COURT OF APPEALS OF VIRGINIA

Record No. 1277-25-2

JOHANNES KAREL NYKS
v.
MAXEMILLIAN CORKUM, F/K/A
RUTH CORKUM NYKS

Present: Judges AtLee, Ortiz and Senior Judge Humphreys

Argued at Richmond, Virginia

Opinion Issued September 22, 2026[*]

FROM THE CIRCUIT COURT OF MADISON COUNTY
David B. Franzen, Judge

Peter W. Buchbauer (James J. McGuire; Devon B. Humphreys; Emily A. Woznak; Buchbauer & McGuire, P.C., on briefs), for appellant.

Monica J. Chernin (Law Offices of Monica J. Chernin, P.C., on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE RICHARD Y. ATLEE, JR.

On June 30, 2025, the circuit court entered a final decree of divorce, ending the marriage of Johannes Karel Nyks and Maxemillian Corkum. On appeal, Nyks assigns 21 errors to the circuit court's rulings. He alleges errors in the circuit court's rulings on, among other things, the grounds for divorce, the equitable distribution award, supposal support, the pendente lite awards, discovery rulings, notice, and attorney fees. For the following reasons, we affirm in part and reverse in part.

[*] This opinion is not designated for publication. *See* Code § 17.1-413(A).

BACKGROUND

A. *Marriage and Separation*

Nyks and Corkum were married on August 17, 1968. They had two children during the marriage, both of whom were adults by the time the parties separated. Nyks is a Dutch citizen, and three weeks after getting married, the parties moved to the Netherlands. While there, Nyks worked at various companies. Corkum worked sporadically, but she primarily stayed home due to the social convention in the Netherlands at the time. In 1981, the parties returned to the United States, where Nyks worked for VNU Amvest until 1987 before establishing his own company, Nyks & Co. Corkum was employed for at least two years in various jobs, and she helped Nyks with his endeavors. They split briefly in 1986, apparently due to Nyks's extramarital affairs, though they eventually reconciled.

In 1995, Nyks, along with three other investors, purchased two companies out of bankruptcy in Holland. Part of the shareholders' agreement required each investor to participate in the management of the company or sell their shares to the others for a nominal value. When the opportunity arose, Nyks "decided that [he] want[ed] to actually do that and spend the time in Holland." Consequently, he was spending "the greatest part of time in Holland." Corkum did not want to live in Holland again, and she did not agree to move back.

The parties sold the marital home in 1996 for approximately $1.95 million. Corkum wired the money from the sale to Nyks, who was already in Holland at the time of the sale. Nyks moved to Holland on a more permanent basis, and he eventually wired Corkum $168,000 to purchase her own home in Virginia. The parties did not reconcile after this point, and they divided at least some of their personal property between them. From 1997 through 1999, Nyks sent Corkum a total of $120,000.

B. *Initial Divorce Proceedings*

On March 8, 1999, Nyks, through counsel, filed for divorce, requesting that it be granted on the ground that they had been living separate and apart for one year. Corkum filed a cross-bill, seeking a divorce on the grounds of adultery, cruelty, and desertion.

The proceedings turned contentious almost immediately. Corkum filed multiple motions to compel, claiming that Nyks failed to respond to discovery requests. The circuit court ordered Nyks to comply with discovery by July 20, 1999, and it ordered him to pay Corkum $300 in attorney fees. On July 29, 1999, Corkum filed a motion for sanctions, arguing that Nyks still had not complied with the court's discovery order. After a hearing, the court found that Nyks had failed to comply with the order, and it ordered him to pay $100 per day for each day after August 16, 1999, that he did not "provide[] full and complete discovery responses." It also ruled that Nyks had waived all discovery objections by failing to respond, and it ordered him to pay Corkum attorney fees.

The circuit court entered a pendente lite support order on October 13, 1999, nunc pro tunc to August 11, 1999. It ordered Nyks to pay Corkum $5,000 per month and to maintain her health insurance. Additionally, it ordered both parties "to preserve the estate and assets of the parties, and each is restrained from dissipating 'Marital' property or part 'Marital' property as the terms are defined in Virginia Code Section 20-107.3."

Corkum filed additional motions in November and December of that year, including a motion for sanctions, claiming Nyks had still not complied with the discovery order. She also filed a motion for judgment, asserting that Nyks had not paid any of the pendente lite support. After a hearing, the circuit court found Nyks in contempt for his failure to comply with the discovery order, and it ordered him to pay $500 per day for every day after January 24, 2000, that he failed to comply. The court also "entered judgment" against Nyks, in the amount of

$30,000 for the pendente lite arrearages. And it ordered him to pay Corkum $500 in attorney fees.

In November 2000, Corkum filed another motion for judgment, claiming that Nyks still had not paid the pendente lite support or the accumulated arrearages. Following a hearing, the court again entered judgment for Corkum, ordering Nyks to pay $60,000 in arrearages for the months of January through December 2000. It also ordered him to pay $1,000 to Corkum for attorney fees.

C. *Withdrawal of Nyks's Counsel*

On January 31, 2001, Corkum filed a motion requesting additional contempt sanctions. She also asked the court to issue a capias for Nyks's arrest.

On January 31, 2001, however, the circuit court entered an "Order of Withdrawal of Counsel." The order stated that the cause was before the court "upon the Motion of Ronald R. Tweel and Elizabeth P. Coughter . . . , counsel for Johannes Karel Nyks, to withdraw as counsel in this cause."[1] The order permitted Nyks's counsel to withdraw, and it stated that he would "appear *pro se* and may be noticed at his residence" in the Netherlands "or at his place of employment." It ordered the clerk to mail certified copies to Nyks at the listed addresses.

On March 21, 2001, the circuit court issued an order granting Corkum's motion for additional contempt sanctions, and it issued a capias for his arrest.

[1] There is no formal motion to withdraw in the record. Nyks's brief refers to a letter that Nyks's counsel sent to the circuit court. This letter does not appear in the record. There was significant discussion about the letter, and its attachments, at a hearing in August 2024, where the parties argued about the legal effect of the of Nyks's prior counsel's withdrawal on the subsequent proceedings. According to the statements in the transcript, Nyks's prior counsel sent the court a letter dated January 16, 2001. The letter contained two attachments: (1) a January 2, 2001 email from counsel to Nyks, informing him that counsel intended to withdraw and setting out the reasons for the withdrawal, and (2) a FedEx receipt indicating that counsel had notified Nyks in that manner as well.

D. *Nyks Stops Participating—January 2001 to July 2023*

Following his counsel's withdrawal, Nyks did not participate in subsequent proceedings or otherwise pursue the divorce. Nor did he make any pendente lite support payments.

From 2000 through 2009, Corkum filed annual motions for judgment, asking the court to enter judgment on the arrearages owed for the missed pendente lite support payments. Corkum served these motions on Nyks, typically by overnight mail or FedEx, at the two addresses listed in the withdrawal order. Following each motion, the circuit court granted an order for judgment on the arrearages. The orders dispensed with Nyks's endorsement, with some orders stating "proper notice given."

In 2009, Corkum moved to increase her pendente lite support. The certificate of service attached to the motion indicated that it was served on Nyks by FedEx at both addresses listed in the withdrawal order. After a hearing, the court increased the pendente lite support from $5,000 per month to $7,500 per month.

From 2010 through 2023, Corkum continued to file almost annual motions for judgments on the unpaid pendente lite support. The circuit court continued to grant the motions and enter judgment against Nyks. Each order also ordered Nyks to pay Corkum's attorney fees. As before, Nyks did not participate in these proceedings.

Corkum used the judgment orders to collect the unpaid pendente lite support from Nyks's William Penn annuity, which he negotiated when he left his employment with VNU Amvest. Both parties agree the annuity was a marital asset. The annuity paid Nyks $6,250 per month. Through her execution of the judgment orders against the annuity, Corkum received approximately $1,562,000.

E. *Renewed Proceedings*

In 2023, Nyks took a renewed interest in the proceedings. On July 10, 2023, without filing a notice of appearance, his new counsel filed a "Notice of Presentation of Decree." The circuit court did not enter the decree, and Nyks's new counsel moved to withdraw shortly thereafter, and Nyks obtained his current counsel.

On February 1, 2024, Corkum filed her by-now annual motion for judgment on the pendente lite arrearages. Nyks opposed her motion, arguing that the court does not have authority to reduce temporary support arrearages to judgment prior to entry of a final order of divorce. The circuit court agreed and denied Corkum's motion for judgment. Nyks then filed a motion to vacate all the prior orders for judgment on the arrearages, arguing that they were void ab initio. The circuit court granted his motion and vacated all the prior judgment orders.

Nyks also filed a motion to vacate the 2009 order that increased the pendente lite support from $5,000 to $7,500, arguing that he was not properly served with the motion. He asserted that the order allowing Nyks's prior counsel to withdraw, which authorized certain methods of service on Nyks, was not properly entered because there was no motion to withdraw, no service of the motion on Nyks, and no endorsement of the withdrawal order by Nyks.

After a hearing in August 2024, the circuit court denied the motion. The court noted that Nyks's prior counsel had sent a letter to the court, with two attachments, asking to withdraw. Neither the letter nor the attachments appear in the record. But the court noted that one of the attachments was a copy of an email to Nyks, informing him both of counsel's intent to withdraw

and the reasons for the withdrawal.[2] The other attachment was a FedEx receipt, as counsel also sent Nyks the notice of intent to withdraw via FedEx. Given that information and the fact that the withdrawal order was sent to Nyks at both addresses authorized by his counsel, the circuit court found that notice by the method authorized in the withdrawal order was sufficient.

The case was tried over two days in January 2025. Corkum appeared in person, but Nyks was not present. The circuit court noted that it "ha[d] previously required both parties to be here in person in this case." It asked if Corkum intended to request that Nyks be held in contempt for his failure to appear, and she made an oral motion asking the court to hold Nyks in contempt. Nyks's counsel opposed the motion, arguing that there was no written order that required him to be there. The court took the motion under advisement.

As Nyks did not appear, his deposition testimony was played for the court. Among other things, Nyks acknowledged some acts of adultery in his relationship, but he claimed he did not start seeing his current partner, Hlana, with whom he has a child, until 1997. Nyks testified about his various business endeavors, and he claimed that any of the businesses formed during the marriage no longer had any value. He also asserted that Pretium, a company started after the parties separated, was funded out of its own cash flow. He claimed that he had depleted the marital estate supporting Corkum, himself, and the couple's children. He also testified that he

[2] Though the letter and email are not in the record, the circuit court read a portion of the email into the record. According to the portion read by the court, counsel had stated that they had "repeatedly advised [Nyks] against the strategy he ha[d] employed." Counsel also informed him about a court hearing and stated that

> in that court hearing, I will ask the [c]ourt to allow this firm to withdraw as counsel of record on your behalf; [we] no longer feel comfortable representing you as you continue to ignore all court orders and never intend to work within the judicial system; as officers of this court, we have gone as far for you as we possibly can under the circumstances and constraints that you have instituted.

lived in a 5 million euro home in Holland, which he had purchased in 2014. Nyks testified that he had an income of 4,000 euros per month, a bank account with more than 400,000 euros, and other liquid assets of 79,000 euros, which he claimed was an inheritance from his parents.

Nyks then called one of Corkum's former neighbors as a witness. That witness testified that Corkum had lived in Madison County from some time in 1996 until approximately 2007. She testified that Corkum and Nyks had lived separate and apart, without any cohabitation, for more than a year. And she testified that, to her knowledge, the parties had never reconciled since the 1990s.

Corkum also testified. She explained that Nyks had had multiple affairs. She claimed that Nyks told her about his relationship with his current partner in 1996, before the parties separated. She testified that Nyks did not pay her any money after May 1999. She could not recall how much money the couple had in savings at the time the marriage ended. Nor did she have any information about where the proceeds from the sale of the marital residence went. She explained that she believed money from the companies started during the marriage and other marital assets were used to create the companies started post-separation, but she did not have any documentary evidence or specific knowledge. She acknowledged that she received funds from the William Penn annuity from 2002 through 2021. She testified that she moved back to Holland in 2018, where she still lived at the time of the trial, and that she was living on funds borrowed from other people.

Following the presentation of evidence, the circuit court asked the parties to submit written closing arguments, including proposed findings of fact and conclusions of law. It also ordered Nyks to pay Corkum $3,500 per month in pendente lite support.

On June 9, 2025, the circuit court issued a letter opinion. It awarded Corkum a divorce on the grounds of adultery and desertion. Given the length of the case, the court found it

unsurprising that most of the assets now owned by the parties were acquired after they separated in 1996. It also acknowledged that the passage of time made the task of tracing assets difficult, which it found was "exacerbated by [Nyks's] willful refusal to respond to discovery." Even so, the court classified Nyks's current home, his 400,000 euro bank account, and 79,000 euros in liquid assets, as marital property. It did so on the inference that

> virtually all of the property now owned by Nyks stems either from assets he acquired prior to the final separation of the parties, or from the sale of the former marital residence, the proceeds of which he used to acquire the companies which, in turn, were used to acquire other assets, which remained marital.

Though it acknowledged that Nyks likely contributed separate property, it found that he "did not produce satisfactory evidence of tracing." It ordered Nyks to pay Corkum a monetary payment of 2,211,600 euros.

As for support, the circuit court ordered Nyks to pay the arrearages in the pendente lite support. It found that he owed $2,029,000, but it gave him a full credit for the money Corkum collected from the William Penn annuity, leaving him to pay $466,500 in arrearages. After evaluating the factors in Code § 20-107.1(E), the circuit court determined that Corkum needed spousal support. Given Nyks's age and the monetary award to Corkum, it awarded Corkum $3,500 per month for ten years, but it ordered it to be paid in a lump-sum payment of $420,000, due 30 days after entry of the final order.

The court also noted that Nyks had been held in contempt on several occasions. It ordered Nyks to pay the attorney fees ordered in those various orders, but, given present circumstances and the amounts Nyks' owed Corkum, it did not require Nyks to pay the $4.5 million in sanctions accumulated due to his failure to respond to discovery.

The circuit court also awarded Corkum $75,000 in attorney fees, recognizing that a large portion of the fees accumulated in the case "were the consequence of [Nyks's] unjustifiable

behavior," including "[h]is steadfast refusal to respond to discovery on a timely basis, his contempt for the authority of th[e c]ourt, the positions he has taken, and his failure over decades to participate in actively in the litigation *he himself initiated*." The circuit court entered the final decree of divorce on June 30, 2025.

Both parties filed motions to reconsider various aspects of the court's ruling, which the court denied. Nyks now appeals.

ANALYSIS

A. *Grounds for Divorce* (Assignments of Error 1, 2, and 3)

Nyks argues that the circuit court should have granted the divorce based on a one-year separation rather than granting a divorce on the fault-based grounds of desertion and adultery. Because the evidence supports the circuit court's finding that Nyks deserted Corkum, it did not err in granting Corkum a divorce on that ground.

"We begin our analysis by recognizing the well-established principle that all trial court rulings come to an appellate court with a presumption of correctness." *Wynnycky v. Kozel*, 71 Va. App. 177, 192 (2019) (quoting *Stiles v. Stiles*, 48 Va. App. 449, 453 (2006)). A circuit court's factual determination, such as the finding of a grounds for divorce, "cannot be reversed on appeal unless 'plainly wrong or without evidence to support it.'" *Congdon v. Congdon*, 40 Va. App. 255, 261 (2003) (quoting Code § 8.01-680). "[W]here dual or multiple grounds for divorce exist, the trial [court] can use [its] sound discretion to select the grounds upon which [it] will grant the divorce." *Payne v. Payne*, 77 Va. App. 570, 584 (2023) (alterations in original) (quoting *Williams v. Williams*, 14 Va. App. 217, 220 (1992)). We will not reverse a court's exercise of that discretion "absent a finding of abuse of that discretion." *Chaney v. Karabaic-Chaney*, 71 Va. App. 431, 434 (2020) (quoting *Harman v. Honeywell Int'l, Inc.*, 288 Va. 84, 92 (2014)).

1. Desertion

Code § 20-91(A)(6) provides that "[w]here either party has . . . willfully deserted or abandoned the other, [a] divorce may be decreed to the innocent party after a period of one year from the date of such act." "Notwithstanding Code § 20-91(A)(6)'s use of the disjunctive 'or' to distinguish 'desertion' and 'abandonment,' our Supreme Court has found that '[i]n the domestic relations context, "abandonment" is generally used synonymously with "desertion."'" *Payne*, 77 Va. App. at 584-85 (alteration in original) (quoting *Purce v. Patterson*, 275 Va. 190, 195 (2008)). Desertion is "a breach of matrimonial duty—an actual breaking off of the matrimonial cohabitation coupled with an intent to desert in the mind of the deserting party." *Purce*, 275 Va. at 195 (quoting *Petachenko v. Petachenko*, 232 Va. 296, 298-99 (1986)). "Both must combine to make the desertion complete." *Nash v. Nash*, 200 Va. 890, 893 (1959) (quoting *Bailey v. Bailey*, 62 Va. 43, 47 (1871)). Desertion usually occurs "when a party physically leaves the marital home and does not return." *Payne*, 77 Va. App. at 585. "[T]his willful breaking off occurs 'without the consent and against the will of the other spouse.'" *Id.* (quoting *Barnes v. Barnes*, 16 Va. App. 98, 101 (1993)).

Here, the evidence is sufficient to establish desertion. Even before the separation, beginning in 1995, Nyks testified that he was spending the "greater part" of his time in Holland because of his decision to purchase two Dutch companies out of bankruptcy. When the opportunity arose, Nyks "decided that [he] want[ed] to actually do that and spend the time in Holland." After the parties sold the marital residence in 1996, Nyks moved back to Holland on a more permanent basis. Corkum testified that she did not want to move to Holland, a country she had not lived in since 1981, and she did not agree to move. Nyks made his decisions unilaterally, and it appears that he decided to move to Holland with or without Corkum. From

this, a reasonable factfinder could conclude that Nyks broke off the marital cohabitation with an intent to desert.

Nyks argues that the parties had to go somewhere after selling the marital home, that he had business in Holland, and that he invited Corkum to join him. But the circuit court had the opportunity to see and hear the witnesses, and it apparently did not accept Nyks's version of events. "It is well established that the trier of fact ascertains a witness' credibility, determines the weight to be given to their testimony, and has the discretion to accept or reject any of the witness' testimony." *Street v. Street*, 25 Va. App. 380, 387 (1997) (en banc). The evidence supports the circuit court's finding that Nyks unilaterally decided to move to Holland. Thus, the circuit court did not err in finding that Nyks deserted the marriage and granting a divorce on that ground.[3]

2. Adultery

Nyks also argues that Corkum did not sufficiently establish adultery as a ground for divorce. Among other things, he contends that there was no evidence to corroborate the adultery.[4] Under Code § 20-99(1), no divorce, except for a divorce on the grounds of a one-year separation, "shall be granted on the uncorroborated testimony of the parties or either of them." "The general rule is that where a particular fact or circumstance is vital to complainant's case,

[3] Nyks also argues that the circuit court should have granted the divorce based on a one-year separation under Code § 20-91(9)(a). "[W]here dual or multiple grounds for divorce exist, the trial [court] can use [its] sound discretion to select the grounds upon which [it] will grant the divorce." *Payne*, 77 Va. App. at 584 (alterations in original) (quoting *Williams*, 14 Va. App. at 220). Because the court was not required to grant a divorce on the parties' one-year separation where, as here, dual grounds existed, we find no error in the court's decision to grant Corkum a divorce on the ground of desertion.

[4] Additionally, Nyks argues that Corkum did not properly plead adultery as a ground for divorce, that the evidence was insufficient to establish adultery, and that any alleged adultery occurred more than five years before the divorce action and is thus barred as a ground of divorce under Code § 20-94. Because we find any error is harmless, we need not address the merits of his other arguments.

some evidence of the same, in addition to the complainant's own testimony, is essential." *Venable v. Venable*, 2 Va. App. 178 (1986) (quoting *Graves v. Graves*, 193 Va. 659, 662 (1952)).

Here, the only evidence relating to adultery came from the testimony of both parties; there was no other evidence to corroborate any acts of adultery.[5] Thus, the circuit court erred in granting a divorce on that ground.

"Finding an error by the court does not end our inquiry, however." *Milam v. Milam*, 65 Va. App. 439, 459 (2015). "Code § 8.01-678 makes 'harmless error review required in *all* cases.'" *Id.* (quoting *Tynes v. Commonwealth*, 49 Va. App. 17, 23 n.3 (2006)). Thus, "[w]hen this court finds that error has been committed by a trial court, we are required to consider whether the error was harmless." *Id.*

We find that any error here is harmless. Although the circuit court improperly granted a divorce on the ground of adultery, such ruling did not impermissibly affect the outcome of this case. The court granted the divorce on two fault-based grounds, adultery and desertion, and the record supports the circuit court's decision to award Corkum a divorce on the ground of desertion. Thus, there is still a fault-based ground for the divorce independent of adultery. Furthermore, Nyks did not request spousal support, so the ruling did not erroneously bar him from receiving such support. *See Chaney*, 71 Va. App. at 436 ("When granting a divorce on adultery grounds, a court cannot award support to the adulterous spouse . . . ." (quoting Code § 20-197.1(B))).

[5] The circuit court references Nyks's relationship with his current partner, Hlana, and the birth of a son to that relationship while Nyks was still married to Corkum. It inferred that Nyks committed adultery both before and after the parties separated in 1996. Based on the age of the son in January 2024, however, he was not conceived until approximately 2004, which is well after the parties separated and filed for divorce. Thus, it is not sufficient corroboration of the adultery alleged.

Additionally, Nyks did admit to acts of adultery. And although the evidence may not have been sufficiently corroborated to support adultery as a ground for divorce, Code § 20-107.1(E) requires a court to "consider the circumstances and factors which contributed to the dissolution of the marriage, *specifically including adultery* and any other ground for divorce." (Emphasis added). This Court has interpreted that section to permit a circuit court to consider "evidence of an extramarital romantic relationship that was insufficient to establish adultery as a fault ground." *Chaney*, 71 Va. App. at 437-38; *see also* Code § 20-107.3(E)(5) (equitable distribution factors include the "circumstances and factors which contributed to the dissolution of the marriage"). The court was therefore still permitted to consider Nyks's adultery in making its spousal and equitable distribution awards. Accordingly, any error in granting the divorce on the ground of adultery was harmless error.

B. *Equitable Distribution and Spousal Support* (Assignments of Error 4, 5, 12, 13)

Nyks argues that the circuit court erred by classifying (and valuing) certain property that he acquired after the parties separated as marital property rather than his separate property. He contends that the court improperly required him to prove that property acquired post-separation was separate property rather than requiring Corkum to prove it was marital. We agree.

"In reviewing an equitable distribution award on appeal, we have recognized that the trial court's job is a difficult one, and we rely heavily on the discretion of the trial judge in weighing the many considerations and circumstances that are presented in each case." *Moran v. Moran*, 29 Va. App. 408, 417 (1999) (quoting *Klein v. Klein*, 11 Va. App. 155, 161 (1990)). "Accordingly, 'a circuit court's "equitable distribution award will not be overturned unless the [appellate court] finds an abuse of discretion, misapplication or wrongful application of the equitable distribution statute, or lack of evidence to support the award."'" *Sobol v. Sobol*, 74

Va. App. 252, 272 (2022) (alteration in original) (quoting *Dixon v. Dixon*, 71 Va. App. 709, 712-18 (2020)).

"The equitable distribution process is governed by Code § 20-107.3, which requires a trial court to classify, value, and distribute property." *Id.* at 273. The classification step requires the court to "classify the property as either [separate, marital, or part separate and part marital property]." *Id.* (alteration in original) (quoting *Fox v. Fox*, 61 Va. App. 185, 193 (2012)).

All property "acquired by either spouse during the marriage, and before the last separation of the parties, . . . is presumed to be marital property." Code § 20-107.3(A)(2); *Dietz v. Dietz*, 17 Va. App. 203, 210 (1993). "Property acquired after the last separation is presumed to be separate property unless the party claiming otherwise demonstrates that it was obtained with marital funds." *Luczkovich v. Luczkovich*, 26 Va. App. 702, 712 (1998). Thus, Corkum, as the party claiming that property acquired post-separation is marital property, must rebut the presumption that the property is separate property. *Id.*

At issue here are three assets: (1) Nyks's 5 million euro home, (2) Nyks's 450,000 euro bank account, and (3) an additional 79,000 euro in liquid assets. Nyks's home, purchased in 2014, was undisputedly acquired post-separation, and it is therefore presumed separate property. And there is no evidence that the other assets were acquired during the marriage. In fact, the evidence suggests that they were acquired post-separation. Despite this, the circuit court classified them as marital, inferring that they were acquired using marital assets. The burden, however, was on Corkum, as the party claiming that the property was marital, to establish that it was acquired with marital assets. *Luczkovich*, 26 Va. App. at 712. Thus, the circuit court incorrectly shifted the burden to Nyks to establish that the property was separate.

Corkum's testimony below does not establish that any of these properties were acquired with the use of marital funds. Though she testified that she believed certain assets were acquired

using marital funds or the proceeds therefrom, she did not have any documents or other evidence to establish that fact. And, during oral argument, Corkum conceded that the record does not contain evidence establishing that the assets were acquired with marital funds, which she blames on Nyks's failure to comply with discovery requests. Though we recognize the difficulties caused by the passage of time and the discovery issues in this case, we are nevertheless bound by the law and the evidence in the record before us. Because Nyks's assets were acquired post-separation, the burden was on Corkum to establish that the assets, or any portion thereof, were acquired using marital funds. She was unable to do so, and, accordingly, the circuit court erred in classifying the assets as marital. We therefore reverse the circuit court's equitable distribution award and remand to the circuit court for further proceedings consistent with this opinion.[6]

In determining whether to award spousal support, Virginia's statutory scheme requires a circuit court "to consider the 'provisions made with regard to the marital property under § 20-107.3.'" *Dixon*, 71 Va. App. at 722 (quoting Code § 20-107.1(E)(8)). "Accordingly, our ruling reversing the equitable distribution award and remanding the case for additional proceedings requires that the circuit court, on remand, also visit the award of spousal support to make any necessary adjustments." *Id.* Therefore, we also reverse the spousal support award.[7]

[6] Nyks also assigned error to the court's timetable for payment of the support obligations and the equitable distribution award. Because we are reversing both the equitable distribution and spousal support awards and remanding for further proceedings, we do not reach these assignments of error.

[7] Nyks also assigned error to the court's award of permanent spousal support, the court's findings of fact, and the decision to order the support paid in a lump sum. Because the spousal support award is already being remanded to the circuit court, we do not reach these issues. Though we will note that a court is permitted to award spousal support in a lump sum when it finds "special circumstances or [a] compelling reason." *Taylor v. Taylor*, 27 Va. App. 209, 217 (1998) (quoting *Blank v. Blank*, 10 Va. App. 1, 5 (1990)).

C. *Notice by Mail* (Assignments of Error 6, 9)

Nyks challenges the circuit court's conclusion that he had proper notice when he was served by mail and/or by FedEx at his home address or place of employment. The circuit court found that Nyks had proper notice because the notice was given in a manner prescribed by its order allowing Nyks's counsel to withdraw and to the address endorsed by his counsel.[8] Nyks contends that this notice was insufficient, and his argument is premised on his contention that his prior counsel's withdrawal did not comply with Rule 1:5.

"We begin our analysis by recognizing the well-established principle that all trial court rulings come to an appellate court with a presumption of correctness." *Wynnycky*, 71 Va. App. at 192 (quoting *Stiles*, 48 Va. App. at 453). Additionally, a circuit court's "factual finding is entitled to deference and will not be disturbed on appeal unless it is plainly wrong or without evidence to support it." *Wilson v. Commonwealth*, 66 Va. App. 9, 18 (2016).

Rule 1:5 in effect at the time provided that "[c]ounsel of record shall not withdraw from a case except by leave of court after notice to the client of the time and place of a motion to withdraw." Nyks argues that there is no motion to withdraw in the record and that he did not receive notice about his counsel's intention to withdraw. Nyks is correct that there is no formal motion to withdraw in the record. But the order of withdrawal specifically states that the issue was before the court "upon the [m]otion" of Nyks's prior counsel. And Nyks's brief references a letter from Nyks's counsel to the circuit court, and it suggests that the letter contained proof of some form of notice to Nyks. Likewise, the transcript from the hearing on this issue contains extensive discussion about the letter from Nyks's counsel to the court and counsel's communications with Nyks regarding counsel's intent to withdraw.

[8] The address is also consistent with his address listed in the pendente lite decree.

This letter and email, however, are not included in the record.[9] It appears from the transcript that the circuit court relied on this letter and the communication with Nyks in making its determination. Given that the withdrawal order specifically stated that it was before the court upon a motion, and in the absence of the letter and email, we are unable to determine whether Nyks's prior counsel properly withdrew, as it is unclear whether the letter from Nyks's counsel constituted a motion to withdraw sufficient to comply with Rule 1:5.

"Courts are presumed to act in accordance with the law, and orders of the court are entitled to a presumption of regularity." *Napert v. Napert*, 261 Va. 45, 47 (2001)). It was Nyks's burden, as the appellant, to provide this Court with a record sufficient to determine whether the error alleged occurred. *See Clarke v. Commonwealth*, 60 Va. App. 190, 199 (2012) ("It is appellant's burden to provide this Court with a record from which it can decide the issues in the case."). Without the letter and its attachments, the record before us is insufficient to determine whether the circuit court properly allowed Nyks's counsel to withdraw. Thus, the record does not establish that the circuit court erred by finding that service that complied with the order of withdrawal was proper. Accordingly, we are left with the presumption that the circuit court acted in accordance with the law.

D. *Pendente Lite* (Assignments of Error 10, 17)

Nyks argues that the circuit court erred by finding that the pendente lite support was not includable in the gross income of Corkum nor deductible by Nyks. Nyks correctly notes that, at

[9] During oral argument, we asked counsel for both parties about the letter and where it appeared in the record. Following oral argument, Corkum submitted a supplemental filing containing the letter and its various attachments. Those pages, however, do not appear in the record before this court. We are only permitted to consider the evidence in the record before us, and therefore we do not consider these documents. *See Prince Seating Corp. v. Rabideau*, 275 Va. 468, 469 (2009) ("We can consider only the evidence presented in the record. Questions raised in the brief about evidence not shown in the record cannot be considered by us." (quoting *Omohundro v. Arlington County*, 194 Va. 773, 778 (1953))).

the time of the pendente lite order, the law considered spousal support, both pendente lite and permanent support, as taxable income. *See, e.g.*, 26 U.S.C. §§ 71, 215. Following changes to the law in 2019, spousal support is no longer considered taxable income. *See* Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11051(c), 131 Stat. 2054 (2017) (repealing I.R.C. § 71, which made spousal support taxable income).

Despite that, however, it appears that Nyks mischaracterizes the circuit court's ruling. His argument appears to relate to the following statement in the court's letter opinion: "For factor 13, spousal support is neither includable nor deductible in federal taxes; no evidence was presented with regard to Netherlands tax treatment." The circuit court made this statement when weighing the statutory factors set out in Code §20-107.1(E), which the court is required to consider when determining whether and how much to award for spousal support. Factor 13 requires the court to consider "[s]uch other factors, including the tax consequences to each party . . . ." Code § 20-107.1(E)(13).

Although the court made this statement in the pendente lite section of its letter opinion, it appears that the court was considering these factors in determining whether to award permanent spousal support rather than pendente lite support. It had already set out its pendente lite rulings prior to setting out this factual finding, and the circuit court did not set a new pendente lite award. Rather, it simply calculated the arrearages owed. The court was only required to consider those factors in "determining whether to award support and maintenance for a spouse," *i.e.*, the permanent support. Code § 20-107.1(E)(13). The circuit court specifically referenced these considerations in the following section, where it awarded Corkum spousal support. Because it made that award after 2019, the spousal support was not includable or deductible

under federal tax law. Accordingly, the circuit court did not conclude that the pendente lite support was not includable as taxable income.[10]

E. *Corkum's Alleged Dissipation of Assets* (Assignment of Error 16)

Throughout these proceedings, Nyks has elected not to pay the court ordered pendente lite support to Corkum. From 1999 through 2021, Corkum obtained judgments on the arrearages, which have since been vacated, and she executed those judgments against Nyks's William Penn annuity, which would have been a marital asset. Nyks argues that this was dissipation of a marital asset and that the circuit court erred by failing to so find. We disagree.

Nyks's argument is based on the circuit court's original pendente lite order in 1999, which ordered: "The Complainant and the Defendant are hereby required to preserve the estate and assets of the parties, and each is restrained from dissipating 'Marital' property or part 'Marital' property as the terms are defined in Virginia Code Section 20-107.3." Under Virginia law, waste or "[d]issipation occurs where one spouse uses marital property for his own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown." *Wright v. Wright*, 61 Va. App. 432, 464 (2013) (quoting *Clements v. Clements*, 10 Va. App. 580, 586 (1990)). "Once the aggrieved spouse shows that marital funds were either withdrawn or used after the breakdown, the burden rests with the party charged with dissipation to prove that the money was spent for a proper purpose." *Id.* (quoting *Clements*, 10 Va. App. at 586). But we have previously recognized "that marital funds spent for living expenses, attorney's fees for the divorce proceedings, and other necessities of life while the

[10] Moreover, to the extent that Nyks argues it should have been deductible to him, any error would be harmless. *See Spruill v. Garcia*, 298 Va. 120, 127 (2019) ("Code § 8.01-678 makes 'harmless-error review required in all cases.'" (quoting *Commonwealth v. White*, 293 Va.411, 420 (2017))). It does not appear that Nyks filed any taxes in the United States after he returned to the Netherlands, nor did he provide any evidence to establish the tax consequences to him under Dutch law.

parties are separated do not constitute dissipation." *Anderson v. Anderson*, 29 Va. App. 673, 695 (1999).

Here, although the collection judgments are now void, Corkum provided sufficient evidence to establish that her use of the William Penn annuity was not dissipation. Though she had jobs at certain points during the marriage, Corkum was essentially a stay-at-home mom. Most of her "work" involved assisting her husband with his various business endeavors. She had little earning potential, and Nyks had control of the marital assets. Though Nyks did provide some support for Corkum after the parties separated in 1996, he stopped all support in 1999, refused to pay the court ordered pendente lite support, and cut all contact with both Corkum and the court. Corkum did not collect on the annuity until Nyks stopped paying support, and she collected those funds over a period of approximately 20 years. From the record, it is reasonable to conclude that Corkum used those funds to pay for living expenses and the necessities of life. Such expenses are not dissipation. *See Anderson*, 29 Va. App. at 695. Thus, the circuit court did not err when it failed to find that Corkum dissipated marital assets.

F. *Attorney Fees* (Assignment of Error 19)

We review a circuit court's decision to award attorney fees "under the deferential abuse of discretion standard." *Sobol*, 74 Va. App. at 288. In awarding attorney fees, the court must "consider[] 'the circumstances of the parties' and 'the equities of the entire case,' and its ultimate award must be 'reasonable "under all of the circumstances revealed by the record."'" *Id.* (quoting *Mayer v. Corso-Mayer*, 62 Va. App. 713, 734 (2014)). Some of the factors that a court may consider include the parties' "ability to pay a fee, the party's degree of fault in bringing about the dissolution of the marriage, and whether the party unnecessarily increased litigation

costs through unjustified conduct." *Yazdani v. Sazegar*, 76 Va. App. 261, 273 (2022) (quoting *Rinaldi v. Rinaldi*, 53 Va. App. 61, 78 (2008)).

A review of the record reveals that the circuit court considered the relevant factors and circumstances and that its award was reasonable. The circuit court noted that a large portion of the fees were the consequences of Nyks's "unjustifiable behaviors," his "steadfast refusal to respond to discovery on a timely basis, his contempt for the authority of th[e c]ourt, the positions he has taken, and his failure over decades to participate actively in litigation *he himself initiated*," and that much of the fees could have been avoided. The record supports that finding. Nyks initiated the litigation in 1999 and then stopped participating or responding from 1999 until 2023. He also failed to comply with discovery requests, leading to multiple motions to compel. *See Yazdani*, 76 Va. App. at 273-74 ("When a party unnecessarily prolongs litigation, it increases the amount of attorney fees the other party incurs and is a relevant factor for a trial court to consider in awarding attorney fees.").

Nyks argues that the court erred by awarding the fees because it erroneously concluded that Nyks had "contempt for authority" and "fail[ed] to actively participate" in the litigation. He contends that the court's ruling was based on its irritation that Nyks did not appear at trial, and he notes that the court did not order him—in writing—to appear. This argument is without merit. The circuit court referenced multiple issues with Nyks's conduct during the proceedings that go beyond its irritation from a single incident. And the circuit court's findings are amply supported by the record.

G. *Failure to Include Sufficient Argument in Violation of Rule 5A:20* (Assignments of Error 7, 8, 10, 11, 18, 20, 21)

Rule 5A:20(e) requires that an opening brief contain "[t]he standard of review and the argument (including principles of law and authorities) relating to each assignment of error." Our case law establishes that "[u]nsupported assertions of error 'do not merit appellate

consideration.'" *Bartley v. Commonwealth*, 67 Va. App. 740, 744 (2017) (quoting *Jones v. Commonwealth*, 51 Va. App. 730, 734 (2008), *aff'd in part and vacated in part on other grounds*, 279 Va. 52, 58-60 (2010)). "[A] court of review is entitled to have the issues clearly defined and to be cited pertinent authority. The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Id.* (quoting *Jones*, 51 Va. App. at 734). Stated plainly, "[i]t is not the role of the [appellate] court[] . . . to research or construct a litigant's case or arguments for him." *Id.* at 746 (first alteration in original) (quoting *Sneed v. Bd. of Pro. Resp.*, 301 S.Wd.3d 603, 615 (Tenn. 2010)). Significant here, Rule 5A:20 also requires that "[w]ith respect to each assignment of error, the standard of review and the argument—including principles of law and the authorities—must be stated in one place and not scattered through the brief."

If we were to ignore the mandates of Rule 5A:20 and address the issues on the merits, it "would require this court to be an advocate for, as well as the judge of the correctness of, [appellant's] position on the issues he raises." *Bartley*, 67 Va. App. at 744 (alteration in original) (quoting *Jones*, 51 Va. App. at 734-35). Requiring strict compliance with the rule, on the other hand, "permits a reviewing court to ascertain the integrity of the parties' assertions which is essential to an accurate determination of the issues raised on appeal." *Id.* (quoting *Jones*, 51 Va. App. at 735). Thus, when we find that a party's failure to comply with Rule 5A:20 is significant, we will treat the question as waived. *Id.*

1. Service of the December 2008 Motion (Assignment of Error 7)

Nyks assigns error to the circuit court's finding that the December 2008 motion was properly served on him. Nyks makes passing reference to Code § 8.01-296, but he does not describe the requirements of that code section, nor does his argument set forth how he alleges that the service failed to comply with that code section's requirements. He merely makes two

conclusory statements that service was not effectuated in conformity with that statute. A bare statement that something violates a particular statute does not satisfy Rule 5A:20(e). *See Bartley*, 67 Va. App. at 746 (noting that a "failure to develop an argument" or construction of "a skeletal argument" is insufficient (quoting *Sneed*, 301 S.W.3d at 615)). This error is significant and the issue is waived.

2. The March 2001 Order (Assignment of Error 8)

Nyks assigns error to the court's conclusion that the March 21, 2001 order, which included a capias for Nyks's arrest, was proper. He alleges it was not properly served and that it was based on an impermissible ex parte communication. Nyks's argument does not include any legal authority to support his assertions.[11] His "failure to provide legal argument and authority as required by Rule 5A:20(e) leaves us without a legal prism through which to view his alleged error . . . ." *Bartley*, 67 Va. App. at 746. If he believed the court erred, Rule 5A:20(e) requires him "to present that error to us with legal authority to support [his] contention." *Id.* (quoting *Fadness v. Fadness*, 52 Va. App. 833, 851 (2008)). Nyks's failure to comply with the rule is significant, and thus the issue is waived.

[11] Nyks's argument under this heading includes significant discussion about the service of a 2024 rule to show cause. This portion of his argument contains ample analysis and legal authority. But "[e]lementary is the rule of appellate procedure that the scope of argument on appeal is limited by the assignments of error." *Dudley v. Est. Life Ins. Co. of Am.*, 220 Va. 343, 348 (1979). Nyks's assignment of error specifically references only the March 21, 2001 contempt order. It does not reference the 2024 rule to show cause, nor is it worded broadly enough to cover that additional issue. Thus, we do not address that issue.

3. Pendente Lite Arguments (Assignment of Error 10)

In his tenth assignment of error, Nyks argues that the circuit court's pendente lite award is a misapplication of the law because it was "without proper notice and opportunity to be heard" and was the result of "false affidavits filed by Corkum."[12]

He contends that the circuit court disregarded his due process rights because he did not have notice or an opportunity to be heard. He makes several inflammatory statements speculating about the court's reasons for disregarding his rights, but his argument contains only conclusory statements without legal analysis. The few legal authorities he does cite apply only to his allegation that Corkum failed to secure employment to support herself; they provide no support for his contention that he did not have sufficient notice. While Nyks argues the notice issue in other sections of his brief, he does not provide any legal authority to support his position here, and Rule 5A:20 requires the "argument—including principles of law and the authorities—" to "be stated in one place and not scattered through the brief." Rule 5A:20(e).

Nyks's argument related to his claims that Corkum submitted false affidavits does not contain a single legal authority to support his argument. Nor do his general allegations of fault specify which affidavits relating to which pendente lite orders contain falsehoods. There were three separate pendente lite orders and three separate expense sheets. It is not the role of this Court to dig through the record to find the facts necessary to support Nyks's argument. "The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Bartley*, 67 Va. App. at 744 (quoting *Jones*, 51 Va. App. at 734). We find Nyks's failure to comply with Rule 5A:20 significant and, thus, the issue is waived.

[12] Nyks also argues that the circuit court had the authority to retroactively amend the pendente lite support and that each of the orders was entered without evidence of his income or ability to pay. These arguments, however, are not encompassed within his assignment of error. Therefore, we do not address these arguments. *See* Rule 5A:20(c)(1) ("Only assignments of error listed in the brief will be noticed by this Court.").

4. Pendente Lite Arrearages (Assignment of Error 11)

Nyks argues that the circuit court erred in calculating the pendente lite arrearages. He does not cite a single source of legal authority to support his argument for this assignment of error. His argument consists of two conclusory sentences. Conclusory statements, particularly when unsupported by legal authority, are insufficient to comply with Rule 5A:20. *See Bartley*, 67 Va. App. at 745. To the extent that his argument relies on authority in other sections of the brief, Rule 5A:20 requires that "the argument—including principles of law and the authorities—must be stated in one place and not scattered through the brief." Rule 5A:20(e). Accordingly, this issue is waived.

5. Nyks's Discovery Responses (Assignment of Error 18)

Nyks assigns error to the circuit court's conclusion that he did not provide full discovery responses. His argument in support of this assertion of error, however, is bereft of legal authority. Beyond the unpublished case he cites for the standard of review, he cites only a single legal authority to support his argument. *See Mitchell v. Commonwealth*, 60 Va. App. 349, 253 (2012) (citation to one case and statute was "insufficient to satisfy Rule 5A:20(e)"). He does not explain how that case supports his argument, and he only generally cites the case after his statement that the circuit court's conclusion cannot be sustained. His argument is otherwise comprised of conclusory statements that he did in fact provide discovery responses whenever "appropriately noticed." Conclusory statements, particularly when unsupported by legal authority, are insufficient to comply with Rule 5A:20. *See Bartley*, 67 Va. App. at 745. Thus, this issue is waived.

6. Attorney Fees (Assignments of Error 20, 21)

In assignment of error 20, Nyks argues that the attorney fees awarded in connection with the contempt or sanctions motions were inconsistent with the orders entered. His argument

consists of only three sentences. In assignment of error 21, he also asserts that the fees awarded from the March 21, 2001 order were improper and an abuse of discretion. Nyks does not cite a single legal authority or principle to support his position for either argument. "A court of review is entitled to have the issues clearly defined and to be cited pertinent authority." *Bartley*, 67 Va. App. 744 (quoting *Jones*, 51 Va. App. at 734). Accordingly, the issues are waived.

CONCLUSION

For the following reasons, we affirm in part and reverse in part, and we remand to the circuit court for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.