Circuit Court for Baltimore County
Case No. C-03-FM-21-006410

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1899

September Term, 2023

OLIVER OJIH

v.

CHIOMA MAUREEN OKONGWU

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

JJ.

Opinion by Getty, J.

Filed: December 10, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal originates from a divorce hearing between Oliver Ojih ("Appellant") and Chioma Okongwu ("Appellee") at which marital property, custody, and child support, among other issues, were decided. The Circuit Court for Baltimore County granted Appellee $35,000 in marital property without determining in the record the amount of total marital property. The trial court also granted Appellee sole legal and primary physical custody over the parties' two children, aged 5 and 7. Lastly at issue, the trial court granted Appellee $1,284 in child support per month as well as $29,532 in child support arrears to be paid by Appellant based on approximations of his income without first finding that he is voluntarily impoverished. Appellant challenges the trial court's decision on several grounds. The parties present us with the following questions, which we have rephrased as follows:[1]

1. Did the trial court err or abuse its discretion by granting the Appellee a marital property award in the amount of $35,000?

[1] Appellant presented the questions as follows:

1) Whether the divorce court abused its discretion, and/or erred as a matter of law by granting a monetary award to Appellee in excess of the value of marital property the divorce court itself determined was titled in the name of husband before the marriage, resulting in wife's receiving more than what the court determined was the value of all of the parties' marital property?
2) Whether the circuit court erred in awarding sole legal and primary physical custody to the Appellee?
3) Whether the circuit court erred in making a child support award based on pure speculation of what Appellant "could" make?

2. Did the trial court err or abuse its discretion in awarding sole legal and primary physical custody to the Appellee?
3. Did the trial court err or abuse its discretion in granting a child support award to Appellee based on an approximation of Appellant's income without having first found that Appellant is voluntarily impoverished?

For the reasons below, we shall affirm the judgment of custody and vacate the judgments of marital property, child support, alimony, and attorney's fees and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

The parties married in December 2010 in Nigeria. They had two children during their marriage: Isabella, born in July 2017, and Ivanka, born in April 2019. The parties separated in January 2020 when the children were ages 18 months and 6 months, respectively. The Circuit Court for Baltimore County held two hearings regarding the grounds for divorce and the disputed issues on February 10, 2023, and September 13, 2023. The disputed issues included custody, visitation, child support, property distribution, alimony, and attorney's fees. The trial court granted the parties an absolute divorce.

Appellant informed Appellee that he planned on seeking a divorce in January 2020. From that time until January 2021, Appellee and their children did not see Appellant. Appellant, who served in the military, was deployed at various times throughout the marriage. However, from January 2020 to January 2021, Appellee did not know if

Appellant was deployed or just living elsewhere. In January 2021, Appellant called Appellee and informed her that he was living in Texas but was moving back to Maryland.

In September 2022, Appellee and the two children were living in the marital home at 18 Tussock Court in Middle River, Maryland. Appellant was not living there at the time. In August 2022, Appellant received notice that the marital home was being foreclosed upon and was scheduled for auction. Appellant sent Appellee a notice to vacate the property by the beginning of October when Appellant intended to move back into the house. Appellant explained in the letter and testified that he was unable to maintain the cost of two homes—the home he was renting and living in and the mortgage of the marital home in which Appellee and the children were living—and would move back into the marital home to be able to pay the mortgage. Appellee vacated the property and moved to Texas in September 2022. She did not tell Appellant at the time that she was moving. She moved in with her sister and mother, where she did not have to pay rent and was able to rely on her family for childcare.

Appellant bought the property at 18 Tussock Court in November 2009, 13 months before the parties married. During the February hearing, he testified that the mortgage on the house is $1,022 a month. There is no evidence of what he paid as the down payment on the house, the fair market value of the home at the time of the marriage, or the outstanding mortgage at the time of the marriage.

Appellant had been deployed with the military several times throughout the marriage. Appellant testified to his deployment dates, however the trial court noted that

there was confusion over Appellant's whereabouts throughout the marriage. From June 2016 to September 2017, Appellant served in Kuwait. The parties' first child was born in July 2017. From November 2017 to April 2018, Appellant was stationed in Fort Hood, Texas. From July 2018 to May 2019, Appellant was deployed to Iraq and Kuwait. The parties' second child was born in April 2019. From May 2019 to September 2019, Appellant was in various medical and rehabilitation centers in Texas and Virginia for an injury that occurred while deployed. From January 2020 to January 2021, Appellant was again mobilized to Fort Hood, Texas. Appellant is no longer active duty but receives about $1,100 per month from the Defense Financing and Accounting Service as an Army Reservist. In between deployments, until May 2021 when he resigned, Appellant was working as a corrections officer for the Maryland Department of Public Safety & Correctional Services making about $113,000 per year.

Appellant began working as a home improvement contractor around the time he resigned from being a corrections officer. He testified that he can make $30 per hour as a contractor. However, during the time of the trial he had stopped working in this field, and his sole income was driving for Uber and Lyft. At the time of the trial, he had plans to start working in home improvement again. The trial court found from his testimony that he can make between $3,600 and $4,000 per month driving for Uber and Lyft.

Appellee works part-time as a nursing assistant. She works, on average, 25 hours per week at $13 an hour. She is also in school completing her prerequisites for nursing school, for which, from the time of trial, she had about 18 months remaining. She then

plans to attend nursing school which would take her an additional two to two and one-half years to finish.

The Trial Court's Rulings

The trial court published its rulings in a memorandum opinion on November 29, 2023. We summarize the rulings here.

Marital Property Award

The trial court lists certain retirement benefits and the share to which Appellee is entitled. The trial court found that Appellee is entitled to one half of the marital share of Appellant's military retirement, one half of the marital share of Appellant's Thrift Savings Account Plan, and one half of the marital share of Appellant's Maryland State Retirement and Pension. The court noted that Appellant's Maryland Supplemental Retirement Plan (457b) had a value of $20,432.02 in October 2021 but only $822.14 in June 2022. The court did not find credible Appellant's testimony that the money was used for family-related expenses. The court also noted that Appellee made multiple withdrawals from a Wells Fargo account, including one single withdrawal of $35,000, for questionable purposes and did not find Appellee's testimony regarding the withdrawals convincing. The trial court found that the parties owned four vehicles, but the parties agreed to keep any vehicles in their possession and transfer title accordingly, which the court found equitable.

In considering the marital home, the trial court found that from the date of the marriage forward, all income used to pay the mortgage on the marital home and increase

the equity therein is marital property. The trial court found the current value of the home to be $170,000, based on a professional appraisal, and the current lien to be about $122,000. The trial court did not calculate the value of the nonmarital portion of the home.

The trial court did not determine a single amount of the total marital property but did state that it considered the relevant FL § 8-205 factors. The trial court ordered Appellant to pay Appellee a monetary award of $35,000 and stated this amount reflected "equitable determinations in the remaining equity in the marital home as well as all of the other factors."

Custody

The trial court granted Appellee sole legal and primary physical custody. In reaching this conclusion the trial court considered, among other factors, that Appellant's day-to-day presence in the children's lives was sporadic at best, even when not deployed; that Appellant lives in Maryland and Appellee lives in Texas; that Appellee receives financial and childcare support from her mother and sister with whom she lives; and that Appellee has always overseen the children's medical visits. The trial court specifically stated that Appellant's deployments overseas "[are] in no way being held against him," but rather that his unknown whereabouts when returning from deployments is troubling. The trial court awarded Appellant four weeks of visitation in the summer and alternating winter and spring holiday breaks, to be implemented by agreement of the parties.

Child Support

The trial court found that Appellant has held numerous jobs over the past several years, which has caused his income to fluctuate. The trial court relied on Appellant's testimony that he could make approximately $30 per hour in home improvement. The trial court then calculated that at $30 per hour, 40-hours per week, and 4.3 weeks per month, Appellant would make $5,160 per month. The trial court also considered his testimony that he is making $3,600 to $4,000 per month driving for Uber and Lyft, which the trial court averaged to $3,800. The trial court then averaged the average Uber/Lyft monthly income with the average home improvement monthly income to find Appellant's monthly income to be $4,480. The trial court based this finding on "all of the credible testimony." The trial court then added the Appellant's military pay and found his income to be $5,642 per month, and based on the Maryland Child Support Guidelines, his monthly child support obligation would be $1,284, plus $29,532 in arrearages.

STANDARD OF REVIEW

Marital property issues are a question of fact that should not be overturned unless the trial court's findings are clearly erroneous. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). When the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous. *Innerbichler*, 132 Md. App. at 230. "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002).

In reviewing a custody decision, "an appellate court does not make its own determination as to a child's best interest." *Gordon v. Gordon*, 174 Md. App. 583, 637 (2007). An appellate court uses "three distinct aspects of review in child custody disputes." *Davis v. Davis*, 280 Md. 119, 125 (1977). First, factual findings are reviewed for clear error. *Id.* at 125-26. Second, errors of law will typically require "further proceedings in the trial court…unless the error is determined to be harmless." *Id.* at 126. Lastly, we review the ultimate conclusions in a custody determination under an abuse of discretion standard. *Id.* "There is an abuse of discretion where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). To constitute an abuse of discretion, the conclusions must be "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

Furthermore, in reviewing a child support determination, "[w]e will not disturb the trial court's discretionary determination…absent legal error or abuse of discretion." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002). *See also Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020). "[W]here the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Walter v. Gunter*, 367 Md. 386, 392 (2002).

DISCUSSION

A) THE MARITAL PROPERTY AWARD MUST BE VACATED AND THE CASE REMANDED FOR FURTHER PROCEEDINGS

Marital property is defined in Family Law Article § 8-201(e)(1) as "property, however titled, acquired by 1 or both parties during the marriage." Marital property does not include property acquired before marriage. FL § 8-201(e)(3)(i). Maryland courts follow a three-step procedure to determine whether to grant a marital property award to achieve equity between the spouses in dividing marital property. *Flanagan v. Flanagan*, 181 Md. App. 492, 519 (2008). *See Doser v. Doser*, 106 Md. App. 329, 349 (1995) ("The purpose of the monetary award is to correct any inequity created by the way in which property acquired during marriage happened to be titled."). First, the trial court must determine whether each item of property is marital or nonmarital. Second, the trial court must determine the value of all the marital property. *Flanagan*, 181 Md. App. at 519. In this step of the process, a trial court "should consider the dissipated property as extant marital property…to be valued with the other existing marital property." *Sharp v. Sharp*, 58 Md. App. 386, 399 (1984). Third, the trial court must decide if the division of marital property according to title would be unfair and, if so, determine whether, and at what amount, to make a monetary award to rectify the inequity. *Flanagan*, 181 Md. at 519-20. To determine an equitable award, the court must consider the factors in Family Law Article § 8-205.

While the trial court here did indicate that certain items of property are marital, the court included insufficient findings in step two of the process: determining the value of all the marital property. In *Randolph v. Randolph*, the Appellate Court of Maryland held that the trial court should not have granted a monetary award without first identifying and valuing the marital property. 67 Md. App. 577, 584 (1986) ("§ 8–204 unequivocably [sic] requires the court to determine the value of all marital property. Those determinations are prerequisites to the granting of a monetary award."). *See also Campolattaro v. Campolattaro*, 66 Md. App. 68, 78 (1986) ("While it is discretionary with the chancellor to make a monetary award and to determine the amount of that award, it is mandatory that if the division of the property is at issue, he first determines which property is marital property and, then, determines the value of all marital property."). In contrast to the § 8–205 factors a judge must consider in step three, for which it is often sufficient for a trial judge merely to state that they considered the factors, § 8–204 requires a judge to determine the value of all marital property and state that determination in the record. *Randolph*, 67 Md. App. at 585 ("Where the statute requires the court to determine an issue, that determination must appear in the record.").

Appellant argues that the value of the marital equity in the 18 Tussock Court property was less than the trial court considered because the court did not take into account the down payment or first year's mortgage payments paid by Appellant before the marriage. Appellee, in contrast, argues that the monetary award determined by the trial court was within the court's sound discretion. Appellee asserts that the court correctly

classified the home as marital property because there was no testimony regarding the pre-marital value of the home.

While Appellant is generally correct that the nonmarital portion of a home should not be included in the total value of marital property subject to equitable distribution, here, Appellant did not produce sufficient evidence for the court to determine a nonmarital share of the home. The Supreme Court of Maryland, in *Harper v. Harper*, held that the Maryland courts should apply the source of funds theory to property divided at divorce, according to which: "when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital." 294 Md. 54, 80 (1982). The nonmarital value of the home must be calculated based on the "ratio that the nonmarital investment bears to the total nonmarital and marital investment in the property." *Grant v. Zich*, 300 Md. 256, 276 n.9 (1984).[2]

However, to make such a calculation, the trial court needs to know the fair market value of the property and the remaining indebtedness at the time of the marriage. *See id.* (calculating wife's nonmarital investment using the purchase price, wife's nonmarital down payment, and the remaining mortgage). Appellant presented neither as evidence at trial. The burden of production of such evidence is on Appellant as the party asserting that

[2] Although the holding in *Grant v. Zich*, 300 Md. 256 (1984), was superseded by statute on the grounds that there is now a presumption that property held as tenants by the entirety is marital, the case's requirement of tracing is still applicable to real property not titled by the entireties, as is the case here. FADER'S MARYLAND FAMILY LAW 13-24 n.122 (Cynthia Callahan & Thomas C. Ries eds., 7th ed. 2021). *See also McGeehan v. McGeehan*, 455 Md. 268, 283-84 (2017) (stating that *Grant v. Zich* has been superseded by statute).

a portion of the property is nonmarital. As the Appellate Court of Maryland stated in *Golden v. Golden*: "[T]he party asserting that a portion is nonmarital bears the burden of tracing the expenditure to nonmarital funds. If he or she cannot do so, the increase in value is considered to be marital property." 116 Md. App. 190, 205 (1997).

Appellee is correct that there was insufficient evidence to calculate the nonmarital share of the 18 Tussock Court property. Appellant did not present evidence of either the down payment he paid on the house or the fair market value of the house at the time of the marriage. Appellant included the down payment and purchase price in his brief on appeal, but these figures were not presented at trial and therefore could not be considered by the trial court. While there is some evidence of mortgage payments made before the marriage by Appellant in the trial transcript, these are insufficient because there is no record of, or means of calculating, the amount remaining on the mortgage at the time of the marriage. Because Appellant did not produce sufficient evidence to trace the increase in value to his nonmarital contributions, the entire home was correctly considered marital property.

While the trial court was correct in considering the current fair market value of the house as marital property, the trial court's failure to determine on the record the total value of all marital property before making a marital property award requires us to vacate the monetary award and remand for further proceedings. *See Campolattaro*, 66 Md. App. at 78 ("The failure to comply with the three-step process requires vacation of any marital award made.").

The Appellant further takes issue with the trial court's determination of dissipated assets. The trial court found that there was evidence that Appellant spent down approximately $20,000 of the Maryland Supplemental Retirement Plan without a credible explanation. The trial court also found that Appellee made many withdrawals from a Wells Fargo account for questionable purposes, including a single $35,000 withdrawal that she was unable to account for while testifying. The trial court noted that these findings were considered in determining the marital property award. Appellant argues that the trial court erred in awarding Appellee $10,000 from the $20,000 the court found Appellant to have dissipated without awarding Appellant anything from the $35,000 Appellee spent. In the alternative, Appellant argues that the trial court should have awarded him the entire $35,000 because that amount came from a loan which was not a marital asset.

In response to Appellant's contention that the trial court erroneously awarded Appellee $10,000 of the $20,000 that he spent, we note that this division is not corroborated by the trial court's memorandum opinion. The court's opinion merely states that the award of $35,000 "reflects my equitable determination in the remaining equity in the marital home as well as all of the other factors noted above." There is no indication in the trial court's opinion that the amount was divided in half, only that the court found the spendings of both parties "of consequence" and both parties' spendings were reflected in the award. Furthermore, there is no requirement that any amount must be divided equally. *See Alston v. Alston*, 331 Md. 496, 508 (1993) ("…[O]ur statute requires 'equitable' division of marital property, not 'equal' division."). We cannot say that the trial court abused its

discretion in finding and considering these amounts. However, insofar as these amounts are part of dissipated marital property, which is rightfully considered in determining a marital property award, these findings are also vacated. The entire marital property award should be determined anew on remand. If the trial court finds these amounts to have been dissipated on remand, the amount of dissipated marital property should be identified in the court's schedule of marital property.

B) THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION IN AWARDING APPELLEE FULL LEGAL AND PRIMARY PHYSICAL CUSTODY.

In a child custody determination, Maryland courts must determine what is in the best interest of the child. *See Ross v. Hoffman*, 280 Md. 172, 174-75 (1977) ("[The] best interest standard is firmly entrenched in Maryland and is deemed to be of transcendent importance."); *Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019) ("Unequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child.") (citing *Boswell v. Boswell*, 352 Md. 204, 236 (1998)). Maryland courts rely on factors from two cases to determine what custody arrangement is in a child's best interest.

This Court's decision in *Montgomery County Department of Social Services v. Sanders* provides ten non-exclusive factors for a trial court to consider when determining custody 38 Md. App. 406, 420 (1977). These factors are: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference

of the child; (6) material opportunities affecting the future life of the child; (7) age, health, and sex of the child; (8) residences of parents and opportunities for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender. *Id.* A court should not weigh any one factor to the exclusion of the others but instead should look at the totality of the circumstances. *Id.* at 420-21.

In *Taylor v. Taylor* the Supreme Court of Maryland also established a list of factors for custody determinations. 306 Md. 290, 304-11 (1986). These factors are: (1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (2) willingness of parents to share custody; (3) fitness of parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child's social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of parents' request; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to parents; and (14) any other factor that reasonably relates to the issue. *Id.* These factors were not intended to replace any factors that trial judges already consider, such as the *Sanders* factors listed above. *Id.* at 303.

The trial judge explicitly discussed and weighed twenty factors from *Sanders* and *Taylor* to determine that it was in the children's best interest to grant Appellee sole legal custody and primary physical custody. A trial court need not explicitly discuss every factor, and it is not essential that this court would have weighed the factors in the same exact way as the trial judge.

Appellant points to two supposed issues with the trial court's evaluation of the factors. First, Appellant seems to take issue with the trial court's weighing of Appellee's relocation with the children to Texas. Second, Appellant contends that the trial court held his military service against him in deciding to grant Appellee sole legal and primary physical custody.

We cannot say that the trial court abused its discretion in weighing the geographic distance between the parties. The Supreme Court of Maryland has explained that the effect of one parent relocating to a different state on a decision to modify custody will depend on "the relationship that exists between the parents and child before relocation," noting that "[i]f one parent has become the primary caretaker, and the other parent has become an occasional or infrequent visitor, evidencing little interest in day-to-day contact with the child, the adverse effects of a move by the custodial parent will be diminished." *Domingues v. Johnson*, 323 Md. 486, 501-02 (1991). Here, the trial court did acknowledge that Appellee moved abruptly and without notice to Texas. However, the court continued by noting that Appellant's involvement with the children had been marginal before the move. As opposed to *Domingues*, in which the non-moving father had a very close relationship with the children, regularly exercised extensive rights of visitation, and spent substantial periods of time with the children, here, the trial court found that "[Appellant]'s day-to-day presence in the children's lives can be described as sporadic, at best" and so, chose not to weigh the relocation against Appellee. *See Domingues*, 323 Md. at 502.

Furthermore, in his analysis of multiple factors, the trial judge weighed the children's location in Texas as supporting granting custody to Appellee. When considering each parent's ability to maintain the children's relationship with their relatives, the trial court explained that living in Texas allows the children to have a stronger relationship with their maternal aunt and grandmother, with whom they now live. The trial court also weighed the sheer geographic distance between the parties as not supportive of joint custody. When considering the ability of each parent to maintain a stable and appropriate home, the trial court reasoned that the move to Texas has allowed Appellee to provide a more stable life for the children thanks to the financial and childcare assistance she receives from her sister and mother. In considering the potential disruption of the children's social and school lives, the trial court noted that the children are comfortable and entrenched in their schools, activities, and social lives in Texas, where they have lived for over a year. While the trial court noted the abruptness and unilateral nature of Appellee's decision to move to Texas, overall, the court adequately exercised its discretion to weigh the circumstances of the move and the children's lives now in favor of granting Appellee sole legal and primary physical custody.

Regarding Appellant's second contention, in reviewing the opinion by the trial court, Appellant's military service was not held against him. Appellant claims that Maryland Family Law Code § 9-108 states that if a parent is deployed or may be deployed in the future, the trial court cannot use this as the sole reason to change or deny custody or visitation. This section of the Family Law Code discusses the effects of a parent's

deployment when the child custody order is issued during a parent's deployment and when a parent petitions for an order upon returning from deployment, as well as accommodations of the non-deployed parents during the other parent's deployment. The section does not discuss how a court may weigh a parent's military deployments. Regardless, the trial court did not weigh Appellant's military deployments against him. The trial court explicitly stated:

> [Appellant] has admirably served his country and has been deployed away from home on numerous occasions. To be clear, this fact is in no way being held against him. There was, however, concerning testimony regarding [Appellant]'s whereabouts upon returning home from overseas deployments and whether/when [Appellee] and family knew exactly where [Appellant] was living. This is troubling. This fact has undoubtedly hindered [Appellant]'s ability to nurture a full relationship with the children. Consideration of this factor does not support awarding joint custody.

The trial judge made clear that the military deployments were not considered negatively against him. Rather, his unknown whereabouts when not deployed were weighed against granting joint custody. Appellant has provided additional documents that were not presented at trial in an attempt to counter the trial court's finding that he was absent apart from his deployments. As these documents were not admitted into evidence at trial, they cannot be considered here.

C) CHILD SUPPORT MUST BE VACATED AND REMANDED BECAUSE TRIAL COURT RELIED ON APPROXIMATIONS AND TESTIMONY TO FIND POTENTIAL INCOME WITHOUT FIRST FINDING VOLUNTARY IMPOVERISHMENT

When establishing child support payments, a court must calculate the income of both parents. Income is defined in § 12–201(b) of the Family Law Article as: (1) the actual income of a parent, if the parent is employed to full capacity; or (2) potential income of a parent, if the parent is voluntarily impoverished.

Section 12–201(b) of the Family Law article defines "actual income" as income from any source. This article also instructs that income statements of the parents be verified with documentation of both current and past actual income, including pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent's three most recent federal tax returns. FL § 12-203. In *Ley v. Forman*, the Appellate Court of Maryland vacated and remanded a child support award because the court relied on approximations and estimations of income and failed to make specific findings of fact regarding the parties' incomes. 144 Md. App. 658, 665 (2002). The court reasoned that "[t]he clear intention of the legislature requires the trial court to consider actual income and expenses based on the evidence. The court must rely on the verifiable incomes of the parties, and failure to do so results in an inaccurate financial picture." *Id.* at 670.

In contrast, "potential income" means income attributed to a parent determined by: (1) the parent's employment potential and probable earnings level; (2) the parent's assets; (3) the parent's actual income from all sources; and (4) any other factor bearing on the parent's ability to obtain funds for child support. FL § 12-201(m). Potential income necessarily involves a degree of speculation as it cannot be verified through documentation or otherwise. *Durkee v. Durkee*, 144 Md. App. 161, 187 (2002). It may only be considered, however, if the trial court first makes a finding that the party to whom income is being imputed is voluntarily impoverished. *Id.* at 183 ("[A] trial court must find voluntary impoverishment in order to impute income to that parent for purposes of calculating child support."). Voluntary impoverishment occurs whenever a parent has made "the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources." *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993). To determine voluntary impoverishment, the court must inquire into the parent's motivations and intentions. *Wills v. Jones*, 340 Md. 480, 489 (1995).

Appellant argues that the trial court considered his potential income as opposed to his actual income, and that to consider potential income, it first needed to analyze whether, and find that, he was voluntarily impoverished. We agree.

The Appellee contends both that the trial court's determination of Appellant's income was not speculative and that the trial court did in fact conclude that the Appellant was voluntarily impoverished. Appellee notes that the trial court grounded its determination of income in Appellant's own testimony regarding his approximate earning

capacity and income range. However, approximations are insufficient to support a finding of actual income. Here, the trial court considered an approximate hourly wage and a monthly range to find what Appellant could make if he worked 40 hours per week. However, the trial court also noted that his jobs do not allow for guaranteed reliance on a 40-hour work week.

If actual income is not correctly considered, the court must use a party's potential income. However, in order to consider potential income, the trial court first must find that Appellant was voluntarily impoverished, which the trial court did not do here. In arguing that the trial court correctly used Appellant's potential income, Appellee notes that the trial court considered the factors laid out in *John. O. v. Jane O.*, 90 Md. App. 406, 422 (1992), and that Appellant's significant decrease in income from a stable position to the gig economy raised concerns about voluntary impoverishment. The trial court may have considered certain voluntary impoverishment factors in other areas of its opinion and these concerns may be warranted, but the failure to make a specific finding of voluntary impoverishment necessitates a remand in this case. In *John O. v. Jane O.*, the trial court considered certain factors and found that Mr. O. was physically capable, educated, and possessed other skills which would make him employable. 90 Md. App. at 422-23. Furthermore, to make a finding of voluntary impoverishment, the trial court must consider the party's motivation, *see Wills*, 340 Md. at 489, which the trial court here also did not do.

The child support award is therefore vacated and remanded for the trial court to either make a finding on Appellant's actual income, supported by appropriate

documentation, or find that Appellant is voluntarily impoverished and then calculate potential income.

D) VACATED MARITAL PROPERTY NECESSITATES VACATING ALIMONY AND ATTORNEY'S FEES

The trial court here declined to make an award of alimony or attorney's fees. Neither party has appealed these decisions. However, although those findings may be sustainable, our vacation of the monetary award mandates that the trial court reconsider its decision regarding alimony and attorney's fees. *See Turner v. Turner*, 147 Md. App. 350, 400 (2002) ("The factors underlying alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other."). The trial court may reconsider requests for alimony and attorney's fees on remand.

CONCLUSION

Insufficient findings on the value of all marital property necessitates remanding the issue of the marital property award to the trial court. Because the marital property award will be reconsidered, alimony and attorney's fees may also be reconsidered. The trial court's findings on the Appellant's income were not supported by adequate evidence and were rather approximations that do not constitute actual income. Nor did the trial court make a finding on voluntary impoverishment necessary to consider the Appellant's potential income. On remand, the trial court must determine Appellant's actual income based on adequate documentation or determine that Appellant was voluntarily

impoverished. The trial court's custody determination was not an abuse of discretion and is not to be reconsidered on remand.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY, OTHER THAN GRANT OF ABSOLUTE DIVORCE AND CUSTODY, VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.