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APPENDIX A
UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2445

September, 2015

ANN McGEEHAN

v.

MICHAEL McGEEHAN

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 26, 2016

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Ms. Daniels (formerly McGeehan)¹ came into the marriage with more money than her ex-husband and believes she should exit the marriage in the same way. During the 18-year marriage, however, the couple lost millions in unwise stock investments, lived an elaborate lifestyle in the United States and Europe, and produced eight children. The trial court properly considered the entire history of the marriage – not just how the parties entered the marriage – and determined that over its course the parties equally contributed to the marriage and family, and divided the marital property accordingly.

BACKGROUND

Michael McGeehan and Ana Portell Daniels married in 1996. Ms. Daniels brought a significant investment portfolio into the marriage. Mr. McGeehan came into the marriage without financial resources, but with an interest in investing money.

Sometime after they married, Mr. McGeehan convinced Ms. Daniels to let him manage her portfolio. Although it is not clear where the money went or how long it took, in the end, Mr. McGeehan either traded away or spent the entirety of Ms. Daniels's investment portfolio. In 2005, Ms. Daniels discovered the loss. She was pregnant at the time with the parties' fourth child and was, understandably, upset. To compensate Ms.

¹ With the Judgment of Absolute Divorce, the Circuit Court for Howard County restored the Appellant's birth name, Ana Portell Daniels. We will refer to her by that name.

Daniels for frittering away her investment portfolio and accruing a tax liability of over \$500,000 in her name, Mr. McGeehan transferred three pieces of real property to Ms. Daniels and they were re-titled in Ms. Daniels's name alone. Mr. McGeehan also promised never to trade stocks again. Ms. Daniels later obtained a monetary gift from her mother and grandmother, which she used to pay off the mortgages on two of the properties.

In 2002, Mr. McGeehan announced that he had a secret new job and, as a result, the family needed to move to Europe. They lived in Europe for the next 8 years. Mr. McGeehan worked for the United States Government and operated several businesses in Europe in conjunction with his work. While in Europe, the couple had several more children and Ms. Daniels, who had quit her job as a patent attorney in Washington, D.C. to move, worked as a stay-at-home mother of the family's growing number of children.

Throughout the parties' marriage, and even after Ms. Daniels discovered the loss of her investment portfolio, Mr. McGeehan controlled the family finances and Ms. Daniels was not allowed to see the bank statements or to know how much money Mr. McGeehan earned. Mr. McGeehan, however, frequently assured Ms. Daniels that their finances were stable.

The parties and their children returned to the United States in 2010. Mr. McGeehan continued to work for the U.S. Government, although it appears to have been in a different capacity. After giving birth to

their eighth and final child, Ms. Daniels attempted to work but was unable to find permanent employment.

In 2014 the parties' marriage dissolved. Mr. McGeehan left the family home.

Mr. McGeehan filed for divorce in the Circuit Court for Howard County in December of 2014. Discovery was complicated and time consuming in part because the U.S. Government noted an interest in the case and in maintaining the secrecy of Mr. McGeehan's employment records. The resulting disputes were only resolved when the circuit court appointed a special discovery magistrate. The divorce trial finally began at the end of November 2015, and, on December 11, 2015, the parties were awarded a judgment of absolute divorce.

The judgment of absolute divorce awarded the parties joint legal custody and shared physical custody of the children. The oldest child chose to live with Mr. McGeehan but the seven other children live with Ms. Daniels and have regular visitation with Mr. McGeehan. Mr. McGeehan was ordered to pay \$1,600 a month in child support. Ms. Daniels was ordered to pay Mr. McGeehan a monetary award of \$230,000. Ms. Daniels was also awarded \$15,303 for discovery costs and \$7,000 for her attorney's fees related to discovery. Finally, the trial court ordered that the family home be sold and the proceeds divided between the parties.

Ms. Daniels appealed.

DISCUSSION

Ms. Daniels raises five issues on appeal: (1) the trial court should not have allowed the U.S. Government to participate to the extent it did in the divorce proceedings; (2) the trial court incorrectly found that Ms. Daniels was voluntarily impoverished; (3) the trial court should have awarded her use and possession of the family home; (4) the trial court erred in the disposition of marital property and grant of a monetary award; and (5) the trial court should have voided two deeds of trust Mr. McGeehan placed on the family home. We address each of these issues in turn.²

² Ms. Daniels has moved to strike portions of Mr. McGeehan's brief because of alleged violations of our appellate rules, specifically Rule 8-504(a)(2), which governs the content of an appellee's statement of the case, and Rule 8-504(a)(4), which governs the content of an appellee's statement of facts. The defects, if they are indeed defects, in Mr. McGeehan's brief are matters of degree, could have been addressed in Ms. Daniels's reply brief, and, in any event, do not merit the severe sanction recommended. The over-the-top tone of her motion to strike reminds us of the old adage that people who live in glass houses, shouldn't. There are more significant violations of the Rules in Ms. Daniels's brief. First, a motion to exceed the page limitation contains within it the implicit promise to the Court that there will be something in the oversize brief that merits the additional words. Here, however, all we got was a failure to edit. Second, Rule 8-112(c)(1) requires the use of no less than 13-point font in text and footnotes. Moreover, the recent change from page limits to word limits were adopted, in part, to de incentivize counsel from putting arguments in footnotes, where (the old theory went) smaller fonts and single-spacing allowed more argument. Ms. Daniels's 6-point font in her footnotes violates the Rules and tests both the eyesight and patience of this panel. Third, despite filing an outrageously oversized opening brief, Ms. Daniels's first argument in her reply brief

1. Federal Government Participation in the Divorce Proceedings

Mr. McGeehan was an employee of the U.S. Government. We infer from all of the secrecy (but, of course, don't know) that he worked for one of the alphabet soup of federal intelligence agencies.³ In the course of the divorce proceedings, the United States Attorney for the District of Maryland filed a statement of interest in the proceedings, which stated:

[Mr. McGeehan] is a federal Government employee. The disclosure of information related to his employment, therefore, is subject to the control of the U.S. Government under applicable law. We understand that [Mr. McGeehan]

(that the trial court erred in finding the Pyrenavest entities to be nonmarital property) wasn't included. This violates a bedrock rule of appellate practice, that an appellant cannot raise an issue for the first time in the reply brief. *E.g., Gazunis v. Foster*, 400 Md. 541, 554 (2007). That's because raising an issue for the first time in the reply brief deprives the appellee of an opportunity to respond. Finally, her opening brief failed to contain a certification that complies with Rule 8-503(g) leading to significant confusion at oral argument. Despite all of this, however, the only sanctions that we will impose on Ms. Daniels are (1) that we will not consider her argument that the trial court erred in considering the Pyrenavest entities as nonmarital property; (2) the loss of argument time occasioned by the confusion surrounding her lack of a proper Rule 8-503(g) certification; and (3) our warning that this is not how appellate litigation ought to be conducted.

³ And, more importantly, we don't care. The details of Mr. McGeehan's employment are immaterial to our analysis. We note that the government has not filed a motion to participate in the proceedings of this Court. We are, therefore, unconstrained and will discuss anything in the case file (which, fortunately, contains nothing likely to be secret).

has provided [Ms. Daniels] with certain information regarding his earnings and benefits in connection with this proceeding. However, as set forth further below, [Mr. McGeehan] is not authorized to provide additional information regarding his employment (including particular information [Ms. Daniels] is seeking in discovery) without the approval of the U.S. Government. As also explained below, [Ms. Daniels] can request additional information about [Mr. McGeehan's] employment from the U.S. Government through established regulatory procedures.⁴

The circuit court allowed the government to participate and to object to the production of certain information in discovery and at trial. The court's order allowed the government lawyers to prevent Mr. McGeehan from disclosing for whom he actually worked, the dates of employment, job titles, salaries, and the like. Ms. Daniels argues that (1) the government failed to identify its specific interest in the case and in fact did not have an interest in the case; and (2) the effect

⁴ We infer that the government was referring to a so-called *Touhy* request. "In *United States ex rel. Touhy v. Ragen*, the Supreme Court interpreted the Housekeeping Statute[, 5 U.S.C. § 301,] to permit agencies to promulgate regulations centralizing their processing of subpoenas. These regulations have come to be known as *Touhy* regulations." Daniel C. Taylor, *Taking Touhy Too Far: Why It Is Improper for Federal Agencies To Unilaterally Convert Subpoenas into FOIA Requests*, 99 GEO. L.J. 1227, 1230 (2011). See also 36 C.F.R. § 1012.5 ("What information must I put in my *Touhy* Request?"); and 28 C.F.R. § 16.26 ("Considerations in determining whether production or disclosure should be made pursuant to a demand.").

of the government's improper involvement was to make it impossible for the trial court to properly identify marital property.

The U.S. Government has wide latitude to participate in any pending suit "to attend to the interests of the United States." 28 U.S.C. § 517; *Falkowski v. EEOC*, 783 F.2d 252, 254 (D.C. Cir. 1986). The Attorney General has "general powers to safeguard the interests of the United States in any case, and in any court of the United States, whenever in his [or her] opinion those interests may be jeopardized." *Booth v. Fletcher*, 101 F.2d 676, 681-82 (D.C. Cir. 1938). "But the government is entitled to a presumption that the lawyers it identifies as working for it are acting within the powers granted them by law." *U.S. v. Springer*, 580 F. App'x 655, 657 (10th Cir. 2014). Other than that presumption, there is no standard by which to review the government's decision to intervene or the trial court's decision to permit the intervention. *See Falkowski*, 783 F.2d at 254 (noting that there is no standard of review in the statute, any regulation, or any administrative practice).

To Ms. Daniels's first point, while we acknowledge that the government's statement of interest, quoted above, was vague, we also understand that there will be occasions where such vagueness is required. We trust, and are required by § 517 to trust, that the federal government will not use its power to participate in state court proceedings lightly or frivolously. Therefore, we reject Ms. Daniels's first claim.

As to Ms. Daniels's second point – that the federal government made it impossible for the circuit court to identify marital property – there is more to say. *First*, from our review of the record, we think that she undervalues the government's attempts to provide useful information. It could have simply declined to produce *any* employment information and she would have had no recourse. Instead, it provided income statements; earnings statements; statements from Mr. McGeehan's thrift savings plan; and information regarding the annuity and health insurance plans in which Mr. McGeehan participates. Imperfect and incomplete information, but useful information nonetheless. *Second*, some of the insufficiencies of the government's discovery were occasioned by Ms. Daniels's choices. The government offered to produce additional information but only pursuant to a nondisclosure agreement. She declined to execute such an agreement. If, after that refusal, the government declined to produce information, the blame must be assessed against Ms. Daniels as well. *Third*, we aren't sure to what extent that gaps in the discovery prevented just resolution of the parties' disputes. Although the circuit court did complain about "the secrecy of information" and intimated that it would have liked to have seen more information about Mr. McGeehan's employment history, neither the circuit court nor Ms. Daniels has identified any real or personal property that could not be valued due to missing information.⁵ And, *fourth*, this problem

⁵ The only real property that the trial court noted any difficulty in valuing was the Mason Neck property and it placed the

(if it was a problem) was hardly unique to this case, these parties, or due to the intervention of the federal government. Circuit courts decide cases in the real world. They make decisions based on the evidence adduced, which is frequently imperfect and incomplete. That's just the nature of the process. For all of these reasons, we hold that the federal government, if it impeded discovery, did not cause reversible error.

We conclude, therefore, that the federal government's participation in this case did not prevent the circuit court from deciding the ultimate issues in this case. We affirm.

2. Child Support

The trial court found Ms. Daniels to be voluntarily impoverished and, rather than computing child support based on her actual income of \$0, imputed to her an annual income of \$105,000. Ms. Daniels challenges the finding of voluntary impoverishment, arguing that she could not have made a "free and conscious" choice to remain unemployed because she was the primary caregiver for her eight children. We conclude that the trial court did not err.

Parents are obligated to support their children "if [they have] or reasonably could obtain, the means to do so." *Goldberger v. Goldberger*, 96 Md. App. 313, 327

blame for that difficulty on Ms. Daniels. The trial court noted that because Ms. Daniels had failed to have the property appraised, it had to accept that the value was \$600,000, although the court believed the value could be much higher.

(1993) (stating also that “[t]he law requires that parent to alter his or her previously chosen lifestyle if necessary to enable the parent to meet his or her support obligation.”). When calculating child support, the trial court uses the actual income of a parent to calculate that parent’s support obligation unless it finds that a parent is voluntarily impoverished. FL § 12-201(h). A parent is considered voluntarily impoverished “whenever the 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.” *Wills v. Jones*, 340 Md. 480, 494 (1995) (citations omitted) (emphasis added). If the trial court finds that a parent is voluntarily impoverished, then the court may impute potential income to that parent. FL § 12-201(h). Thus, although a parent may be unable to work due to factors beyond her control, if a parent has reasonable means to support her child, she must do so.

The trial court found that Ms. Daniels had made the free and conscious choice not to work, had thus voluntarily impoverished herself, and imputed to her an annual income of \$105,000. We hold that the trial court’s determination that Ms. Daniels could have worked part-time and earned \$105,000 per year was not an abuse of discretion. Ms. Daniels has experience in intellectual property law and had, in the past, earned more than \$200,000 per year when working full time. Although she has physical custody of seven of her eight children, Ms. Daniels’s youngest child is no longer an infant and the rest of the children are school-aged. Ms. Daniels also employs a “mother’s helper,”

which alleviates some of the child care and housekeeping concerns. We discern no error in the trial court's determination that Ms. Daniels is voluntarily impoverished or in the decision to impute to her a part-time income of \$105,000 per year.

3. Use and Possession of Marital Home

In the divorce judgment, rather than award either party use and possession of the marital home in Ellicott City, the trial court ordered that it be sold because neither party could afford to both pay the mortgage and keep the electricity on at the house. Ms. Daniels argues that the trial court failed to properly consider the best interests of the children in coming to this decision. We conclude, however, that the trial court did not abuse its discretion.

Although the decision whether to grant use and possession of the family home rests in the discretion of the trial court, there are certain factors the trial court *must* consider when awarding use and possession. FL § 8-208. The trial court must consider (1) the “best interests of any children;” (2) the “interests of each of the parties” in continuing to use the property as a dwelling or for income; and (3) “any hardship imposed” on the party who is not granted use and possession. FL § 8-208(b). The trial court's decision whether to grant use and possession will not be disturbed unless clearly erroneous. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016). Here, Ms. Daniels does not dispute that the trial court considered the required factors but instead

argues that the trial court allowed its concerns about one factor, the parties' financial stability, to outweigh another factor, the children's best interests.

The trial court commented on the record that "[t]here's no question that the children's interest would be served by remaining in the home." The trial court also considered, however, the parties' inability to afford the home and that neither party would actually be able to maintain the home for any length of time. The trial court noted that "[t]he reality is, this family can't survive with only one parent working and this family can't afford that house. And that's certainly evidenced by the fact that the utilities have been cut off. . . . No one has the money to pay the expenses of maintaining that house."

We conclude that the trial court's decision to not award use and possession was not clearly erroneous. Even if the trial court had awarded Ms. Daniels use and possession of the home, Ms. Daniels would not have been able to afford to keep the home. The trial court could have found that the children's interest in staying in the home may have been served temporarily by granting use and possession to Ms. Daniels, but the trial court's decision not to award use and possession goes a long way to ensuring that the children's long term interests are more secure. We conclude, therefore, that the trial court did not err in its decision to deny use and possession.

4. Marital v. Nonmarital Property and Monetary Award

Ms. Daniels contends that the trial court made several errors in its disposition of marital property and grant of a monetary award. First, she argues that the trial court improperly identified two pieces of real property (Mason Neck and Farside) as marital property. Second, she argues that the trial court improperly granted Mr. McGeehan a monetary award. We first address the disputed properties and then the marital award.

“In determining marital and nonmarital property, Maryland follows the ‘source of funds’ theory.” *Dave v. Steinmuller*, 157 Md. App. 653, 663 (2004) (citing *Pope v. Pope*, 322 Md. 277, 281-82 (1991)).

Under that theory, when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital. Thus, a spouse contributing nonmarital property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital and marital investment in the property. The remaining property is characterized as marital property and its value is subject to equal distribution. Thus, the spouse who contributed nonmarital funds, and the marital unit that contributed marital funds each receive a proportionate and fair return on their investment.

Pope, 322 Md. at 281-82 (quoting *Harper v. Harper*, 294 Md. 54, 80 (1982)). “If a property interest cannot be traced to a nonmarital source, it is considered marital property.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000) (internal citation omitted). If a piece of real property is titled as “tenants by the entirety,” that property is automatically considered marital property. FL § 8-201(e)(2). When a party claims that nonmarital funds were used to buy a property titled as “tenants by the entirety,” that party must rebut the presumption that the property is marital property. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000). “When attempting to demonstrate that property acquired during the marriage is nonmarital, the party with this burden must directly trace the property to a nonmarital source.” *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281-82 (1993).

Parties may exclude a piece of property acquired during the marriage from the marital property pool through a valid agreement. FL § 8-201(e)(2) (“‘Marital property’ includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.”). To do so, however, the agreement must either specifically provide that the property is nonmarital or specifically exclude the property from the scope of the Marital Property Act. *Golden v. Golden*, 116 Md. App. 190, 203 (1997) (citing *Falise v. Falise*, 63 Md. App. 574, 581 (1985)). Findings of whether property is marital or nonmarital “are subject to review under the clearly erroneous standard embodied by Md. Rule 8-131(c); we

will not disturb a factual finding unless it is clearly erroneous.” *Noffsinger*, 95 Md. App. at 229.

a. Mason Neck Property (Virginia)

The Mason Neck property is located in Virginia. It was acquired early in the marriage. As described above, the Mason Neck property was transferred from Mr. McGeehan to Ms. Daniels when she discovered his stock losses in 2005. From then on, it was titled in her name alone. Ms. Daniels later received a monetary gift from her mother and grandmother, which she used to pay off the mortgage on the property. Ms. Daniels contends that when Mr. McGeehan transferred the Mason Neck property to her in 2005, it was the parties’ intent that the property be hers alone. She also argues that the fact that she paid off the mortgage on the property with money from her mother and grandmother is further proof that the property was nonmarital. She concludes, therefore, that the Mason Neck property was nonmarital property and the trial court erred by counting it as marital.

Although, as the trial court noted, the deed for the property and the oral agreement between the parties evidenced an intent to transfer the property into Ms. Daniels’s name alone, they did not express an intent to remove the Mason Neck property from marital property status or to exempt it from application of the Marital Property Act. The trial court, citing *Golden v. Golden*, carefully noted that an agreement must explicitly state that the property is to be excluded from

marital property and that the agreement between Ms. Daniels and Mr. McGeehan had no such statement. The trial court concluded that the testimony and the documents did not support a finding that the parties were contemplating the future division of property and wanted to remove the Mason Neck property from the scope of the Marital Property Act. Similarly, the trial court did not believe that Ms. Daniels's use of gift funds to pay off the mortgage converted Mason Neck into nonmarital property. We see no error in the trial court's analysis.

b. Log Jump Property (Ellicott City)

The trial court also found that the Log Jump property, the family home in Ellicott City, was marital property and ordered that, after the Log Jump property is sold, the proceeds of the sale will be split evenly between Mr. McGeehan and Ms. Daniels. Ms. Daniels's argument regarding the nonmarital property status of the Log Jump property requires more background on the manner in which the property was purchased. In 2005, when Mr. McGeehan conveyed the Mason Neck property to Ms. Daniels only, the parties also jointly conveyed a property called the "Farside property" to her. Ms. Daniels paid off the lien to the Farside property at the same time she paid the lien on the Mason Neck property with the monetary gift from her mother and grandmother. The Farside property was then sold when the family bought the Log Jump property, and \$407,035.61 of the proceeds from the Farside property sale were put towards the purchase of the Log Jump

property. Ms. Daniels contends that, because Farside was titled in her name alone and she had paid off the Farside lien with the gift money, the \$407,035.61 from the sale of Farside that was contributed to the purchase of Log Jump, should be considered nonmarital. As a result of her modified calculations, after selling Log Jump, Ms. Daniels argues that she should receive \$407,035.61 of the sale proceeds and then the remaining proceeds should be split between the parties.

The trial court determined that because Log Jump was titled as tenants by the entirety it was marital property. The trial court explained that the Log Jump property was “purchased with funds that had been for years and years co-mingled with premarital funds and would now be considered marital.” The trial court did not find that any portion of the Log Jump property could be considered nonmarital despite that part of the purchase money coming from the sale of the Farside property. By concluding that the Log Jump purchase funds were marital funds, the trial court implicitly rejected Ms. Daniels’s argument that Farside was nonmarital property. We see no error in the circuit court’s conclusion that the Farside property was marital property for the same reasons that we agreed that the Mason Neck property was marital property – there was no explicit agreement excluding the Farside property from the marital property pool when the parties transferred title to Ms. Daniels only. We see nothing to persuade us that the trial court’s determination was clearly erroneous.

c. The Monetary Award

Ms. Daniels argues that the trial court's split of the marital property, and corresponding monetary award of \$230,000 to Mr. McGeehan, results in Ms. Daniels walking away from the marriage with \$150,000 less in retirement savings than Mr. McGeehan. She argues that the trial court should have accounted for this inequality in retirement accounts by awarding her a portion of Mr. McGeehan's Thrift Savings Plan. Because the trial court did not do so, she concludes, the trial court abused its discretion. We conclude that the trial court did not err.

Trial courts are empowered to "balance the equities" between the parties in a divorce if division of the marital property by title is inequitable. *Innerbichler*, 132 Md. App. at 227. After having determined what property is marital property, who holds that property, and the value of the property, the trial court totals the value of the marital property titled in each party's name. *Id.* Then, because frequently one party will hold significantly more property than the other, the trial court may balance the equities by ordering one party to pay the other a monetary award. *Id.*

Here, Ms. Daniels believes the trial court should have ordered Mr. McGeehan to transfer a portion of his Thrift Savings Plan to her so that they each retain roughly the same amount of retirement savings. By Ms. Daniels's math, Mr. McGeehan retained more than double the amount of retirement savings that she was awarded:

Ms. Daniels Retirement Assets		Mr. McGeehan Retirement Assets	
Citibank IRA	\$102,746.60	Thrift Savings Plan	\$251,362.77
		Merrill Lynch 401K	\$1,287.98
		E-Trade	\$379.49
		Charles Schwab	\$521.91
Total:	\$102,746.60	Total:	\$253,552.15

The trial court, however, did not consider only the retirement accounts when determining the value of the property held by each party. Instead, the trial court included, as it was required to include, checking accounts, savings accounts, cars, retirement accounts, investment accounts, stock trading accounts, real property, and personal property:

Ms. Daniels Assets		Mr. McGeehan Assets	
Account -3816	\$8.00	Account -2326	\$25.25
Account -4245	\$5.00	Honda Pilot	\$11,242.00
Account -5152	\$7.00	BMW	\$5,773.00
Account -6323	\$6.00	Watches	\$2,500.00
Account -7681	\$300.00	Thrift Savings Plan	\$251,362.77
Citibank IRA	\$102,746.60	Merrill Lynch 401K	\$1,287.98
Suburban	\$23,016.00	E-Trade	\$379.49
Mason Neck	\$600,000.00	Charles Schwab	\$521.91

Log Jump Furniture	\$10,000.00	Whale Boat Furniture	\$5,000.00
Log Jump Paintings	\$10,000.00	Whale Boat Paintings	\$2,500.00
Jewelry	\$5,000.00		
Total:	\$751,088.60	Total:	\$280,592.40

By our calculation, after the monetary award of \$230,000 to Mr. McGeehan, Ms. Daniels will retain a combination of marital property valued at \$521,088.60, while Mr. McGeehan will receive combination of marital property valued at \$510,592.40.⁶ The trial court's balancing of the equities came as close to equal as possible while also considering the parties' intangible contributions to the marriage. While Ms. Daniels is correct that she has less in retirement accounts than Mr. McGeehan, her argument ignores that she has \$600,000 more in real property. The \$230,000 award makes it all just about even. We affirm.

5. The Deeds of Trust

Ms. Daniels's final argument is that the trial court erred by declining to rule on her request to void two deeds of trust that Mr. McGeehan put on the Log Jump house during the pendency of the divorce. Appellate courts do not ordinarily, however, review issues that were not decided by the trial court. Md. Rule 8-131. The

⁶ Our calculations exclude the fish tank because *de minimis non curat lex*.

circuit court never ruled on the request to void the deeds of trust. The trial court deferred its ruling on Ms. Daniels's motion to void the deeds of trust until it issued its ruling on the merits of the divorce. But, at the close of the divorce trial, when the trial court issued its ruling, the court never returned to the question.

We decline to review this undecided issue and instead will allow the trial court to do so. Because of the continuing jurisdiction exercised by circuit courts in family law cases, the circuit court retains jurisdiction to decide this matter upon remand. *Walsh v. Walsh*, 95 Md. App. 710, 715 (1993). We, therefore, remand as to this issue only, without affirmance or reversal, for whatever consideration the circuit court deems appropriate.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED
IN PART. REMANDED IN PART WITH-
OUT AFFIRMANCE OR REVERSAL.
COSTS TO BE PAID BY APPELLANT.**

APPENDIX B

ANN MCGEEHAN	*	IN THE
	*	COURT OF APPEALS
		OF MARYLAND
	*	Petition Docket
v.	*	No. 537
	*	September Term,
	*	2016
		(No. 2445, Sept. Term,
MICHAEL MCGEEHAN	*	2015
		Court of Special
	*	Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals filed in the above entitled case, it is this 17th day of February, 2017

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, granted, limited, to the following issue:

1. “Did the Court of Special Appeals err in affirming the trial court’s determination that the parties’ oral agreement, with consideration, that property deemed Wife’s sole and separate property did not constitute a ‘valid agreement’ under the requirements of FL § 8201(e)?”

ORDERED, that said case shall be transferred to the regular docket as No. 93, September Term, 2016, and it is further

ORDERED, that counsel shall file briefs and printed record extract in accordance with Md. Rules 8-501 and 8-502, petitioner's brief and record extract to be filed on or before March 28, 2017; respondent's brief to be filed on or before April 27, 2017; and it is further

ORDERED, that this case shall be set for argument during the June session of Court.

/s/ Mary Ellen Barbera

Chief Judge

ANN MCGEEHAN

v.

MICHAEL MCGEEHAN

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* Petition Docket
* No. 537
* September Term,
* 2016
* (No. 2445, Sept. Term,
* 2015
* Court of Special
* Appeals)

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

TO THE HONORABLE THE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND:

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WHEREAS, *ANN McGEEHAN v. MICHAEL McGEEHAN*, No. 2445, September Term, 2015 was pending before your Court and the Court of Appeals is willing that the record and proceedings therein be certified to it.

YOU ARE HEREBY COMMANDED TO HAVE THE RECORD TRANSMITTED TO THE COURT OF APPEALS OF MARYLAND ON OR BEFORE *March 3, 2017*, together with this writ, for the said Court to proceed thereon as justice may require.

WITNESS the Chief Judge of the Court of Appeals of Maryland this 17th day of February, 2017.

/s/ Bessie M. Decker

Clerk

Court of Appeals of Maryland

APPENDIX C

COURT OF APPEAL OF MARYLAND

McGeehan v. McGeehan, 455 Md. 268, 167 A.3d 579
(Decision, August 10, 2017)

We are asked to consider whether an agreement entered into during the course of a marriage made manifest by three deeds by which title was transferred to the wife, Ann McGeehan, Petitioner, by her husband, Michael McGeehan, Respondent, was sufficient to exclude those properties from consideration as marital property under Section 8-201(e) of the Family Law Article of the Maryland Code (1984, 2012 Repl. Vol.). We granted certiorari to address the following question:

Did the Court of Special Appeals err in affirming the trial court's determination that the parties' oral agreement, with consideration, that property deemed Wife's sole and separate property did not constitute a "valid agreement" under the requirements of [the *Family Law Article*) § 8-201(e)?

McGeehan v. McGeehan, 451 Md 580, 155 A.3d 435
(2017)

[***]

The bases for the trial judge's finding that it was the parties' "mutual agreement that the property would be wife's property" were the deeds that conveyed the property to the wife as her sole and separate property; the wife's discovery of her alienated inheritance; the simultaneous execution during the marriage of the deeds

for Mason Neck, Farside, and Embassy Park; and the execution of a new will by Ms. McGeehan excluding Mr. McGeehan and Mr. McGeehan's waiver of his statutory share. The judge's finding of validity of the agreement is supported in the record and in our jurisprudence addressing validity of postnuptial agreements. The same conclusion can be drawn regarding the Farside and Embassy Park deeds executed contemporaneously with Mason Neck.

As a result, there was a valid postnuptial agreement to exclude Mason Neck as the nonmarital property of Ms. McGeehan. With respect to Log Jump, the trial judge, on remand, must initially consider whether there was a valid agreement to exclude Log Jump as nonmarital under Section 8-201(e)(2) of the Family Law Article. Absent such an agreement, the judge must then consider whether the source of funds for the purchase of Log Jump, based upon the testimony elicited that the proceeds of the sale of Farside and Embassy Park, which were transferred in 2005 to the wife, was traceable thereby to her contribution under Section 8-205(b)(8)-(9) of the Family Law Article.

JUDGMENT OF ABSOLUTE DIVORCE AFFIRMED;
JUDGMENT GRANTING MONETARY AWARD VA-
CATED. CASE REMANDED TO THE CIRCUIT
COURT FOR HOWARD COUNTY FOR FURTHER
PROCEEDINGS CONSISTENT WITH THE VIEWS
EXPRESSED IN THIS OPINION. COSTS TO BE
PAID BY RESPONDENT.

APPENDIX D

MICHAEL MCGEEHAN * IN THE
Plaintiff/Counter- * CIRCUIT COURT
Defendant, * FOR
V. * HOWARD COUNTY
ANN MCGEEHAN, * Case No.:
Defendant/Counter- * 13-C14-101752
Plaintiff. *

* * * * *

ORDER

Upon consideration of Plaintiff's Exceptions to Report and Recommendations of Special Master, having been read and considered, it is this 8 day of October, 2015, by the Circuit Court for Howard County,

ORDERED, that Plaintiff's Exceptions to Report and Recommendation of Special Master are hereby **DENIED**; and it is further

ORDERED, that the Plaintiff be required to produce the discovery set forth in the Motions to Compel filed by the Defendant as more particularly set forth in Docket Entry 111000, 113000, 116000, 133000, 137000, 155000, and 164000, within 10 days from the date of this Order, and it is further

ORDERED, that if any discovery sought would not be available for direct disclosure by Plaintiff due to restrictions from federal law, Plaintiff shall immediately instruct the U.S. Attorney, in writing, to provide

to Judge Mary M. Kramer for in camera inspection;
and it is further

ORDERED, that if Plaintiff fails to do so, the
Plaintiff shall not be permitted to produce testimony
or introduce documents concerning any financial issue
in support of his claims, or as a defense, at any hearing
in connection with this case.

All subject to further Order of this Court.

/s/ Mary M. Kramer, Judge
Mary M. Kramer

CC Jac E. Knust, Esquire
David S. Coaxum, Esquire
Matthew P. Phelps, Esquire
Asst. U. S. Attorney

APPENDIX E
IN THE CIRCUIT COURT FOR
HOWARD County, MARYLAND

MICHAEL SCOTT McGEEHAN, *

Plaintiff

vs.

ANN O. McGEEHAN

Defendant

* Case No.
13-C-14-101752

* * * * *

REPORT AND RECOMMENDATION
OF SPECIAL MASTER

Pursuant to an Order of this Court dated July 9, 2015, the undersigned was appointed a Special Master to handle all discovery matters between the parties or non-parties in the instant case. The Special Master was directed, in his discretion, to make reasonable efforts to informally resolve all discovery issues that the parties are unable to resolve among themselves, and to the extent such informal efforts fail, the Special Master shall after receiving the parties' respective positions, submit written Recommendations to the Court as to the resolution of such dispute.

The Special Master initially met with Counsel for the parties on July 24, 2015 and discussed the scope of the discovery disputes. Thereafter, the Special Master, reviewed various pending motions filed by the parties relating to discovery issues, as well as Responses

therefore. The pending discovery motions are as follows:

- 1) Defendant, Ann McGeehan's Motion to Quash Plaintiff, Michael McGeehan's Second Request For Production. (D.E. 111000)
- 2) Defendant's Motion to Compel Discovery Responses. (D.E. 113000)
- 3) Defendant's Motion to Compel Compliance with Second Request for Inspection and Copying of Electronic Data. (D.E. 116000)
- 4) Defendant's Motion to Compel Discovery as to Pyrenavest, LLC. (D.E. 133000)
- 5) Defendant's Supplemental Motion to Compel Discovery Responses. (D.E. 137000)
- 6) Defendant's Motion to Compel Answers to Certified Deposition Questions. (D.E. 155000)
- 7) Defendant's Motion to Compel Password of Plaintiff's Laptop. (D.E. 164000)

The Special Master again met with Counsel for the parties, accompanied by representation of the United States Attorney's Office on August 27, 2015, to discuss their respective positions with reference to the pending motions. The Court also spoke *in camera* with individuals produced by Counsel for the United States, and excluded therefrom Counsel for the parties.

Initially, attempts were made to resolve the discovery disputes. Those attempts were unsuccessful.

The Special Master makes the following findings:

1. This is an action for divorce, child custody, child support and access, in which each party seeks alimony, equitable distribution of property, attorney fees, and suit money.

2. In determining the appropriateness of an award of alimony, equitable division and attorney fees, the Court is required to consider, in addition to other factors, certain financial factors, such as the financial resources, financial status, and financial needs of each party; the income and assets of each party; the right of each party to receive retirement benefits; the value of all property interests of each party, and how and when such property interests were obtained.

3. Such factors may also be appropriate considerations in determining child support, child access, and use and possession of the marital home.

4. The information and documents sought by the Defendant primarily concern his employment history and financial activities prior to 2015, including, the identity of his employers, his salary, fringe benefits, retirement benefits, expense reimbursement reports, banking and stock trading accounts.

5. The discovery sought from the Plaintiff is relevant to the issues to be tried.

6. The Plaintiff has steadfastly refused to provide the requested discovery contending that he has been instructed by his employer not to disclose information related to his employment. He asserts that the discovery requests concern “government information”.

7. 22 C.F.R. subsection 172.4, relating to prohibitions against testimony and production of documents concerns “information acquired” and “documents acquired” as part of “the performance of the employee’s duties”. It does not appear to apply to an employee’s personal income and personal records not related to exposing the particulars of any government program.

8. Information and documents pertaining to the identity of the Plaintiff’s employers; his salary; fringe benefits; retirement benefits; real estate holdings; bank accounts; investment accounts; stock ownership and trading history; ownership of other business entities; and identification of all other sources of income; are items particular to the Plaintiff, and not “information acquired” or “documents acquired” as part of the performance of his job.

9. All of the subject information and documents sought from the Plaintiff, with the exception of his travel history in the course of his employment, are discoverable.

RECOMMENDATION

1. That the Plaintiff be required to produce the discovery set forth in the Motions to Compel filed by the Defendant as more particularly set forth in Docket

Entry ~~130000~~, 111000, 113000, [RJS] 116000, 133000, 137000, 155000, and 164000, within 15 days from the date of this Order.

2. The [sic] if the Plaintiff fails to do so, the Plaintiff shall not be permitted to produce testimony or introduce documents concerning any financial issue in support of his claims, or as a defense, at any hearing in connection with this case.

3. A proposed Order is attached.

/s/ Raymond J. Kane, Jr. 9/4/15
Raymond J. Kane, Jr.
Special Master

Copies Mailed 9/4/15

To: Jac E. Knust, Esquire
David S. Coaxum, Esquire
Matthew P. Phelps, Esquire
Assistant U. S. Attorney

Note to Counsel: Pursuant to the Order Appointing Discovery master, any party, or non-party to whom this Report and Recommendation is forwarded, shall indicate his or her disagreement and the reasons therefor by written communication to the Court, with copies to the Special Master and all affected persons within 72 hours of the time the party receives this Report and Recommendation.

IN THE CIRCUIT COURT FOR
HOWARD County, MARYLAND

MICHAEL SCOTT McGEEHAN, *

Plaintiff

vs.

ANN O. McGEEHAN

Defendant

* Case No.

* 13-C-14-101752

*

ORDER

Upon consideration of the various Motions to Compel, filed by the Defendant, Ann O. McGeehan, it is this ____ day of September, 2015, by the Circuit Court for Howard County, Maryland,

ORDERED, that the Plaintiff, Michael Scott McGeehan, produce the requested discovery in the Motions to Compel, filed by the Defendant, Ann O. McGeehan, as more particularly set forth in the Docket Entries ~~130000~~, 111000, 113000, 116000, 133000, 137000, 155000 and 164000, within 15 days from the date of this Order.

ORDERED, that if the Plaintiff fails to do so, the Plaintiff shall not be permitted to produce testimony or introduce documents concerning any financial issue in support of his claims, or as a defense, at any hearing in connection with this case.

JUDGE

APPENDIX F

MICHAEL SCOTT	*	IN THE
MCGEEHAN		CIRCUIT COURT
Plaintiff/Counter-	*	FOR
Defendant,	*	HOWARD COUNTY
v.		Case No.:
ANN O. MCGEEHAN,	*	13-C-14-101752
Defendant/Counter-	*	
Plaintiff.		

* * * * *

STATEMENT OF INTEREST
PURSUANT TO 28 U.S.C. § 517

Pursuant to 28 U.S.C. § 517, the United States of America, by its undersigned counsel, files this Statement of Interest to apprise the Court of its narrow interest in this matter, which relates to certain U.S. Government information regarding Plaintiff's employment that has been placed at issue in this case.¹

1. Plaintiff is a federal Government employee. The disclosure of information related to his employment, therefore, is subject to the control of the U.S. Government under applicable law. We understand that

¹ Title 28, Section 517 of the United States Code provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

Plaintiff has provided Defendant with certain information regarding his earnings and benefits in connection with this proceeding. However, as set forth further below, Plaintiff is not authorized to provide additional information regarding his employment (including particular information Defendant is seeking in discovery) without the approval of the U.S. Government. As also explained below, Defendant can request additional information about Plaintiff's employment from the U.S. Government through established regulatory procedures.

2. The United States understands that Defendant has moved this Court to compel Plaintiff to provide certain information about his employment and has sought sanctions against Plaintiff for his refusal to provide this information. The United States urges the Court to deny Defendant's motions. Plaintiff is prohibited from providing U.S. Government information to Defendant without prior authorization. The U.S. Government has not authorized Defendant to provide Government information in response to Defendant's discovery requests. *See, e.g.*, 22 C.F.R. § 172.4. He cannot, therefore, be compelled to produce Government information in violation of a valid agency regulation. *See U.S. ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951) (holding that Government employee could not be compelled to provide Government information in violation of valid agency regulation); *Boron Oil Co. v. Downie*, 873 F.2d 67, 69-70 (4th Cir.1989) ("*Touhy* is part of an unbroken line of authority which directly supports [the] contention that a federal employee may not be compelled to

obey a subpoena contrary to his federal employer's instructions under valid agency regulations. . . . The doctrine of sovereign immunity precludes the state court – and the federal court which gained limited jurisdiction upon removal – from exercising jurisdiction to compel [a federal agency employee] to testify contrary to [that agency's] instructions.”).

3. To the extent Defendant seeks information concerning Plaintiff's employment, she must comply with applicable procedures for seeking that information from the U.S. Government.²

4. The United States recognizes that the parties to this action require access to certain limited information related to Plaintiff's income and benefits and has attempted to work with the parties to provide such information. Counsel for the United States has sought to make the Court aware of the U.S. Government's narrow interest in this matter and is prepared to provide the Court with additional information at the Court's convenience. The United States also remains willing to continue to confer with the parties through their counsel. As Plaintiff is not authorized to provide U.S. Government information in response to Defendant's discovery requests, Defendant's motions to compel and for sanctions should be denied.

² The United States Attorney's Office for the District of Maryland sent Defense counsel a letter, dated May 26, 2015, explaining the process for seeking information from the U.S. Government.

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Respectfully submitted,

Rod J. Rosenstein
United States Attorney

/s/ [Illegible]

Matthew P. Phelps
Assistant United States Attorney
United States Attorney's Office
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, Maryland 21201
(410) 209-4800
matthew.phelps@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2015, I served the foregoing via first-class mail to:

David S. Coaxum
8171 Maple Lawn Boulevard
Suite 200
Fulton, MD 20759
Counsel for Defendant

Jac E. Knust
The Collaborative Law Group
10440 Little Patuxent Pkwy, Suite 900
Columbia, MD 21044
Counsel for Plaintiff

Courtesy copy to Judge's Chambers via facsimile only

a40

/s/ [Illegible]
Matthew P. Phelps
Assistant U.S. Attorney

APPENDIX G

MICHAEL SCOTT	*	IN THE
MCGEEHAN		CIRCUIT COURT
Plaintiff/Counter-	*	FOR
Defendant,	*	HOWARD COUNTY
v.		
ANN O. MCGEEHAN,	*	Case No.:
Defendant/Counter-	*	13-C-14-101752
Plaintiff.		

* * * * *

SUPPLEMENTAL STATEMENT OF INTEREST
PURSUANT TO 28 U.S.C. § 517

Pursuant to 28 U.S.C. § 517,¹ the United States of America, by its undersigned counsel, files this Supplemental Statement of Interest to apprise the Court of its narrow interest in this matter, which relates to certain U.S. Government information regarding Plaintiff's employment, and to express disagreement with the September 4, 2015 Report and Recommendation of the Special Master ("R&R").

1. The United States filed its original Statement of Interest on or about July 13, 2015, and the substance

¹ Title 28, Section 517 of the United States Code provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." The filing of a Statement of Interest does not constitute formal intervention in a pending case.

of that Statement is incorporated as if fully stated herein.

2. The United States understands that the Special Master has recommended that Plaintiff be ordered to provide certain information about his employment. Adoption of the Special Master's recommendations would conflict with and harm the interests of the United States.

3. Plaintiff is a federal Government employee. The disclosure of information related to his employment, therefore, is subject to the control of the U.S. Government under applicable law. Plaintiff is not authorized to provide information regarding his employment without the approval of the U.S. Government, and the U.S. Government has not authorized Plaintiff to provide Government information in response to Defendant's discovery requests. *See, e.g.*, 22 C.F.R. § 172.4. He cannot, therefore, be compelled to produce Government information in violation of a valid agency regulation. *See US. ex rel. Touhy v. Ragen*, 340. U.S. 462 (1951); *Boron Oil Co. v. Downie*, 873 F.2d 67, 69-70 (4th Cir.1989) (stating "[t]he doctrine of sovereign immunity precludes the state court – and the federal court which gained limited jurisdiction upon removal – from exercising jurisdiction to compel [a federal agency employee] to testify contrary to [that agency's] instructions.")

4. In particular, the United States disagrees with the Special Master's interpretation and application in this case of a federal regulation governing the

production of information by a federal employee. See R&R at 3 (discussing 22 C.F.R. § 172.4). That regulation prohibits a federal employee, in response to a demand or request in connection with any litigation, from producing for use at such proceedings *any document or any material* acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so. . . ." *Id.* (emphasis added). The United States' position is that this federal regulation does encompass information as it pertains to Plaintiff's Government employment, including salary, and that the federal regulation has been construed and applied incorrectly by the Special Master.

5. To the extent Defendant seeks information concerning Plaintiff's employment with the United States, including salary information, she must comply with applicable procedures for seeking such information from the U.S. Government. Such a request, commonly referred to as a *Touhy* request, was submitted by Defendant's counsel on or about July 24, 2015, and the Government's response to that *Touhy* request is the only vehicle by which Government information may be disclosed. In addition, the proper mechanism for challenging the Government's position with respect to the application of 22 C.F.R. Part 172.4 is not through discovery orders in this case but through a separate action against the United States filed in a proper federal forum. See *COMSAT Corp. v. Nat'l Science Found.*, 190 F.3d 269, 274 (4th Cir. 1999) ("[w]hen the government is not a party, the Administrative Procedure Act

(“APA”) provides the sole avenue of review” for an agency’s decision in response to a *Touhy* request).

6. The United States recognizes that the parties to this action require access to certain limited information related to Plaintiff’s income and benefits. Counsel for the United States has made several attempts to make the Court aware of the U.S. Government’s narrow interest in this matter and remains prepared to provide the Court with additional information at the Court’s convenience. The United States again requests that the Court avail itself of this information before issuing any ruling on the Special Masters Report and Recommendation, particularly where such a ruling may be contrary to federal law and regulations, and detrimental to the interests of the United States.

7. If the court is not willing to hear from the United States concerning its interests in this matter, then the United States may have to consider alternative options for protecting its interests in this matter including, if necessary, intervention and removal to federal court. The United States would prefer, however, to work with the parties and the court to address the narrow issues that impact the Government’s interest without the need for further litigation and in a manner that would allow the parties to proceed with their claims and defenses before this court.

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Respectfully submitted,

Rod J. Rosenstein
United States Attorney

/s/ [Illegible]

Matthew P. Phelps
Assistant United States Attorney
United States Attorney's Office
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, Maryland 21201
(410) 209-4800
matthew.phelps@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2015, I served the foregoing via first-class mail to:

David S. Coaxum
8171 Maple Lawn Boulevard
Suite 200
Fulton, MD 20759
Counsel for Defendant

Jac E. Knust
Ellen Stewart
The Collaborative Law Group
10440 Little Patuxent Pkwy, Suite 900
Columbia, MD 21044
Counsel for Plaintiff

Courtesy copy to Judge Kramer's Chambers via email

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/s/ [Illegible]

Matthew P. Phelps

Assistant U.S. Attorney
