

Circuit Court for Harford County
Case No.: C-12-FM-19-001055

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2208

September Term, 2023

SONJA TESTERMAN

v.

RANDALL TESTERMAN

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

JJ.

Opinion by Beachley, J.

Filed: November 19, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On January 4, 2024, the Circuit Court for Harford County granted Sonja Testerman (“Wife”), appellant, an absolute divorce from Randall Testerman (“Husband”), appellee. Among other things, the court also granted Wife a monetary award of \$10,000, ordered the sale of the marital home and directed that the parties split the proceeds therefrom, denied Wife’s request for an interest in Husband’s retirement benefits, denied Wife’s request for a survivor interest in Husband’s retirement plan, and denied Wife’s request for attorney’s fees. Wife appealed and presents eleven “issues” for our review. We recast, as follows, the only issues Wife raises which are properly before this Court:

1. Whether the circuit court erred in its identification and valuation of the parties’ marital property.
2. Whether the circuit court erred in denying Wife any interest in Husband’s retirement benefits and denied her request for a survivor interest in his retirement plan.
3. Whether the court erred in its calculation of temporary alimony arrears and in its denial of Wife’s request for indefinite alimony.
4. Whether the court erred in denying Wife’s request for attorney’s fees.

For the reasons to be discussed, we shall vacate the judgment (other than the judgment of absolute divorce) and remand for further proceedings consistent with this opinion.¹

¹ Husband noted a cross appeal. This Court struck the *pro se* brief Husband filed on April 15, 2024 when counsel for Husband subsequently filed an informal brief on Husband’s behalf. Counsel’s brief, however, is a mere cursory response to the issues raised by Wife and it does not raise any cross-appeal issues on behalf of Husband. After the filing of counsel’s brief, Husband, *pro se*, filed a paper with this Court stating that his lawyer had informed him he could no longer represent him in this appeal and asking for a continuance.

(continued)

BACKGROUND

Pre-Trial Proceedings

On June 11, 2019, Wife, through counsel, filed a “Complaint for Absolute Divorce And For Other Appropriate Relief,” alleging desertion, cruelty of treatment, and excessively vicious conduct. Among other things, Wife requested an absolute divorce, alimony, all of the family use property, a determination and valuation of marital property, a monetary award, and a “transfer or award of an equitable amount/share/interest in the marital portion” of Husband’s interest in any pension plan or retirement account, “as well as award any survivor benefits, survivor annuities, pre-retirement death benefits, special allowances, early retirement subsidies, to which [Wife] may be entitled as the former spouse” of Husband.

Husband, through counsel, filed an Answer to Wife’s Complaint, requesting that the court award him an absolute divorce from Wife pursuant to his counter complaint, and asking that “the remaining relief in [his] Counter Complaint for Absolute Divorce be awarded as requested[.]” (Husband, however, did not file a counter-complaint.) In his Answer, Husband also urged the court to deny the “remaining relief requested” in Wife’s complaint.

Husband’s paper did not include a certificate of service and it does not appear that Husband served a copy of his motion on Wife. *See* Rules 1-321(a) and 1-323. In addition, Husband’s counsel has not filed a line with this Court withdrawing his representation. Consequently, Husband’s *pro se* request for a continuance is denied.

In March 2020, the court granted the requests of counsel to strike their respective appearances for Wife and Husband. From that point on, the parties represented themselves.

By order dated December 23, 2020, the court ordered Husband to pay Wife \$600 per month in temporary alimony beginning December 1, 2020. In December 2022, Wife filed a petition for contempt alleging non-payment of the temporary alimony. After a hearing on April 20, 2023, the court found that Husband owed Wife \$1,200 in temporary alimony and, consequently, found him in contempt. The court, however, found that Husband had a “present inability to pay[,]” and provided that Husband could purge the contempt by “paying his outstanding alimony obligations at the time of the divorce trial[.]”²

Trial

The merits trial began on January 2, 2024. The court, recognizing the parties’ self-represented status, began by asking the parties to clarify what each was seeking in the case. Wife confirmed that she was requesting an absolute divorce, indefinite alimony, the sale of the marital home and the division of the proceeds therefrom,³ a determination and valuation of marital property, a determination of personal property, an equitable portion of Husband’s pension and death benefits, a monetary award, and reasonable attorney’s fees. Husband asked the court to deny all relief requested by Wife. He also confirmed that he

² We note that the validity of this purge provision is not before us on appeal.

³ Wife initially stated that she would like the marital home. The court, however, informed her that, absent a release from the mortgage holder (which Wife did not have), it could not transfer title to the marital home to her. She then stated she would like the home sold, with the proceeds divided between the parties.

had not filed a counter-complaint for divorce or other relief. Husband, however, told the court that he would like to keep the marital home and requested that Wife’s interest be transferred to him.

The court then informed the parties that it would take a recess to enable Husband to complete a financial statement and Wife to update hers.⁴ Before doing so, the court also reviewed Maryland Rule 9-207, which provides that when a monetary award is at issue in a divorce proceeding, the “parties shall file a joint statement listing all property owned by one or both of them.” Neither party had completed the Rule 9-207 joint statement in this case, which should have been filed with the court at least ten days before the trial date. Rule 9-207(c). Although acknowledging that it could sanction the parties for their failure to submit the joint statement, the court chose instead to give them the opportunity to complete it. The court then gave the parties the Rule 9-207(b) joint statement form and carefully explained how it should be completed.

After a nearly two-hour recess, the hearing resumed. Because the parties did not reach an agreement on the properties to be listed on the joint statement—or the value of the properties identified—the court stepped in “to try and extrapolate” from their respective forms a document that represented the parties’ position.

⁴ Maryland Rule 9-202(e) provides, in part, that, “[i]f spousal support is claimed by a party and either party alleges that no agreement regarding support exists, each party shall file a current financial statement in substantially the form set forth in Rule 9-203(a).” Wife filed a financial statement on July 25, 2019. Husband did not file a financial statement prior to trial.

As we summarize in the table below, the parties agreed that certain property was marital property, but they disagreed as to the fair market value (“FMV”).

<u>Property</u>	<u>How Titled Wife/Husband</u>	<u>FMV-Wife</u>	<u>FMV-Husband</u>
House ⁵	joint/joint	\$180,000	\$120,000
Boat	joint/? ⁶	\$ 35,000	0
PT Cruiser	husband/husband	\$ 6,000	\$ 800
Ice cream truck	joint/? ⁷	\$ 35,000	\$ 1,500
Canoe trailer	joint/? ⁸	\$ 3,000	\$ 700
Tractor	joint/husband	\$ 3,000	\$ 350
Jeep Wrangler	joint/husband	\$ 6,000	\$ 0
Tiffany-style lamps	joint/joint	\$ 2,000	\$ 20
Misc. personal prop.	joint/joint	\$ 50,000	\$ 5,000

The court also reviewed items of property that the parties agreed were not marital property. In addition, the form included items the parties could not agree were marital or non-marital, including a “pool bar,” hot tub, and miscellaneous personal property.

After assisting the parties with the completion of the Rule 9-207 statement, the court gave the parties time to review it. They both agreed that it was “an accurate extrapolation or summary of the parties’ positions[]” and signed it. The court then heard their testimony.

⁵ The marital home was identified as 711 Plater Street, Aberdeen, Maryland, and both parties agreed there was an outstanding mortgage of \$48,000. The home was the only marital property that the parties claimed was burdened by a lien, encumbrance, or debt.

⁶ Wife asserted that the boat was titled in both names; Husband was unsure.

⁷ Wife asserted that the ice cream truck was titled in both names; Husband was unsure.

⁸ Wife asserted that the canoe trailer was titled in both names. Husband claimed that canoe trailer was his, a gift from his brother, and when pressed as to how it was titled, stated that he “imagined” it was titled in his brother’s name.

Wife testified that she was then 57 years old and Husband 59 years old. The parties married on July 22, 1989, and had two children together, both now in their thirties. Husband and Wife separated twice in the early 1990s, but they reconciled each time after a brief separation. Wife claimed that Husband assaulted her many times (at least thirty) during their marriage.

Wife acknowledged that “for many, many years, [Husband] never hit” or “abused” her. But in 2016, following Husband’s back surgery, Wife claimed that “he wasn’t the same anymore.” Wife related that during the surgery Husband “died on the table[]” and, although they ultimately revived him, “he had severe brain damage” and once home from the hospital he “became aggressively angry all the time.” She claimed that Husband accused her of having an affair, something she denied.

During an argument in March 2019, the parties, in Wife’s words, engaged in “physical violence with each other.” Husband sought a protective order, alleging that on or about March 12, 2019, Wife had punched, slapped, shoved, and threatened him and had come after him with a knife. Upon Wife’s consent, the court granted Husband a final protective order. At the divorce hearing, in discussing the incident, Wife admitted that she had grabbed a knife “to protect” herself because Husband was “slamming [her] against the walls[]” and she “thought he was going to kill” her. On March 16, 2019, the police served Wife with the protective order and escorted her from the marital home, which she was barred from entering during the order’s one-year duration. This date marked the beginning of the parties’ final marital separation.

Wife related that Husband worked for thirty-two years, throughout much of their marriage, for Chrysler, but he hurt his back in 2012 and retired on disability. She claimed that he then began receiving both workers' compensation and a pension from Chrysler. Wife submitted a copy of a statement, with the caption "advice of deposit non-negotiable," reflecting a payment made on November 1, 2019 to Husband from State Street Retiree Services totaling \$2,913.81 (after deductions for federal tax and VEBA Health). She testified that this deposit was Husband's monthly retirement benefit from Chrysler. In addition, from 2012 until February 2, 2022, Husband received \$618 per week in workers' compensation.

Husband admitted that he is presently receiving a pension, stating that he received \$2,944.00 per month. He confirmed that the workers' compensation payments of \$618 per week ended January 2, 2022. When the court asked him why those payments were terminated, Husband related that he had received a letter telling him to look for a job, but because he is "disabled" he cannot work and has not worked since 2012. He has, however, applied for Social Security Disability and was awaiting a hearing on that matter.⁹

In addition, Husband claimed that, because Chrysler had fired him "illegally two or three times" they "owe [him] a lot of back pay money." He maintained, however, that he did not know how to "go forward to get any of this straightened out."

⁹ Husband submitted a letter dated October 24, 2023 from an attorney advising him that his case had been appealed to the Hearings Unit of the Social Security Administration and it could take six to twelve months before his case would be heard by an Administrative Law Judge.

Wife also claimed that Chrysler owed Husband money for “back pay,” asserting that he had won a legal action “through the Public Review Board” against Chrysler and the “Union” in 1992 and 1998 and was awarded \$169,000 plus interest. According to Wife, “Chrysler and the Union told” Husband “that he’ll collect it when he retires[,]” but Husband has “not done anything to get that money.” When asked by the court if she had any documents to support her assertions, Wife replied that she did not personally have any, but they were at the marital home. Although she encouraged him to file the necessary paperwork before they separated, Wife asserted that Husband “just wouldn’t do it[,]” noting that after his surgery in 2016 “his mind wasn’t right.” Her attempts to move things forward were unsuccessful without Husband’s cooperation.

Wife requested that the court award her attorney’s fees, testifying that she had borrowed \$3,000 from her brother to pay her lawyer and still owed \$1,200. She submitted copies of the invoices from her attorney to support her claim.

Wife also reiterated her request for a share in Husband’s pension, as well as a \$1,900 monthly “death benefit pension” in the event he predeceases her. In addition, she wanted to secure what she called the “non-transferable death benefit” of \$65,000 that she claimed is in her name. In other words, it appears that she wanted to prevent Husband from removing her as the beneficiary of that benefit.

Wife testified that on March 13, 2019—just days before she was ordered to leave the marital home—Husband transferred \$10,643.15 from their joint checking account to “a new account” he opened in his name only. She submitted a bank statement reflecting a

“funds transfer debit” on March 13, 2019 in the amount of \$10,643.15. There was no evidence as to where the money was transferred. Husband claimed that the money in the joint account was “from [his] Workman’s Comp injuries.” Husband did not address the large withdrawal on March 13, 2019 and Wife did not cross-examine him about it.

While Husband worked at Chrysler throughout most of the marriage, Wife primarily stayed at home raising the children and tending to the house.¹⁰ Wife described their standard of living as middle class.

Around 1987, Wife began working with Husband’s parents who had an ice cream truck business. She and Husband then began running their own ice cream truck. Wife created all the routes, purchased supplies, ran events, and the like. Wife estimated that her net annual income from this business at about \$35,000. In 2001 or 2002, after fifteen years running this business, the business folded when “the economy tanked” and the cost to run it became “financially infeasible.” After that, Wife worked part-time—at a place whose name she could not remember—“pulling parts that would come in.” The last time Wife was employed, in any capacity, was 2002.

When the court inquired as to why she was not currently employed, Wife explained that when she “first got kicked out of the house,” she was “an emotional wreck” because it was unexpected. Although she had applied for jobs, she did not receive any call backs, and

¹⁰ Wife testified that in 1992 she received a \$12,000 settlement from a car accident, which she used to purchase, for the family, “a mobile home, a car, and the furniture.” They later sold the mobile home for \$4,000 and used the money to remodel the family home on Plater Street. Husband disagreed, saying that the car was a gift from his parents and that his parents had gifted him \$4,000 for the Plater Street house.

then COVID-19 surfaced. She also related that she has “a sciatica issue” and, more recently, a dog bit her left hand and she no longer has full use of that hand. About ten years ago, Wife shattered two vertebrae in her neck, which still gives her “problems.” She has not applied for social security disability because she “never thought about it.”

Although she acknowledged that she had been capable of working between 2002 and 2019, she claimed that she did not because she was taking care of Husband who had “all kinds of physical problems” and “multiple surgeries.” Since leaving the marital home, Wife had been living at her brother’s house while the brother was working overseas. She has been asked to leave, however, because the brother is in the process of gutting his house to remodel it.

When the court asked Wife whether she believed she had “the ability to be either wholly or partially self-supporting[,]” Wife replied that she did not know. When asked if there was “any type of education or training” that she believed she could “undertake which might enable [her] to find some type of employment[,]” Wife responded that she “can run a business.”

Wife requested alimony, but more than the temporary \$600 monthly allowance. Rather, she requested half of Husband’s income. She also sought payment for back alimony which, by her calculations, totaled \$16,200. Although the order requiring Husband to pay Wife \$600 monthly in temporary alimony directed that the payments begin

December 1, 2020, Wife wanted to collect from the date of separation.¹¹

Wife also requested a vehicle, specifically the PT Cruiser. When she acknowledged that the vehicle was titled in Husband’s name, the court informed her it had no authority to transfer title to her name, but it could be considered in any monetary award given that the parties agreed it was marital property.

Wendy Testerman, the parties’ 32-year-old daughter, testified on behalf of Wife.¹² She currently lives at the family home and lived there at the time of her parents’ separation. She reported that she had lost her job in April 2021 and was presently unemployed. Wendy did not pay her father rent, but she contributed to the household by purchasing “necessities,” such as toilet paper, food, dish soap, and pet food.

Wendy had a good relationship with her mother and, until recently, also with her father. Due to a domestic violence incident, Wendy obtained a protective order against her father. The final protective order, issued on December 18, 2023 and effective through March 18, 2024, directed him not to abuse, threaten to abuse, harass, or contact Wendy.

Wendy had observed “some of” the argument between her parents in 2019 that led to Husband obtaining a protective order against Wife. “Throughout [her] life,” Wendy had also witnessed, on numerous occasions, Husband verbally and physically abuse Wife.

¹¹ The court informed Wife that it could only “backdate a temporary alimony to the date the complaint was filed[,]” which in this case was June 2019.

¹² To avoid any confusion with her mother, we shall refer to Ms. Testerman by her first name.

Faith Fells, Wife’s niece, also testified on behalf of Wife. Ms. Fells had witnessed Husband’s verbal abuse against Wife. Although she never witnessed Husband physically abuse Wife, in March 2019 (after the domestic violence incident between the parties), Ms. Fells observed bruises on Wife’s body which Wife said were inflicted by Husband.

Because Wife has had no vehicle since the separation, Ms. Fells transports her “everywhere.” Ms. Fells had also given wife \$2,100 to help with her expenses.

Husband called his brother, Joseph Testerman, to testify on his behalf.¹³ Joseph related that the parties’ boat, which Wife claimed was worth \$35,000, had no value. The boat was “wooden,” it “was rotten[,] the “inside was buckled[,]” and “the planks were upended.” The boat “wouldn’t even float.” In 2002, Joseph spent \$3,800 to have the boat towed from his mother’s property, where it had sat for fifteen or twenty years, to a salvage yard. Their attempts to sell it were fruitless, as “[n]obody wanted it.” Joseph could not even “give it away.” It had to be moved from his deceased mother’s property, which was to be sold. Husband later reimbursed Joseph for the towing expense. Husband testified that he purchased the boat from Wife’s mother in the early 1990s for \$2,500.

Husband valued the marital home at \$120,000 and submitted a copy of a “Home Value Estimator” obtained online reflecting a value of \$192,224. Husband believed \$120,000 was the appropriate value in light of needed repairs that he estimated would cost \$18,000 to \$22,000. He pointed out that the Home Value Estimator did not take into

¹³ To avoid any confusion with appellee, we shall refer to Mr. Testerman by his first name.

account the interior of the house.

Husband also submitted real estate listings for houses in his neighborhood that had sold in 2023, and he noted that one home—slightly larger than his—had sold in April 2023 for \$155,000. Another, also slightly larger, had sold for \$160,717. Husband reiterated that, due to “damages” in his home, the “whole house” needs to be “redone.” He submitted photographs of the kitchen, bathroom, the gutters on the house, and a backyard out-building to support his claim concerning the required repairs. He indicated that his disability prevented him from performing the repairs himself.

Husband purchased the marital home in 1995, at a time when the parties were separated. The home was titled only in Husband’s name until about 2010 when Wife’s name was added. The mortgage is and always has been in Husband’s name only, and he has made all the mortgage payments. At the time of the hearing, the outstanding mortgage principal was \$48,000.

Because Husband wanted to keep the house, he requested that Wife’s interest in the home be transferred to him. He did not believe that Wife should retain any interest in the home because, he claimed, he had taken out a second mortgage (\$34,000) on the house in 2000 to finance the ice cream business for Wife and he was the one who had repaid that loan. He had also made the mortgage payments throughout the parties’ separation.

Husband submitted photographs (exterior and interior) of the ice cream truck, which Wife valued at \$35,000 and Husband at \$1,500. Husband claimed that Wife had operated the business for three seasons, and the truck has been sitting in the backyard for over twenty

years and had not been driven “at all[.]” during that time period. When the truck was purchased in 2000, Husband installed a “rebuilt engine” in it. He did not know how many miles were on it, and claimed it is “scrap metal now.” Husband asserted that Wife “can have that ice truck[.]” and “almost everything in that house.”

As for a hot tub/Jacuzzi that Wife valued at \$3,000 and Husband claimed had no value, Husband testified that he had gotten “it free on eBay” and he fixed it up. He also asserted that when they separated, he offered Wife his van, but she declined to take it. As for the PT Cruiser, Husband related that he purchased it for his daughter in 2019.¹⁴

Husband admitted that he had stopped making the temporary alimony payments after the contempt hearing in April 2023. His apparent reason was that his workers’ compensation benefits had ended, and he had medical problems to deal with.

Husband admitted that he had once assaulted his wife “back maybe in 1990[.]” but denied ever doing so again. He also denied ever hitting his daughter.

The Court’s Rulings

On the third day of trial, after the parties made closing statements, the court announced its decision in open court.¹⁵ We summarize the court’s rulings.

Divorce

The court granted Wife an absolute divorce after finding sufficient evidence to

¹⁴ The record does not disclose the model year or condition of the PT Cruiser. Similarly, there is no evidence concerning the existence or value of the van at the time of trial.

¹⁵ The same date, January 4, 2024, the court filed its written judgment.

support her claim of cruelty of treatment and excessively vicious conduct at the hands of Husband.

Temporary Alimony Arrears

The court found that the April 20, 2023 order of the court determined that Husband owed Wife \$1,200 in temporary alimony as of the date of the order, but shortly thereafter Husband paid her \$600. The court further found that the parties agreed that Husband had not paid Wife any temporary alimony for the past seven months. The court, therefore, determined an arrears of \$4,800 (\$600 plus \$600 x 7 months) which the court awarded to Wife and reduced to a judgment.

Marital Property Identification & Valuation

Marital Home. The court noted that, on the joint property statement, Wife claimed the home was worth \$180,000 and Husband \$120,000. The court found that, based on the \$192,000 on-line “appraisal” Husband had submitted into evidence and the \$22,000 in repairs he testified were needed, the house had a market value of \$170,000, but after looking at the photos Husband had submitted, the court ultimately determined that the fair market value of the house was \$135,000. After subtracting the outstanding mortgage of \$48,000, the court concluded that there was approximately \$87,000 in equity in the house—\$43,500 for each party.

Boat. Wife claimed, without any supporting evidence, that the boat was worth \$35,000 while Husband maintained it was worthless. The court found that Wife “has tended to overvalue particular items[,]” and noted that, given the testimony of Husband

and his brother Joseph, it was satisfied the boat had no value.

PT Cruiser. The court accepted Husband’s assertion that the vehicle, titled in his name, was worth \$800.

Ice Cream Truck. The court concluded that the vehicle was jointly owned and rejected Wife’s claim that it was worth \$35,000. The court accepted Husband’s value of \$1,500.

Canoe Trailer. The court found that the trailer is joint property and agreed with the \$700 value asserted by Husband.

Tractor. The court found that the tractor is joint property with a value of \$500.

Jeep Wrangler. The court found that the vehicle is joint property. It rejected Wife’s value of \$6,000 and rejected Husband’s value of zero. The court concluded that the vehicle had a \$500 value.

Tiffany-Style Lamps. The parties agreed that the lamps are marital property, but they disagreed on value. Wife asserted a value of \$2,000 and Husband \$20. The court noted that it had seen the photographs of the lamps, and it found they had a total value of \$50.

Miscellaneous Property. The court combined a host of personal property items, mostly household goods, that the parties had agreed is marital property. Wife valued the property at \$50,000, Husband at \$5,000. The court, “having seen photographs of the interior of the home,” accepted Husband’s valuation.

The parties did not agree whether the pool bar, hot tub, and certain other “miscellaneous personal property” were marital or not. Wife claimed that these items were jointly owned and had a total value of \$40,600 and Husband claimed he owned them, and they either were worth nothing or he was unsure of the value. The court found that Wife did not establish that the items were marital property and, therefore, did not include them in its calculations.

The court completed a “marital property identification and valuation” form, marked as Court’s Exhibit 5, which summarized its findings and read as follows:

<u>Property</u>	<u>Titled</u>	<u>Joint – MP</u>	<u>H-MP</u>	<u>W-MP</u>
711 Plater St.	T/E	<u>Wife/Husband</u>	\$43,500	\$43,500
Boat	Joint		0	
PT Cruiser	Husband		800	
Ice Cream Truck	Joint		750	750
Canoe Trailer	Joint		350	350
Tractor	Joint		250	250
Jeep Wrangler	Joint		250	250
7 Lamps	Joint		25	25
Miscellaneous	Joint		2,500	2,500
Total Value Marital Property			\$62,375 ^[16]	\$47,625

Monetary Award & Alimony

The court addressed, together, Wife’s request for alimony and a monetary award. In doing so, the court first reviewed the factors set forth in Family Law § 8-205(b), which

¹⁶ It is unclear to us how the court reached \$62,375 as the total value of Husband’s share of the marital property. When we add the numbers the court inserted in Husband’s column, the total we reach is \$48,425 – \$13,950 less than the court’s total.

a court must consider when determining whether to grant a monetary award.¹⁷ We summarize the court’s findings as to each factor.

The contributions, monetary and nonmonetary, of each party to the well-being of the family. The court found that Husband was the primary monetary contributor and Wife the primary non-monetary contributor.

The value of all property interests of each party. As to this factor, the court referred to Court’s Exhibit 5, which we summarized above.¹⁸

The economic circumstances of each party at the time the award is to be made. The court found that “neither party is in a particularly good financial situation.” The court noted that Husband receives about \$2,900 a month in retirement from Chrysler, and that he had previously received workers’ compensation benefits and, although he had a “pending Social Security Disability Claim,” the court could not “speculate” on the outcome of that claim. Wife, the court noted, was currently unemployed and living with a relative. “So neither party at this time,” the court found, “is in a particularly good economic circumstance[.]”

¹⁷ The court must also consider these same factors when transferring an ownership of an interest in “a pension, retirement, profit sharing, or deferred compensation plan, from one party to either or both parties.” Fam. Law § 8-205(a)(2)(i). Likewise, the court must consider these factors when transferring an ownership interest in family use property and real property jointly owned by the parties and used as the parties’ principal residence when they resided together. Fam. Law § 8-205(a)(2)(iii).

¹⁸ The court actually referred to Court’s Exhibit 3, but it is clear that it meant to refer to Court’s Exhibit 5.

The circumstances that contributed to the estrangement of the parties. The court found that the parties’ estrangement was attributed “mostly to [Husband’s] behavior.”

The duration of the marriage. The parties married in 1989. They had two very brief separations during the marriage.

The age of each party. Wife was 57 years old, Husband 59.

The physical and mental condition of each party. The court found that Wife had suffered an injury to her left hand following a dog bite and accepted her testimony as to “other physical impairments.” The court found that Husband had “suffered a serious injury to his back while working at Chrysler in 2012, which prevented any employment by him since that time.” As for the parties’ mental condition, the court found that both Husband and Wife “are undergoing a great deal of stress as a result of the separation.”

How and when specific marital property or interest in [certain] property [such as a pension, family use property, and real property used as the parties’ principal residence when they lived together] . . . was acquired, including the effort expended by each party in accumulating the marital property or the interest in [certain] property . . . , or both. The court found that it had already addressed this factor in its marital property determination.

Any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home. The court expressly considered this factor as we discuss below.

Any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of [certain] interest[s]

in property . . . , or both. The court did not address any additional relevant facts.

Before announcing its decision on a monetary award, the court turned to the factors set forth in Family Law § 11-106(b) relative to alimony. Many of those factors overlap with the factors the court is required to consider in determining a monetary award. In making an alimony determination, however, the court must also consider the following:

- (1) the ability of the party seeking alimony to be wholly or partially self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;

- (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
- (10) any agreement between the parties;
- (11) the financial needs and financial resources of each party, including:
 - (i) all income and assets, including property that does not produce income;
 - (ii) any [monetary and family use] award[s] made . . . ;
 - (iii) the nature and amount of the financial obligations of each party;and
 - (iv) the right of each party to receive retirement benefits[.]

Fam. Law § 11-106(b).

The court found that Wife, “despite her physical ailments,” is “quite capable of finding some type of part-time employment.”¹⁹ “[B]ased on her age,” the court found that

¹⁹ It is not clear from the record before us why the court found that Wife was capable of working “part-time” versus full-time.

Wife, then 57 years old, was not likely able to obtain “sufficient education and/or training” to improve her employability. The court found that the parties’ standard of living was “very modest . . . very much at the lower end” of middle class. As for the ability of Husband to meet his own needs while meeting the needs of Wife, the court found that Husband was no longer receiving the \$618 weekly workers’ compensation benefits, meaning his monthly income had been “almost cut in half” since temporary alimony was awarded. The court noted that the parties had not reached an agreement on alimony.²⁰

“Based on all of these factors,” the court denied Wife’s request for “permanent” alimony and granted her a monetary award of \$10,000, which it reduced to judgment.

The Marital Home & Personal Property

The court rejected Husband’s request that the marital home be transferred to him, finding that such a transfer “would be very unfair and very inequitable” to Wife. The court, therefore, ordered the sale of the home, directing that the proceeds be split evenly between the parties, but the temporary alimony arrearages of \$4,800 and the \$10,000 monetary award owed to Wife would be deducted from Husband’s share of the proceeds. The court directed that the trustee to be appointed to sell the home would also sell the personal property absent an agreement between the parties as to the disposition of the personal property.

When Husband inquired about credit for the mortgage payments he had made on

²⁰ Although a factor to be considered, the court did not explicitly address Husband’s retirement benefits or Wife’s lack thereof.

the marital home throughout the parties’ nearly five-year separation—which the court had not addressed—the court responded that it would not reconsider its decision.²¹

Wife’s Share of Husband’s Retirement Benefits

“Based on [its] other decisions,” the court denied Wife’s request for any interest in Husband’s retirement. Wife then inquired as to her request to remain (or be named) the beneficiary under Husband’s “survivor benefits.” The court responded that it did not believe it had the authority to order Husband to do that, noting that Wife did not offer “sufficient evidence” on that issue.

Attorney’s Fees

“[B]ased on [its] review of everything,” the court denied Wife’s request for attorney’s fees. The court noted that, although Husband and Wife were initially represented by counsel, after the attorneys withdrew from the case in March 2020, the parties represented themselves. Consequently, the court concluded that “each party should be responsible for whatever attorney’s fees that they had.”

²¹ Although Husband had made it clear to the court that he had made all the mortgage payments, including all payments during the separation, he did not explicitly request credit for them. Rather, he requested that Wife’s interest in the house be transferred to him. On cross-examination by Wife, however, Husband did testify that “[t]he only thing” he was “claiming is the mortgage payments” that he “made from 2019,” asserting that Wife should be accountable for her share of those payments given that her name was also on the title to the house. In any event, Husband makes no argument in his “Informal Reply Brief” that the court erred in denying his contribution claim.

STANDARD OF REVIEW

We review 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 under the clearly erroneous standard of review and determine whether the court’s findings are supported by substantial evidence in the record. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (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 v. Korotki*, 465 Md. 457, 475 (2019)). We review the ultimate decision to grant a monetary award for an abuse of discretion. *Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019).

DISCUSSION

THE MONETARY AWARD MUST BE VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS

Before granting a monetary award, a trial court must complete a three-step process. “First, the court must categorize each disputed item of property as marital or non-marital.” *Wasyluszko v. Wasylusko*, 250 Md. App. 263, 279 (2021) (citation omitted). “Second, the court must determine the value of all marital property. Finally, the court must decide if the division of marital property according to title would be unfair, and if so, it may make a monetary award to rectify any inequality created by the way in which property acquired during the marriage happened to be titled.” *Id.* (cleaned up). The court here engaged in this process. Wife, however, asserts that the court made mistakes in doing so.

A. The Court’s Identification and Valuation of Marital Property

Wife asserts that the circuit court erred in its identification and valuation of marital property. Specifically, Wife claims that the court erred in failing to recognize that Husband had “liquidated and or destroyed/divested parts” of the parties’ property, including “drain[ing]” their joint bank account. Wife also maintains that the court erred by accepting Husband’s “undervalued” estimate of the parties’ possessions, instead of doing its “own due diligence” by utilizing “standard legal resources such as the Kelly Blue Book” or “a simple internet search” to determine the value.

We agree with Wife that the court erred in failing to address the evidence she submitted (her testimony and copy of the bank statement) that Husband had withdrawn over \$10,000 from the parties’ joint checking account several days prior to their separation. Husband testified that the funds were his workers’ compensation benefits. But workers’ compensation benefits are deemed marital property. *Lookingbill v. Lookingbill*, 301 Md. 283, 289 (1984); *Queen v. Queen*, 308 Md. 574, 579 (1987). Thus, Wife satisfied her initial burden of production related to her claim that Husband intentionally dissipated marital assets. *Omayaka v. Omayaka*, 417 Md. 643, 656-57 (2011). The court’s failure to consider whether Husband dissipated these funds requires us to vacate the monetary award and remand for further proceedings. In addition, a remand is necessitated by what appears to us to be a mathematical mistake—or at least a lack of clarity—in the court’s calculation of Husband’s total marital property as reflected on the Court’s Exhibit 5. See footnote 16, *supra*.

We disagree, however, with Wife’s contention that the court erred in accepting Husband’s value of certain marital property rather than undertake its own independent research regarding valuation. It is the responsibility of the *parties* to present evidence to the court from which the court can determine the value of their property. *Murray v. Murray*, 190 Md. App. 553, 570-71 (2010) (The party asserting a marital interest in property must produce evidence as to its identity and value.) Given that Wife presented little to no evidence as to the value of specific marital property, such as the ice cream truck, the PT Cruiser, the Tiffany lamps, and the boat, we cannot say that the court erred in accepting Husband’s valuation.

B. Wife’s Share of Husband’s Retirement Benefits

Wife asserts that the court gave “no regard” to her marital share of Husband’s “income and benefits,” including his pension, the “survivor benefits from Chrysler,” his workers’ compensation benefits, and “the Chrysler Public Review Board Settlement.” She claims that, because she was married to Husband throughout most of his employment with Chrysler, she has “acquired the survivor benefits” consisting of \$65,000 in death benefits and \$1,900 monthly upon his death. She also asserts that Husband’s “PRB Settlement” is “still pending” and the court erred in failing to consider this “significant amount of money[.]” And she maintains that the court erred in accepting Husband’s assertion that his weekly workers’ compensation payments were terminated.

First, we agree with Wife that the court erred in failing to address her entitlement to a share of Husband’s retirement benefits. The evidence clearly established that Husband’s

Chrysler pension was in “pay status,” *i.e.*, Husband had been receiving a monthly retirement check from Chrysler since 2012. Moreover, the evidence demonstrated that the parties were married throughout most of Husband’s tenure with Chrysler. Thus, there was sufficient evidence before the court to classify his retirement income (or a significant portion thereof) as marital property.²² *Deering v. Deering*, 292 Md. 115, 128 (1981) (“[A] spouse’s pension rights, to the extent accumulated during the marriage, constitute a form of ‘marital property’ subject to consideration” in a divorce proceeding.) In fact, and likely in this case, pension benefits “may well represent the most valuable asset accumulated by either of the marriage partners.” *Id.* at 122-23. That is not to say, however, that the law “require[s] an equal division of marital property” or “contemplate[s] a decretal award so harsh as to force a wage earner spouse to liquidate his or her pension interest in order to satisfy it.” *Id.* at 131. Rather, a court must consider all relevant statutory factors, including any alimony award. *Id.* Here, the court awarded Wife a \$10,000 monetary award and denied her request for alimony. Not only is it unclear to us how Husband’s vested retirement factored into its monetary award and alimony decisions, but the court’s perfunctory denial of Wife’s claim to an interest in the Chrysler pension is concerning given the parties’ lengthy marriage and the likelihood that the pension “may well represent the most valuable asset accumulated by either of the marriage partners.” *Id.* at 122-23. As

²² Pursuant to FL § 8-204(b)(1), “[t]he court need not determine the value of a pension, retirement, profit sharing, or deferred compensation plan, unless a party has given notice in accordance with paragraph (2) of this subsection that the party objects to a distribution of retirement benefits on an ‘if, as, and when’ basis.”

for Wife’s complaint that she is entitled to survivor’s benefits under the Chrysler pension plan, Wife may re-raise that issue upon remand, although we stress that it is her evidentiary burden to produce evidence of the existence and availability of such benefits.

Wife also asserts that the court erred in failing to address “the PRB Settlement that is still pending[.]” Because we are remanding this case, the parties may produce evidence as to the value of the PRB Settlement. We note that Husband and Wife both testified as to a significant “back pay” award Husband had won against Chrysler during the marriage, which he had not yet collected. We reiterate that the *parties*, not the court, have the responsibility to produce evidence as to the value of marital property.

Finally, as to the termination of the workers’ compensation payments, Husband testified that the payments had ceased in 2022. Wife did not challenge that testimony at trial, and in fact, she acknowledged that she “had a document where he said he lost it on February 2, 2022.” Wife testified that she did not know why the benefits were terminated, and merely asserted that they “should never have been.” In light of the evidence on this issue, we discern no error in the court’s factual determination that the payments had ceased.

C. Temporary Alimony Arrears and Denial of Post-Divorce Alimony

Wife asserts that the court erred in calculating the temporary alimony arrears to be \$4,800. She states that the court erred in finding that the parties had agreed that Husband paid her \$600 subsequent to the April 20, 2023 contempt order that required him to pay temporary alimony totaling \$1,200. Wife maintains that the transcript does not support a finding that Husband paid her \$600 after the contempt order was filed.

We agree with Wife that the court miscalculated the amount Husband owed in temporary alimony. Husband testified that he had paid Wife “everything [he] was supposed to pay all the way up until” April 2023. Although it is not our role to delve through the record, we see no support for the court’s finding that Husband paid \$600 *following* the April 20, 2023 contempt order. Moreover, Husband admitted that he had not paid Wife anything between the contempt order and the divorce trial, which began on January 2, 2024. The court found “that’s seven months at \$600.” May through December 2023, however, consists of eight months, not seven. Therefore, we calculate the temporary alimony arrears at \$6,000: \$1,200 (per the April 2023 contempt order) plus \$4,800 (eight months x \$600).

Wife also argues the December 2020 order directing Husband to pay Wife \$600 monthly in temporary alimony was issued in error because she did not agree to that amount and, she claims, it should have been fifty percent of Husband’s income. Consequently, she maintains that the “owed back pay was severely underestimated, let alone compensation for contempt.” We shall not revisit the court’s December 2020 order establishing \$600 monthly temporary alimony nor the court’s April 2023 contempt order as neither issue is properly before this Court.

In addition, Wife seems to contend that the court erred in denying her request for indefinite alimony. She states that the court erred in failing to hold “an alimony hearing” and that the court “failed to provide a support formula for [her] to live similarly to the lifestyle [she] enjoyed during” the marriage.

The court, however, did consider Wife’s request for alimony and addressed factors set forth in FL § 11-106(b). The court found that Wife is capable of working, that the parties’ standard of living during the marriage was quite modest, and that Husband’s income was reduced to nearly half upon the termination of his workers’ compensation benefits, thus limiting the ability of Husband to meet his own needs if he were required to pay alimony. Although those findings may be sustainable, our vacation of the monetary award mandates that the court reconsider its decision regarding alimony. *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.”); *accord Wasyluszko*, 250 Md. App. at 283.

D. Denial of Attorney’s Fees

Wife maintains that the court erred in denying her request for attorney’s fees given that she had no income and Husband “has all the financial means[.]” Because we are remanding this case for the court’s reconsideration of the monetary award (including Wife’s request for a share of Husband’s retirement benefits) and alimony, the circuit court may also reconsider Wife’s request for attorney’s fees. *Id.*

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY DATED
JANUARY 4, 2024, OTHER THAN GRANT
OF ABSOLUTE DIVORCE, VACATED.
JUDGMENT FOR TEMPORARY
ALIMONY ARREARAGES IN FAVOR OF
APPELLANT TO BE AMENDED FROM
\$4800 TO \$6000. CASE REMANDED TO**

**THE CIRCUIT COURT FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE.**