) failed to accurately determine each party's financial status at the time of the hearing?
3. Did the Court err in denying outright Appellant's Motion to Alter, Amend, and/or Revise Judgment without addressing any issues raised by the Appellant?
4. Did the Court err in denying outright Appellant's Motion for a New Trial without addressing any issues raised by the Appellant?

1. Whether the circuit court’s determination that the marital home was entirely marital property was clearly erroneous.
2. Whether the circuit court’s calculation of the parties’ indebtedness on the marital home was clearly erroneous.
3. Whether the circuit court erred in calculating the monetary award.
4. Whether the circuit court abused its discretion in denying Mr. Phillips’ motion to alter or amend and his motion for a new trial.

For the reasons below, we affirm.

BACKGROUND

The parties were married in February 2010 in Severn, Maryland. They have three minor children together. In the fall of 2015, Ms. Phillips moved out of the marital home with the children, and the parties separated for approximately one year. After the parties reconciled in November of 2016, Ms. Phillips and the children returned to the home and remained living there until the parties separated on or about June 13, 2021. The parties divorced on August 17, 2023.

The parties had purchased a single-family home in Bowie in May of 2015. The parties agreed at trial that the value of the marital home was \$750,000.00. Ms. Phillips asserted that the entirety of the value of the home was marital property; Mr. Phillips asserted that a portion of the value of the home was non-marital.

On June 23, 2023, the court delivered an oral opinion as to the divorce, division of marital property, and custody, followed by a written judgment of divorce entered on August 17, 2023. The court granted the parties an absolute divorce. With respect to the assets that are the subject of this appeal, the court awarded each party 50% of the equity

in the marital home. The court calculated the equity in the home as \$410,072.48 and awarded each party \$205,036.24. The court also granted Ms. Phillips a monetary award in the amount of \$85,012.20, representing 50% of the parties' bank account balance of \$170,024.40, as of the date of the parties' separation.

On August 25 , 2023, Mr. Phillips filed a motion to alter, amend and/or revise the judgment and a motion for new trial. The court denied both motions, and Mr. Phillips filed this appeal.

STANDARD OF REVIEW

This Court reviews the rulings of a circuit court, sitting without a jury, “on both the law and the evidence.” Md. Rule 8-131(c). We review a trial court’s factual findings for clear error and determine whether the court’s findings are supported by substantial evidence in the record. *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 473-74 (2019); *see also Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). ““When a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court.”” *Plank v. Cherneski*, 469 Md. 548, 569 (2020) (quoting *MAS Assocs., LLC*, 465 Md. at 475).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT THE MARITAL HOME WAS ENTIRELY MARITAL PROPERTY.

On appeal, Mr. Phillips challenges the circuit court’s finding that the parties’ home was entirely marital property. He contends that the court erroneously failed to credit him for non-marital funds he claimed he contributed to the down payment on the marital home in the amount of \$44,030.32.

A. Legal Framework

Trial courts use a three-step process in determining the division of marital property upon divorce. Md. Code Ann., Fam. Law (“FL”) §§ 8-203–205 (1984, 2019 Repl. Vol.); *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019). A trial court must first decide whether property is marital or non-marital. *Abdullahi*, 241 Md. App. at 405 (citing FL § 8-203). Next, the court must value all marital property. *Id.* (citing FL § 8-204). Finally, the court must determine whether division of the marital assets according to title would be unfair; if so, the court may grant a monetary award to adjust the inequity. *Id.* at 405-06; FL § 8-205(a). “The function [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 title.” *Alston v. Alston*, 331 Md. 496, 506 (1993) (citation omitted).

In granting a marital award, a court’s determination of whether all or part of an asset is marital or non-marital property is a question of fact. *Innerbichler*, 132 Md. App. at 229. We will not disturb a trial court’s factual finding as to marital property unless it is

clearly erroneous. *Id.* A trial court’s decision to grant a monetary award, and the amount of that award, is reviewed for abuse of discretion, based on correct legal standards.

Flanagan v. Flanagan, 181 Md. App. 492, 521-22 (2008) (citing *Alston*, 331 Md. at 504); *Innerbichler*, 132 Md. App. at 230 (explaining that “[t]his [standard of review] means that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result”).

Marital property is defined as “property, however, titled, acquired by [one] or both parties during the marriage.” FL § 8-201(e)(1)). Marital property specifically includes “any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.” FL § 8-201(e)(2). Non-marital property is any property: “(i) acquired before the marriage; (ii) acquired by inheritance or gift from a third party; (iii) excluded by valid agreement; or (iv) directly traceable to any of these sources.” FL § 8-201(e)(3).

A “party seeking to demonstrate that particular property acquired during the marriage is non[-]marital must trace the property to a non[-]marital source.” *Richards v. Richards*, 166 Md. App. 263, 276 (2005) (quoting *Noffsinger v. Noffsinger*, 95 Md. App. 265, 283 (1993)). “Any property acquired during the marriage that cannot be directly traced to a non[-]marital source is marital property.” *Noffsinger*, 95 Md. App. at 281; *see also Melrod v. Melrod*, 83 Md. App. 180, 187 (1990) (“Property acquired by purchase during the marriage and not excluded by valid agreement between the parties, is marital property unless it can be traced directly to a non-marital source of funds or property”).

B. Analysis

Mr. Phillips’ argument implicates the first step in the process, namely, the determination of marital property. Mr. Phillips testified at trial that he provided “\$44,000 and some change for the down payment” and paid “\$6,000 in liens” owed by the previous owner, “[s]o altogether \$49,000 or . . . \$50,000.” Mr. Phillips sought to introduce into evidence at trial a U.S. Department of Housing and Urban Development (“HUD”) settlement statement showing the payments made at the closing. Ms. Phillips’ counsel objected to the admission of the HUD statement, arguing that it was not produced in discovery. The trial court sustained the objection and the HUD statement was not admitted into evidence.

In this case, the parties purchased the marital home five years after they married. The court found that Mr. Phillips presented no credible evidence that the funds used to purchase the property were acquired prior to the marriage or from some other non-marital source, noting there was “[n]o tracing of down payments or any liens that he used in order to pay that down payment.” Where a party is unable to trace property acquired during the marriage directly to a non-marital source, the property is marital property. *Noffsinger*, 95 Md. App. at 281; *see also Melrod*, 83 Md. App. at 187. Given the absence of tracing in the record here, the circuit court’s finding that that the home was entirely marital property was not clearly erroneous.

II. THE CIRCUIT COURT DID NOT ERR IN CALCULATING THE PARTIES' INDEBTEDNESS ON THE MARITAL HOME.

Mr. Phillips next argues that the circuit court erred in finding that the balance of the parties' mortgage on the marital home was \$300,927.52, because the May 18, 2023 mortgage statement, which was introduced into evidence at the merits trial, showed that the outstanding mortgage balance was \$339,927.52, with an outstanding forbearance amount of \$15,485.91.

Based on our review of the record, it appears that the circuit court initially misstated the amount of the outstanding mortgage as \$300,927.52. In its oral ruling, the court explained its calculations as follows:

I believe the only credible, the only credible encumbrance was the first mortgage which is \$330,900.27 -- I'm sorry -- \$300,927.52 from Exhibit 3, minus which equals a total equity in the house of \$410,072.48, divided in half that would be for the record, \$205,036.24.

In the court's calculations, however, it used the correct amount of the mortgage, \$339,927.52, to determine the parties' total indebtedness. It is undisputed that the parties agreed the value of the house was \$750,000.00. Because \$750,000.00 minus \$410,072.48 equals \$339,927.52, it is clear that the circuit court used the correct mortgage amount in calculating the parties' net equity, although the court misstated the amount of the mortgage in its oral ruling. For this reason, we conclude that the circuit court did not err in calculating the net equity in the home.

III. THE CIRCUIT COURT DID NOT ERR IN CALCULATING THE MONETARY AWARD.

Mr. Phillips argues that the circuit court made numerous errors in calculating the monetary award: *first*, he contends that the court erroneously considered the balance in his bank account at the time of the parties’ separation in June of 2021, rather than at the time of trial; and *second*, he argues that the court failed to account for the home equity line of credit (“HELOC”) in the amount of \$248,337.27, and the home improvement loan balance of \$26,136.65. As to the second argument, Mr. Phillips reasons that the HELOC and home improvement loans were marital debt that should have been deducted from the net equity of the marital home, because he used the money from the HELOC to pay down the forbearance amount and principal on the mortgage.

In response, Ms. Phillips argues that the trial court properly calculated the monetary award based on its findings that Mr. Phillips had dissipated marital funds after the parties’ separation, and that he obtained the HELOC and home improvement loan without her knowledge and for the purpose of encumbering the home and reducing the amount of the monetary award to Ms. Phillips.

A. Legal Framework

In determining the value of the marital property, the court generally values the property as of the date of the divorce entry. *Doser v. Doser*, 106 Md. App. 329, 348 (1995). For purposes of making a monetary award, the trial court must consider “the economic circumstances of each party at the time the award is to be made.”

FL § 8-205(b)(3); *see also Green v. Green*, 64 Md. App. 122, 141 (1985) (explaining that

“equity requires that reasonable efforts be made to ensure that valuations of marital property approximate the date of a judgment of divorce which includes a monetary award”).

An exception to the general rule exists “when a court ‘finds that property was intentionally dissipated in order to avoid inclusion of the property towards consideration of a monetary award’” *Omayaka v. Omayaka*, 417 Md. 643, 653 (2011) (quoting *Sharp v. Sharp*, 58 Md. App. 386, 399 (1984)). “Dissipation may be found where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time where the marriage is undergoing an irreconcilable breakdown.” *Sharp*, 58 Md. App. at 401. “The doctrine of dissipation is aimed at the nefarious purpose of one spouse’s spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets.” *Omayaka*, 417 Md. at 654 (quoting *Heger v. Heger*, 184 Md. App. 83, 96 (2009)). Dissipated property is valued as of the time it is intentionally dissipated. *See Hollander v. Hollander*, 89 Md. App. 156, 170 (1991); *Karmand v. Karmand*, 145 Md. App. 317, 345 (2002) (noting that it was irrelevant that the dissipated funds no longer existed at the time of trial; the trial court was entitled to treat the funds as if they still existed).

The spouse alleging dissipation has the initial burden of providing evidence of dissipation. *Omayaka*, 417 Md. at 656-57 (citing *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 311 (1994)). Once the alleging spouse establishes a prima facie case that marital funds have been dissipated, the burden shifts to the other spouse to show that the funds were

used for an appropriate marital or family purpose. *Id.* The spouse alleging dissipation retains the burden of persuading the court that marital funds were expended for the purpose of reducing the total funds available for distribution. *Id.* Evidence showing “that a spouse made sizable withdrawals from bank accounts under his or her control is sufficient to support the finding that the spouse had dissipated the withdrawn funds[.]” *Id.* at 657. Relevant for our purposes, a reviewing court “will not set aside a trial court’s determination regarding dissipation of marital assets unless the determination is clearly erroneous.” *Id.* at 654 (quoting *Beck v. Beck*, 112 Md. App. 197, 216 (1996)).

B. Analysis

At trial, Ms. Phillips introduced Mr. Phillips’ bank statements dated June 2021, August 2022, and May 2023, all of which she obtained by subpoena. Mr. Phillips did not object. Mr. Phillips’ bank statement for June 2021 showed a checking account balance of \$170,024.40; his bank statement for August 2022 showed a checking account balance of \$100,409.66; and his bank statement for May 2023 showed a negative checking account balance.

Ms. Phillips also testified that Mr. Phillips’ bank account showed multiple large wire transfers of funds from the account following the parties’ separation. Specifically, on August 1, 2022, Mr. Phillips wired \$100,000.00 to Beljoe Homes and Property, Ltd. On that same date, Mr. Phillips’ bank account received a wire deposit of \$99,960.00. Ms. Phillips testified that she had never heard of Beljoe Homes and Property, nor was she able to find any information regarding an entity by that name. Mr. Phillips then wired

\$150,000.00 to Beljoe Homes and Property, Ltd. on August 3, 2022, and another \$33,334.00 on August 30, 2022. On August 31, 2022, Mr. Phillips transferred \$8,000.00 to an account ending in 7671.

With respect to the decline in value of Mr. Phillips’ bank account from \$170,024.40 to a negative balance over the course of two years, Mr. Phillips explained that “most of that money went into renovations” and “was put back into the house.” With respect to the HELOC, Mr. Phillips testified that he applied for the HELOC in April of 2022 to pay for renovations to the home, necessitated by flooding in the basement, and to install a deck. Mr. Phillips claimed that the total cost of renovations to the home was \$270,000.00. He testified that he had receipts for the repair work done to the house, but he had not provided them to his counsel. Mr. Phillips presented no receipts or other documentation at trial relating to any repair work.

Ms. Phillips testified that she had no knowledge of Mr. Phillips obtaining the HELOC or any other type of loan following the parties’ separation in 2021. She argued that Mr. Phillips had encumbered the marital home with the HELOC to devalue the house, and that he used those funds for personal use, not for repairs.

In its oral ruling, the court made a finding that Mr. Phillips had dissipated \$170,024.40 in marital funds, explaining:

As far as the [c]ourt finds based on the evidence, [Ms. Phillips] has proven by a preponderance of the evidence, [Mr. Phillips] still has the money he took out of the house in the bank accounts, either that or he[has] purchased items to

replace it, such as cars^[2] which can be sold and ultimately used to pay -- to bring that money back in.

[Mr. Phillips] has in no way rebutted [Ms. Phillips'] claims with credible evidence. Once again, there are -- where are the contracts, the bills, the payment history for the quote, home repairs, improvements made after the separation[?] There are none whatsoever. They weren't provided in discovery and they weren't entered into [evidence] in court.

If you truly spent that money, you should have had documentation to that effect and the [c]ourt does not find it credible that you took out -- you encumbered the[] house[]in order to improve the house but you did it in order to try to circumvent paying [Ms. Phillips] her share of the equitable value of the home and the bank account.

The court ordered that Mr. Phillips pay Ms. Phillips \$85,012.20, representing one-half of the amount dissipated by Mr. Phillips.

The court further found that Mr. Phillips had utilized the HELOC and home loan for the purpose of reducing the equity in the home available for distribution. The court stated:

. . . With regard to the HELOC and the other loan, the home improvement loan or the consumer loan, whatever you call it, in the amount of \$248,337.28 and \$26,075, [Mr. Phillips] stated that he encumbered the home as a result of home repairs but produced absolutely no independent evidence of those payments, not a single bill, receipt or evidence of payment.

And the [c]ourt does not find [Mr. Phillips] credible that he made any repairs and also finds it[] suspicious that he took

² In the parties' joint property statement, Mr. Phillips reported that he owned a 2022 Cadillac Escalade valued at \$80,000.00 and a 2020 Tesla Model S valued at \$70,000.00.

out the HELOC almost immediately after [Ms. Phillips] left him. The [c]ourt believes that [Mr. Phillips] attempted to put the money somewhere and that the HELOC was to defeat any marital award to [Ms. Phillips] and not because he used it on the house.

Also, the house was appraised at the time of the HELOC in the amount of \$800,000 and the parties agreed that it was worth \$750,000 at the time of divorce. So, it had to have been appraised while allegedly all these damages according to him. So, therefore, I find that the house is worth . . . \$750,000 by agreement of the parties.

In this case, Ms. Phillips established a prima facie case of dissipation based on Mr. Phillips' bank records following the parties' separation. Mr. Phillips failed to carry his burden of demonstrating that he used the funds from the bank account, the HELOC or loan for a family-related purpose. Though he claimed that he spent the money on home repairs and renovations, he presented no documentary evidence of the alleged payments to support his claim, and the trial court simply did not find his testimony credible. The trial court's finding that Mr. Phillips dissipated \$170,024.40 in funds as well as the funds he obtained from the HELOC and loan was supported by competent evidence in the record, and thus was not clearly erroneous. *See Omayaka*, 417 Md. at 659 (noting that, in assessing the credibility of witnesses, the trial court "was entitled to accept—or reject—all, part, or none of the testimony of any witness). Accordingly, based on the circuit court's finding of dissipation, we hold that the court did not err in calculating the

monetary award by using the value of Mr. Phillips’ bank account at the time of the parties’ separation.³

Mr. Phillips argues further that the circuit court committed “clear error” by not considering Ms. Phillips’ financial status. The court, however, *did* consider Ms. Phillips’ financial status and the evidence she submitted. The record shows that Ms. Phillips introduced copies of her paystub and W-2 form for 2022, as well as a long form financial statement pursuant to Md. Rule 9-203(a). In addressing the parties’ economic circumstances, the court stated: “[t]he parties agree that [Ms. Phillips] makes \$8[,]708 and the only evidence I have is [Mr. Phillips] works for the federal government and he makes [\$]10[,]909.” The court proceeded to review the parties’ financial statements at length. Mr. Phillips’ counsel did not cross-examine Ms. Phillips about her financial status or argue to the trial court that her financial information was inaccurate or otherwise lacking. Therefore, to the extent that Mr. Phillips seeks to challenge the accuracy of Ms. Phillips’ financial information for the first time on appeal, his argument is unpreserved, and we shall not address it. Md. Rule 8-131(a).

Mr. Phillips also claims that the circuit court failed to consider that he would be required to sell the marital home to fulfill his obligation under the monetary award, and as a result, erred in failing to further reduce the net equity of the marital home by ten

³ In his brief, Mr. Phillips asserts that the trial court erred in utilizing his bank account balance as of June, rather than July, of 2021. He provides no further argument in support of this contention, and we decline to address it. *Tallant v. State*, 254 Md. App. 665, 689 (2022) (“Maryland courts have the discretion to decline to address issues that have not been adequately briefed by a party.”).

percent to account for the closing costs associated with the sale. Because Mr. Phillips did not raise this issue before the circuit court, the issue is unpreserved for our review, and we shall not address it. Md. Rule 8-131(a).

IV. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. PHILLIPS’ POST-TRIAL MOTIONS.

Mr. Phillips additionally argues that the circuit court abused its discretion in denying his motion to alter or amend the judgment and his motion for a new trial, because the court failed to consider documentation he acquired after trial regarding payments he made for repairs using funds from the HELOC and home improvement loan. Specifically, Mr. Phillips contends that he submitted “new, relevant and material” evidence regarding detailed construction plans, materials, contractor payment information, and bank records requiring that the trial court recalculate the monetary award.

This Court’s review of the denial of a motion to alter or amend under Maryland Rule 2-534 is “limited to whether the trial judge abused his discretion in declining to reconsider the judgment.” *Grimberg v. Marth*, 338 Md. 546, 553 (1995); *see also Estate of Vess*, 234 Md. App. 173, 205 (2017) (“[T]he denial of a motion to revise a judgment should be reversed only if the decision ‘was so far wrong—to wit, so egregiously wrong—as to constitute a clear abuse of discretion.’” (quoting *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 232 (1998))). Indeed, a trial judge’s discretion deciding a motion to alter or amend “is more than broad; it is virtually without limit.” *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). A motion to alter or amend “is not a time

machine in which to travel back to a recently concluded trial in order to try the case better with hindsight.” *Id.* A trial judge has “boundless discretion” not to consider issues “that could have been raised earlier but were not[.]” *Id.*

Similarly, “[t]he standard of review of the denial of a motion for new trial is abuse of discretion.” *B-Line Med., LLC v. Interactive Dig. Sols., Inc.*, 209 Md. App. 22, 45 (2012). A court abuses its discretion “‘where no reasonable person would take the view adopted by the [trial] court’ or where the court acts ‘without reference to any guiding rules or principles.’” *Johnson v. Francis*, 239 Md. App. 530, 542 (2018) (quoting *Powell v. Breslin*, 430 Md. 52, 62 (2013)).

Here, Mr. Phillips sought to relitigate the trial judge’s finding that he used the funds from the HELOC and home loan for a purpose unrelated to the repairs at the home. Mr. Phillips stated at trial that he had documents showing the repairs he made to the home, but that he had failed to provide those documents to his attorney. In his motions to alter or amend and for a new trial, Mr. Phillips provided no explanation for his failure to produce the documents at trial, and no basis for the court to consider newly obtained documents. As such, we perceive no abuse of discretion in the circuit court’s refusal to reconsider the judgment.

CONCLUSION

We hold that the circuit court did not err in finding that the home was entirely marital property, in issuing the monetary award, or in calculating the parties' indebtedness on the marital home. We also hold that the circuit court did not abuse its discretion in denying Mr. Phillips' motion to alter or amend the judgment or his motion for a new trial. Accordingly, we affirm.

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