Circuit Court for Howard County
Case No. C-13-FM-21-002215

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1962

September Term, 2023

DENIKA TOKUNAGA

v.

LANCE TOKUNAGA

Zic,
Ripken,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: March 18, 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 case arises from divorce proceedings between Denika Tokunaga, appellant, and Lance Tokunaga, appellee. Mr. Tokunaga filed for divorce from Ms. Tokunaga in December 2021. The parties jointly filed a Maryland Rule 9-207 statement in June 2022 ("June 2022 Form"), and the divorce trial took place over four days in October 2023. In early November 2023, the Circuit Court for Howard County granted the parties an absolute divorce. Ms. Tokunaga filed a timely appeal, claiming that the circuit court made several erroneous decisions in its November 2023 judgment, as well as in denying multiple requests for postponement.

QUESTIONS PRESENTED

Ms. Tokunaga presents four questions for our review, which we have rephrased as follows:[1]

[1] Ms. Tokunaga phrased the questions as follows:

1. Did The Trial Court Err By Granting a Monetary Award When No Current Joint Statement of Assets Was Executed and Jointly Filed By The Parties and By Reducing Child Support Without A Full Analysis?
2. Did the Trial Court Err By Allowing Form to Triumph Over Substance in the Filing of [Ms. Tokunaga's] 9-207 After The Parties Filed a Joint Line Agreeing To Its Filing Since The Appellee Filed His Separate Partial 9-207?
3. Did The Trial Court Err As a Matter Of Law Creating A Higher Burden to Prove The Existence Of Non-Marital Property?
4. Did The Trial Court Err in Denying The Postponement Request of [Ms. Tokunaga's] New Counsel, Especially Without Comment, Knowing That Appellant's New Counsel Was Just Entering Her Appearance a Couple of

(continued)

1. Whether the circuit court abused its discretion in granting Mr. Tokunaga a monetary award.

2. Whether the circuit court abused its discretion in calculating the amount of monthly child support owed by Mr. Tokunaga.

3. Whether the circuit court erred in denying Ms. Tokunaga's counsel's requests for postponement.

4. Whether the circuit court otherwise erred in relying on the June 2022 Form.

For the following reasons, we affirm.

BACKGROUND

The Parties' Marriage

Ms. Tokunaga and Mr. Tokunaga were married in 2014 and are the parents of two minor children. Shortly after the parties married, they purchased a home in Fulton, Maryland ("Iager Home").[2] The parties separated in May 2020.

Around the time of the parties' separation, Mr. Tokunaga permitted Ms. Tokunaga to use the proceeds of the sale of the Iager Home, which ultimately totaled $548,000, to purchase her own home. Mr. Tokunaga explained during the parties' divorce proceedings that this offer was contingent on having an uncontested divorce. Subsequently, Ms. Tokunaga used a portion of the Iager Home proceeds to put a down payment on and renovate another home ("President Street Home"), and to pay attorney's

Weeks Before Trial, and Stated In Her Postponement Request That She Was Ill?

[2] Throughout this opinion, we assign names to the homes purchased by Mr. Tokunaga and/or Ms. Tokunaga based upon the homes' respective street names.

fees. She also used the furniture from the Iager Home to furnish the President Street Home. Ms. Tokunaga then deposited the remainder of the Iager Home sale proceeds into a non-marital investment account ("LPL Account"). As a result, the gifted sale proceeds were indistinctly mixed with non-marital funds.

The Parties' Divorce

Mr. Tokunaga filed for divorce on December 28, 2021. The parties filed a joint statement of property (previously defined as "June 2022 Form") on June 29, 2022, which stipulated that the President Street Home was marital property. Both parties also filed separate long form financial statements. After multiple settlement conferences, the court scheduled the merits hearing to begin on September 18, 2023.

On March 14, 2023, the court issued a final *pendente lite* ("PL") order based on recommendations issued after an October 2022 PL hearing. The final PL order reduced the recommended amount of child support paid to Ms. Tokunaga from $4,206 to $1,658 per month. Pursuant to Maryland Rule 2-535, Ms. Tokunaga asked the court to revise its child support order, reasoning that the court did not sufficiently explain how it determined the amount of child support owed to Ms. Tokunaga. The court denied the request.

On September 14, 2023, four days before the scheduled merits hearing, Ms. Tokunaga's counsel filed an emergency petition to withdraw due to "circumstances that

[] occurred within the past 10 days[.]"[3] The court allowed Ms. Tokunaga's counsel to withdraw and placed the merits hearing on standby, but did not grant Ms. Tokunaga's *pro se* postponement request filed on September 18, 2023. On October 9, 2023, Ms. Tokunaga's new counsel entered her appearance and requested to postpone the merits hearing, which had been rescheduled to begin on October 23, 2023. This postponement request was amended the next day to explain that Ms. Tokunaga's new counsel had not received records from prior counsel. The court denied the amended postponement request on October 11, 2023.

On Friday, October 20, 2023, Mr. Tokunaga filed a partial 9-207 statement. The same day, Ms. Tokunaga's counsel filed a second postponement request, citing counsel's "acute[]" illness and physician's instructions to return to work on November 1, 2023.

The Merits Hearing

The divorce merits hearing began as rescheduled the following Monday, October 23, 2023. At the hearing's outset, Ms. Tokunaga's counsel voluntarily withdrew the second postponement request:

> THE COURT: Okay, and [Ms. Tokunaga's counsel], I saw that you had filed a request for postponement last Friday.

[3] Three separate law firms represented Ms. Tokunaga at different points during the parties' underlying divorce proceedings. Counsel who filed the September 14, 2023 request to withdraw had represented Ms. Tokunaga since February 2023. Ms. Tokunaga stated in her October 9, 2023 "Request for Postponement of Trial" that her previous counsel did not inform Ms. Tokunaga of his withdrawal until "open court on September 18, 2023[.]" We note, however, that previous counsel's September 14, 2023 petition for withdrawal states that he "ha[d] advised [Ms. Tokunaga] of the action he intend[ed] to take."

> [COUNSEL FOR MS. TOKUNAGA]: I did, I wasn't well enough to file it prior to Friday. I did call the [c]ourt on Thursday. I am going to withdraw that.

On the third day of proceedings, the court, as well as Mr. Tokunaga's counsel, asked Ms. Tokunaga to submit an updated partial 9-207 statement:

> [COUNSEL FOR MR. TOKUNAGA]: Your Honor, I would also ask if Ms. Tokunaga could draft an updated 9[-]207 basically to cover myself. Because at this point it seems like after the last 9[-]207 some money has been moved around. And I would just like to document that that is her assertion at this point now, that things are being moved around.
>
> THE COURT: I hate to do that at the end of the case.
>
> MS. TOKUNAGA: Your Honor, I -- I could log into my account right now.
>
> * * *
>
> THE COURT: I have both the [June 2022 Form] and then [Mr. Tokunaga's statement] where he updated his amounts. So what I would be left to do is take [Ms. Tokunaga's] old amounts and his new amounts and merge them together and see what the evidence discloses. And, of course, we want accuracy. And I think what [Mr. Tokunaga's] counsel is asking is that if money has changed since the last disclosure if [Ms. Tokunaga] could provide that --
>
> [COUNSEL FOR MS. TOKUNAGA]: Well --
>
> THE COURT: These are the documents I use to distribute marital property. You want me to have accurate information on these or it would work to the detriment of one side or the other.
>
> [COUNSEL FOR MS. TOKUNAGA]: And I understand that, Your Honor. And me just getting into the case, I didn't have all of those numbers to confirm those numbers. And you've requested that we updated the statements.

> THE COURT: These are the statements. I'm telling you --
>
> [COUNSEL FOR MS. TOKUNAGA]: Right. I mean -- not that statement.
>
> THE COURT: -- this is how I do my marital property.
>
> [COUNSEL FOR MS. TOKUNAGA]: I'm taking about -- okay.
>
> THE COURT: Using these pieces of paper.
>
> [COUNSEL FOR MS. TOKUNAGA]: Not those statements. I'm talking about the LPL statements. You asked that --
>
> THE COURT: I did ask for updated statements.
>
> [COUNSEL FOR MS. TOKUNAGA]: Right. So then --
>
> THE COURT: And I think [Mr. Tokunaga] produced some updated statements. I wrote all over these. I change amounts, I make notes of whether I think they are marital or non-marital. I've got little notes written all over the place on these . . . . These are the documents I use. So [] I would think you would love an opportunity to bring updated numbers. But like I said, we don't take people's words for it[] . . . . I want to make an accurate marital property determination as to what exists as close to the day as possible.
>
> * * *
>
> [COUNSEL FOR MS. TOKUNAGA]: [M]y understanding is that the Court is requesting that we update the statements to as close to today's value as possible. That's my understanding. With the statements from LPL. And as Your Honor instructed that's what [Ms. Tokunaga will] do. She said she'll get me the statements. And then we can go from there and . . . look at the 9[-]207.

On the fourth and final day of the hearing, Ms. Tokunaga's counsel told the court that she had an updated 9-207 statement:

> [COUNSEL FOR MS. TOKUNAGA]: I do have a 9-207 that we put together based upon the accounts that have the current

> values on there and everything with regard to [Ms.] Tokunaga.
>
> THE COURT: So, I will have a Plaintiff's 9-207 and a Defendant's 9-207. That's okay as long as they talk about the same things . . . . But let's do that after [Ms. Tokunaga's] ten-minute witness. Let's get him out of here.

After hearing testimony from the witness, the court returned to the issue of Ms. Tokunaga's partial 9-207 statement:

> THE COURT: [Ms. Tokunaga's counsel], did you indicate you wanted to put in a 9-207?
>
> [COUNSEL FOR MS. TOKUNAGA]: I did, Your Honor. Ms. Tokunaga wanted to sign it, and after going through all of [the] accounts and everything, I haven't had a chance for her to actually review it and sign it. So, I wanted the opportunity before I put it in.
>
> THE COURT: Okay. All right.

Despite these exchanges, Ms. Tokunaga's counsel did not submit an updated 9-207 statement to the court at any point during the parties' arguments.

The parties then presented evidence concerning the value of the President Street Home. Ms. Tokunaga claimed that the President Street Home was valued at $775,000, explaining that she "arrived at that number by averaging the price per square foot of other townhouses that sold in [the same neighborhood] recently." Mr. Tokunaga "called a certified residential appraiser with 20 years of experience," who testified that the market value of the President Street Home was $865,000.

During closing, the court reminded Ms. Tokunaga's counsel that, according to the June 2022 Form, the President Street Home was marital property:

> [COUNSEL FOR MS. TOKUNAGA]: And Ms. Tokunaga is requesting as her distribution from the marital property, $408,753.00, if the [court] were to rule that -- if you were to rule that [the] President Street [Home] was marital property, given the --
>
> THE COURT: I have to rule that the President Street [Home] is marital property --
>
> [COUNSEL FOR MS. TOKUNAGA]: Right.
>
> THE COURT: [The President Street Home is] here as marital property on the 9-207 that was filed back in 20[22] [. . . .]
>
> MS. TOKUNAGA: You Honor, I didn't state marital property.
>
> * * *
>
> THE COURT: You can't -- no, you are not changing that at closing. That is not happening. [Mr. Tokunaga's counsel is] entitled to notice. [Mr. Tokunaga is] entitled to notice.
>
> [COUNSEL FOR MS. TOKUNAGA]: I understand, Your Honor.
>
> THE COURT: We don't do trial by surprise.
>
> [COUNSEL FOR MS. TOKUNAGA]: I understand that.
>
> MS. TOKUNAGA: Your Honor, I didn't --
>
> THE COURT: Absolutely not. That is not how it works.

Following closing arguments, the court held the case *sub curia*.

Post-Hearing Filings and the Circuit Court's Judgment

On October 31, 2023, five days after the hearing concluded, the parties filed a joint line requesting that the circuit court allow Ms. Tokunaga to file a partial 9-207 form. Although the line states that Ms. Tokunaga's partial 9-207 statement was "filed simultaneously []with" the line, the Maryland Electronic Courts ("MDEC") system

reflects that Ms. Tokunaga did not attach a 9-207 statement along with the line, and instead separately filed a partial 9-207 statement on November 1, 2023. This filing was stricken as deficient under Maryland Rule 20-203(d)(3). Later the same day, Ms. Tokunaga refiled another partial 9-207 statement. This filing was stricken as deficient under Maryland Rule 20-201(g). Ms. Tokunaga again attempted to refile the partial 9-207 statement on November 2, 2023—the same day the court signed the order granting the parties an absolute divorce.

In its November 3, 2023 Memorandum Opinion, the circuit court granted Mr. Tokunaga a $75,000 monetary award and reduced the amount of child support owed by Mr. Tokunaga to $749 per month.[4] The court recognized that "[b]oth parties made substantial monetary and non-monetary contributions to the well-being of the family." In particular, the court found that [Ms. Tokunaga] continually ensured the children's needs were met, while Mr. Tokunaga spent hundreds of thousands of dollars of premarital funds to purchase and furnish the Iager Home.

In considering Mr. Tokunaga's request for a monetary award, the court relied in part on the parties' June 2022 Form and Mr. Tokunaga's partial 9-207 statement. The court then credited Mr. Tokunaga's expert testimony evidence that the President Street Home, listed as a marital asset in the June 2022 Form, was valued at $865,000. The court

[4] During the merits hearing, Mr. Tokunaga requested that the circuit court grant a monetary award in the amount of $383,286 in his favor. The court's Judgment of Absolute Divorce, signed on November 2, 2023, mistakenly granted a monetary award "to [Mr. Tokunaga] in the amount of Seventy-five [sic] Dollars ($75,000.00)[.]" The court later corrected this amount to "Seventy-five Thousand Dollars ($75,000.00)[.]"

also found that the proceeds of the Iager Home were a gift from Mr. Tokunaga to Ms. Tokunaga for her to use to purchase a new home.

The court determined, however, that Mr. Tokunaga established a prima facie case of dissipation. Finding that Ms. Tokunaga "comingled" the Iager Home sale proceeds with marital funds by depositing the remaining proceeds into a marital account, the court estimated that Ms. Tokunaga failed to account for several hundreds of thousands of dollars in cash outflows from her personal and business accounts. Along with Ms. Tokunaga's "lack of candor in failing to timely disclose and update her accounts[and] the withdrawal of cash from a retirement account after representing to the [circuit c]ourt that she would not remove funds from [the] account," the court held that the unaccounted-for marital property, approximately $300,000, was "extant property."

The court then delineated marital property titled in each parties' name and attributed monetary values to each asset based on the evidence presented at trial:

> The following marital property titled in [Ms. Tokunaga's] name:
>
> 1. [President Street Home] value: $865,000; mortgage $534,000; net value $151,000.
> 2. 2[01]6 Mercedes: value: $28,000
> 3. BOA #9448 $5[,]978.90
> 4. BOA[ ]#4331 $1[,]430.59
> 5. BOA #2262 $135.12
> 6. LPL[ ]#2549 $136,892.81
> 7. LPL[ ]#9763 $9[,]482.47
> 8. LPL[ ]#8412 $101,972.79
> 9. LPL[ ]#2258 $152,958.74
> 10. Extant property $300,000.00
>
> The following marital property titled in [Mr. Tokunaga's] name:

1. [Father's current home] value $525,000; mortgage $517,00; net value $8,000
2. 2018 Ram Truck: value $50,000; loan $20,000; net value $30,000
3. USAA #4839: $4[,]128.20
4. USAA #8318: $17[,]000.00
5. Schwab #9306: $26,547
6. Schwab #5682: $66,644
7. Schwab #3000: $53,280.99
8. Raytheon retirement savings: $222,052.37
9. Civilian TSP: $76,704.91
10. USAA: $52,081

The total of the net value of the marital property titled in [Ms. Tokunaga's] name is $587,861.42.[5] In addition, $300,000.00 of extant property is attributed to [Ms. Tokunaga]. The total value of the marital property titled to [Mr. Tokunaga] is $556,438.47.

After valuating the marital assets, the court applied the 11 mandatory factors in Md. Code Ann., Fam. L. ("FL") § 8-205(b):

- contributions, monetary and non-monetary[,] of each party to the well-being of the family: this was discussed above
- value of all property interests: see summary above
- economic circumstances of each party at the time the award is made: both parties make substantial income and did not make the court aware of any large debts other than their mortgages.
- the circumstances that contributed to the estrangement of the parties: the parties were incompatible causing significant conflict
- duration of the marriage: 9 years, 6 years before separation and 3 after
- age of each party: [Mr. Tokunaga] is 57, [Ms. Tokunaga] is 47.

[5] Based on the property values listed in the Memorandum Opinion and this Court's calculations, the total net value of the marital property titled in Ms. Tokunaga's name is $587,851.42, not $587,861.42. Neither party has taken issue with this ten-dollar difference, and we note it here solely for the sake of accuracy.

- physical and mental condition of each party: good physical health. Mental health diagnosis [of Mr. Tokunaga, which does not impact his ability to work].
- how and when the specific property or interest in property was acquired, including the effort expended by each party in accumulating the property or interest in the property: most of the assets were acquired during the marriage. [Mr. Tokunaga] testified that he contributed about $200,000 of premarital assets to the purchase of the marital home and the furnishings.
- contribution by either party of nonmarital property or assets to the acquisition of real property held by the parties as tenants by the entiret[y]: see above.
- any award of alimony or use and possession made in the case: none
- any other factor the court considers necessary or appropriate to consider to arrive at a fair and equitable monetary award or transfer of property: This is significant in this case[.]

Explaining the last factor, the court found that while Mr. Tokunaga makes "much more" than Ms. Tokunaga, Ms. Tokunaga "spent a lot of marital funds over a short period of time[,] . . . mixed her personal and business expenses on one credit card, paid personal expenses through her business, and [withdrew] large sums from retirement accounts incurring penalties for early withdrawal." The court found that Ms. Tokunaga was "less than candid about her use of marital funds during the marriage and has dissipated funds," surmising that:

> Had [Ms. Tokunaga] segregated the funds and used only the segregated non[-]marital (gift) money to fund the down payment and improvements on [the President Street Home] and to pay her mortgage, the net value of the [President Street Home] would have been non-marital. There might have been cash left over (or not—we will never know).

Regarding its decision to reduce the PL child support amount, the court first observed that both parties' financial statements "grossly" understated their incomes. The court determined, based on his salary from his current employment and his military retirement, that Mr. Tokunaga's monthly income was $27,259.58. The court also noted that after the divorce, Mr. Tokunaga would pay $840 per month for the children's aftercare program in addition to expenses for the children's health insurance and karate dojo classes.

To calculate Ms. Tokunaga's monthly income, the court analyzed gross business receipts from Ms. Tokunaga's business and transfers to her personal bank account. Finding that personal expenses appeared to be paid out of Ms. Tokunaga's personal *and* business accounts, the court computed the totals for each, $18,876.31 and $14,576.29 per month, respectively, and used the mid-point figure of $16,726.30 as Ms. Tokunaga's monthly income.[6] The court additionally noted that Ms. Tokunaga did not have a daycare expense. Based on the children's existing activities and other expenses, as well as the parties' shared custody agreement, the court used Child Support Obligation Worksheet A to calculate the recommended monthly child support in the amount of $749, to be paid to Ms. Tokunaga.

Ms. Tokunaga subsequently filed a timely appeal challenging the monetary award, the reduction of child support, the use of the June 2022 Form, and the denials for

[6] For example, Ms. Tokunaga's business account included "unexplained Zelle transfers" to a housekeeper, a church, and several separate individuals.

postponement. We discuss each in turn below, and supplement with additional facts as appropriate.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING MR. TOKUNAGA A MONETARY AWARD.

On appeal, Ms. Tokunaga first challenges the portion of the circuit court's judgment granting Mr. Tokunaga a $75,000 monetary award. Ms. Tokunaga claims that the court "erred as a matter of law" when it issued Mr. Tokunaga a monetary award, because "no current joint statement of assets (9-207) was executed and filed by the parties." Ms. Tokunaga argues that this error precluded the court from factoring her "business expenses to her gross receipts, which artificially inflated her income."

In response, Mr. Tokunaga maintains that Ms. Tokunaga could have argued that the President Street Home was non-marital property at any point before closing statements, but that she failed to do so. Even if the court had allowed Ms. Tokunaga to present an updated partial 9-207 statement during closing, Mr. Tokunaga argues that the court nonetheless relied on evidence and testimony presented—not the June 2022 Form—in granting the monetary award.

A. Standard Of Review

We review the ultimate decision to grant a monetary award and the amount of such an award for abuse of discretion. *Flanagan v. Flanagan*, 181 Md. App. 492, 521-22 (2008) (citing *Alston v. Alston*, 331 Md. 496, 504 (1983)). Factual findings regarding dissipation of assets will not be reversed absent clear error. *Goicochea v. Goicochea*, 256

Md. App. 329, 340 (2022) (internal marks and citation omitted). "'If there is any competent evidence to support the factual findings [of the trial court], those findings cannot be held to be clearly erroneous.'" *Goicochea*, 256 Md. App. at 340 (quoting *Omayaka v. Omayaka*, 417 Md. 643, 652-53 (2011)).

B. Discussion

In divorce cases, trial courts must follow a three-step process to determine whether a monetary award is appropriate. *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 279 (2021).

First, the presiding court must determine whether a disputed item of property is marital or non-marital. *Id.*; FL § 8-203. Significant to the first step, "[a]n agreement in a Rule 9-207 Statement that property is non-marital removes that property from the pool of property that is subject to division for purposes of a monetary award." *Brown v. Brown*, 195 Md. App. 72, 107 n.18 (2010). *See also*, *Beck v. Beck*, 112 Md. App. 197, 206 (1996) (recognizing that the purposes of Rules S72 and S74, predecessors of Rule 9-207, were to allow the parties to "narrow[] the areas of dispute for the court [and] promot[e] settlements") (internal marks and citation omitted).

Second, the court must determine the value of any marital property. *Wasyluszko*, 250 Md. App. at 279 (citing *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019)); FL § 8-204.

Third, "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."

Wasyluszko, 250 Md. App. at 279-80; FL § 8-205. As part of this third step, a trial court must consider the 11 factors listed in FL § 8-205(b). Of particular significance here, FL § 8-205(b)(11) requires a circuit court to consider any factor the court believes "necessary or appropriate . . . in order to arrive at a fair and equitable monetary award[.]"

Although a court need not specifically explain how the monetary award relates to each of the FL § 2-805(b) factors, *Wasyluszko*, 250 Md. App. at 279, the award must ultimately "comport with the underlying purpose of the statute, which is intended to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage strictly in accordance with its title." *Gordon v. Gordon,* 174 Md. App. 583, 631 (2007) (internal marks omitted).

Here, the circuit court used the June 2022 Form, which was jointly submitted by the parties, to determine what property was marital and thus subject to distribution. Considering the evidence and testimony presented, the court determined the monetary value of each piece of marital property. The court then listed and applied all FL § 2-805(b) factors. The court cited Ms. Tokunaga's "lack of candor" with the court and her dissipation of funds, which continued after telling the court she would not withdraw or transfer funds from certain accounts, as "significant" reasons for concluding that an equal division of the marital property would be inequitable under FL § 2-805(b)(11).

Our review of the record reveals no error by the circuit court that "artificially inflated [Ms. Tokunaga's] income" such that the monetary award was an abuse of the court's discretion. The court thoroughly considered financial documents timely submitted by Ms. Tokunaga, including the June 2022 Form, Ms. Tokunaga's long-form

financial statement, and bank account and other financial statements. Ultimately, the court determined that the amount of unaccounted-for marital funds (approximately $300,000) warranted granting a monetary award to Mr. Tokunaga in the amount of $75,000. We conclude that this award "comports with the underlying purpose of [FL § 8-205]" because it mitigated unfairness in property distribution—unfairness caused by Ms. Tokunaga's inability to account for hundreds of thousands of dollars of sale proceeds from the Iager Home.

For this reason, we hold that the circuit court did not abuse its discretion in granting Mr. Tokunaga a monetary award in the amount of $75,000, and affirm.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN CALCULATING THE AMOUNT OF MONTHLY CHILD SUPPORT OWED BY MR. TOKUNAGA.

Ms. Tokunaga next contests the circuit court's reduction of monthly child support. Ms. Tokunaga claims the court "never analyzed nor resolved the important issue of [her] recurring monthly expenses against her gross income as required by the guidelines." The court's "failure" to conduct "a great deal of additional analysis required to arrive at a fair and reasonable child support amount," Ms. Tokunaga argues, "constitutes reversible error."

Mr. Tokunaga argues that the court adequately weighed Ms. Tokunaga's monthly expenses. In support, Mr. Tokunaga cites directly to the circuit court's consideration of Ms. Tokunaga's finances in its Memorandum Opinion, which notes inconsistencies in Ms. Tokunaga's testimony, bank and credit card statements, and other evidence of

financial transactions. As explained in detail below, we affirm the court's child support award.

A. Standard Of Review

"A trial court's child support award in an 'above-guidelines' case is reviewed under the abuse of discretion standard." *Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013) (quoting *Frankel v. Frankel*, 165 Md. App. 553, 587 (2005)). In reviewing for abuse of discretion, we "ask[] whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable." *In re Dany G.*, 223 Md. App. 707, 720 (2015).

B. Discussion

FL § 12-202(a)(1) requires a court to use the child support guidelines, codified at § 12-204(e), "in any proceeding to establish or modify child support, whether *pendente lite* or permanent." The purpose of the guidelines is to "limit the role of trial courts in deciding the specific amount of child support to be awarded in different cases by limiting the necessity of factual findings" previously necessary. *Petrini v. Petrini*, 336 Md. 453, 460 (1994). The presumption in favor of the guidelines may be rebutted by evidence that such application "would be unjust or inappropriate in a particular case."
FL § 12-202(a)(2)(ii).

When "the combined adjusted actual income exceeds the highest level specified in the schedule . . . the [trial] court may use its discretion in setting the amount of child support." *Otley v. Otley*, 147 Md. App. 540, 561 (2002) (citing FL § 12-204(d)). Therefore, if the parties' combined adjusted actual income exceeds the maximum level

specified in the guidelines, then the guidelines are "not directly applicable" to determining the proper amount of child support. FL § 12-204(e); *Karanikas*, 209 Md. App. at 599. *See also Otley*, 147 Md. App. at 561 (recognizing that a trial court may exercise its discretion when the combined adjusted actual income exceeds the maximum specified schedule in FL § 12-204(e)).

Here, we hold that the circuit court's child support award was not an abuse of discretion because, under *Karanikas* and *Otley*, the court was not required to strictly adhere to the child support guidelines in calculating the amount of support. *Karanikas*, 209 Md. App. at 599; *Otley*, 147 Md. App. at 561. At the outset of its child support analysis, the court found that "[b]oth parties' financial statements grossly understate their income." Thus, instead of relying on the parties' financial statements, the court looked at other evidence.

To determine Mr. Tokunaga's monthly income, the court divided Mr. Tokunaga's total yearly wages, calculating his adjusted monthly income to be $27,259.58. To determine Ms. Tokunaga's monthly income, the court found the mid-point cash inflow figure between Ms. Tokunaga's personal and business accounts, $16,726.30, to be Ms. Tokunaga's monthly income. The parties' combined adjusted actual monthly income totaled $43,985.88, and, therefore, this case is comfortably in the "above guidelines" category. FL 12-204(e); *Karanikas*, 209 Md. App. at 596; *Otley*, 147 Md. App. at 561. As such, the court was not directly bound to the child support guidelines; rather, it was empowered to exercise its discretion in fashioning an appropriate child support award.

In its exercise of discretion, the court relied on testimony, bank account statements, and other evidence regarding the parties' finances to determine the appropriate child support amount. The court specifically analyzed Ms. Tokunaga's "gross receipts from her business between July 1, 2021[,] and July 31, 2023[,]" which totaled $471,907.70, and Ms. Tokunaga's transfers to her personal banking account, which totaled $364,407.16. While Ms. Tokunaga correctly states that the court did not explicitly take into consideration Ms. Tokunaga's business expenses, Ms. Tokunaga does not point to any specific expenses supported by the record that, in our view, push the child support award "beyond the fringe of what is minimally acceptable." *In re Dany G.*, 223 Md. App. at 720. For these reasons, we affirm the circuit court's child support award.

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MS. TOKUNAGA'S COUNSEL'S REQUESTS FOR POSTPONEMENT.

Ms. Tokunaga further contends that the circuit court erred in denying her trial counsel's postponement requests, which were filed on October 10, 2023, and October 20, 2023, respectively.[7] Ms. Tokunaga argues that the court's denial of both motions prevented her from timely resolving "all of the issues regarding the 9-207 document[,]"

[7] At oral argument on November 14, 2024, Ms. Tokunaga's appellate counsel argued that her trial counsel's withdrawal of the second motion to postpone, filed on October 20, 2023, was not "necessarily a waiver," because trial counsel had been "put in a pretty unfair position" and was in a "compromised state of mind." Because Ms. Tokunaga's initial brief does not raise this argument, we decline to address it. *Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241 (2004) ("An appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief.").

thereby "severely and irrevocably prejudic[ing]" Ms. Tokunaga at trial. Mr. Tokunaga contends that the denials are not reversable because they did not prejudice Ms. Tokunaga.

A. Standard Of Review

"To grant or deny . . . a motion for [postponement] is 'in the sound discretion of the trial court.'" *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013) (quoting *Das v. Das*, 133 Md. App. 1, 31 (2000) (citation omitted)). We will only review the circuit court's exercise of discretion if the court acts arbitrarily. *Das*, 133 Md. App. at 31 (citing *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)). Furthermore, we will only reverse a circuit court's decision "in 'exceptional instances where there was prejudicial error.'" *Id.* (quoting *Thanos*, 220 Md. at 392 (1959)).

B. Discussion

Maryland Rule 2-508(a) governs requests for continuances and postponements, stating that: "On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require."

The phrase "as justice may require" has been interpreted to mean that a trial court abuses its discretion in denying a postponement when the postponement was required by law, when "counsel was taken by surprise by an unforeseen event at trial" despite diligently preparing for trial, and/or when counsel was otherwise confronted by an unforeseen event and "acted with diligence to mitigate the effects of the surprise[.]" *Touzeau v. Deffinbaugh*, 394 Md. 654, 669-70 (2006) (internal citations omitted). The Supreme Court has also held that denying a postponement due to the inability of counsel to attend the proceeding is not an abuse of discretion. *See, e.g.*, *Cruis Along Boats, Inc.*

v. Langley, 255 Md. 139, 143 (1969). Mere lack of preparedness is not ordinarily a proper ground for a postponement. *Quarles v. Quarles*, 62 Md. App. 394, 401 (1985) (citations omitted).

Here, Ms. Tokunaga's October 10, 2023 amended motion for postponement claimed that, "given the short time[]tables and volumes of motions, pleadings, and correspondence, [counsel] had planned to begin preparing for trial this past weekend but due to lack of receipt of any case records from prior counsel, has been unable to do so." Mere lack of preparedness, however, is ordinarily not a justification for postponement. *Quarles*, 62 Md. App. at 401. Because the amended motion alleges lack of preparation, we conclude that the circuit court did not act arbitrarily in denying this request for a postponement.[8]

Regarding the second motion for postponement, the record shows that the circuit court did not deny the October 20, 2023 motion for postponement; rather, Ms. Tokunaga's trial counsel withdrew her second motion for postponement at the outset of the divorce trial on October 23, 2023. Therefore, we do not address Ms. Tokunaga's argument concerning the second motion for postponement, because the motion was withdrawn by counsel and not, as Ms. Tokunaga claims, denied by the court.

[8] In her brief, Ms. Tokunaga further contends that denying the amended motion for postponement was prejudicial because it inhibited her from timely filing a partial Rule 9-207 statement. This does not explain how, as a threshold appellate matter, the circuit court acted arbitrarily. *Das*, 133 Md. App. at 31. Accordingly, we do not discuss whether the denial of the amended motion for postponement prejudiced Ms. Tokunaga.

IV. THE CIRCUIT COURT DID NOT OTHERWISE ERR IN USING THE JUNE 2022 FORM.

Ms. Tokunaga additionally argues that the circuit court erroneously "allow[ed] form to triumph over substance in the filing of [her] 9-207 after the parties filed a joint line agreeing to its filing[,] since [Mr. Tokunaga] filed his separate partial 9-207." As we understand this argument, Ms. Tokunaga believes the court should have considered the partial Maryland Rule 9-207 statement submitted post-trial because the court considered Mr. Tokunaga's partial Rule 9-207 statement, which was submitted pre-trial. As a result, Ms. Tokunaga argues, the court erroneously "ma[d]e its determination regarding [what is] marital and nonmarital property" by "infer[ring] [Ms. Tokunaga's] portion of the 9-207." In response, Mr. Tokunaga maintains that Ms. Tokunaga's updated partial Rule 9-207 statement was a permissive filing that she did not file before or during the trial despite being afforded opportunities to do so.

The purpose of requiring Maryland Rule 9-207 statements is to simplify for the trial court property disputes by "narrow[ing] the issues (relating to property) that are actually in dispute." *Beck*, 112 Md. App. at 207 (emphasis removed) (holding such as to Rule S72 and S74 statements). Rule 9-207 statements are considered stipulations to property ownership, and may be considered even if not formally admitted at trial. *Id.* at 207-08.

Here, the June 2022 Form, which included several agreed-upon classifications of assets, was jointly prepared by Ms. Tokunaga and Mr. Tokunaga and submitted on June 29, 2022. While Mr. Tokunaga filed a partial Maryland Rule 9-207 statement with

updated asset values approximately one week before the divorce trial, Ms. Tokunaga did not file a partial Rule 9-207 statement before or during the trial. Notably, she did not do so despite Mr. Tokunaga's counsel's request at trial, the court explaining why filing an updated Rule 9-207 statement would be advantageous, or her trial counsel representing to the court than an updated statement would be submitted at trial.

Moreover, Ms. Tokunaga's partial Rule 9-207 statement altered the property ownership stipulations contained in the June 2022 Form, thereby substantively changing Ms. Tokunaga's position on the marital property subject to distribution *after* the divorce trial. Considering that the Rule 9-207 statement was filed days after the trial ended, when Ms. Tokunaga had the opportunity to submit a statement before and during the trial, would be contrary to the purpose of Rule 9-207 statements, and, as the circuit court noted, Mr. Tokunaga's right to notice. For these reasons, we do not agree that the court erroneously elevated "form over substance" in relying on the stipulations contained in the June 2022 Form, and affirm.

CONCLUSION

We hold that the circuit court did not abuse its discretion in granting Mr. Tokunaga a $75,000 monetary award because the court considered all factors required by FL § 8-205(b). Likewise, we hold that the court did not abuse its discretion in calculating

the child support owed by Mr. Tokunaga, in denying the amended motion for a postponement, or in otherwise relying on the June 2022 Form, and affirm.

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