19-P-1616 Appeals Court

CALVIN C. vs. AMELIA A.[1]

No. 19-P-1616.

Worcester. January 12, 2021. - June 10, 2021.

Present: Vuono, Rubin, & Sullivan, JJ.

Divorce and Separation, Alimony, Child support, Division of property, Modification of judgment, Judgment. Trust, Nominee trust, Beneficiary. Evidence, Earning capacity. Parent and Child, Child support. Uniform Trust Code. Practice, Civil, Findings by judge. Probate Court, Divorce, Findings by judge.

Complaint for divorce filed in the Worcester Division of the Probate and Family Court Department on August 23, 2017.

The case was heard by Jennifer A. Melia, J., and a motion to amend findings and judgment was considered by her.

Christine D. Anthony for the husband.
Penelope A. Kathiwala for the wife.

SULLIVAN, J. Calvin C. (husband), the former spouse of Amelia A. (wife), appeals from a judgment of divorce nisi

[1] The parties' names are pseudonyms.

(divorce judgment) entered in the Probate and Family Court. He principally challenges the amount of his alimony obligation, the manner in which the wife's child support obligation was calculated, and certain aspects of the distribution of the marital estate. We conclude that the provisions of the divorce judgment related to the distribution of the marital estate must be vacated and the matter remanded for further proceedings. We otherwise affirm the divorce judgment.

Background. We summarize the relevant facts found by the judge, supplementing them with undisputed evidence in the record. See Pierce v. Pierce, 455 Mass. 286, 288 (2009). The parties were married in 1995. They had three children together during the marriage. The parties enjoyed a "comfortable middle class lifestyle" during the marriage, due in part to the "generosity" of the husband's mother and father.[2] In July 2000, the husband's mother and both parties settled a nominee trust for the purpose of holding title to the marital home, which was purchased shortly thereafter using funds provided by the husband's mother. The husband's mother and both parties are cotrustees and cobeneficiaries of the nominee trust, with the husband's mother having an eighty percent beneficial interest and each of the parties having a ten percent beneficial

[2] The husband's father is now deceased.

interest. The marital home is the sole property held by the trust. At the time of the purchase, title to the marital home was conveyed directly from the sellers to the parties and the husband's mother, as trustees of the nominee trust. The husband's mother resided with the parties in the marital home for most of the marriage.

In August 2017, the husband filed a complaint for divorce. In February 2019, while the divorce action was still pending, the wife vacated the marital home and moved into an apartment with a monthly rent of $1,475. The husband remained in the marital home with his mother and the parties' children.

On August 2, 2019, following a four-day trial, the judge issued the divorce judgment and findings of fact. With respect to support, the divorce judgment provided that the husband would have a weekly alimony obligation of $322, and the wife would have a weekly child support obligation of seventy-seven dollars, resulting in a net alimony payment from the husband to the wife of $245 per week. The divorce judgment required the husband to maintain health and dental insurance for the wife while his alimony obligation remained in effect, and for the children until their respective emancipations.

The judge found that "[t]he parties lived beyond their personal means, relying primarily on [the husband's mother] for economic support, during the marriage. They will not be able to

maintain their marital lifestyle" after the divorce. The wife, who had not completed high school or obtained a general equivalency degree, is a licensed cosmetologist. She worked part time in a hair salon that she co-owned, and reported modest income from her part-time work and a business loss. The wife purchased her one-half ownership interest in the salon using $10,000 gifted by the husband's mother. The judge found the wife capable of earning more with reasonable effort and attributed a weekly income to her of $480, based on full-time employment in a minimum wage position (at the wage then in effect).

The judge found that the husband's total gross income from his full-time employment as an office manager at his cousin's law firm was $1,769.38 per week, which she arrived at by calculating the weekly average of the husband's 2018 total gross earnings of $92,007.98 from the law firm. The judge concluded that the husband failed to "make any persuasive argument for why his total gross income should not be found to be his income available for support"; accordingly, she used that income figure to calculate the husband's alimony obligation to the wife. The judge further found that the husband, who would continue to live in the marital home after the divorce, "does not pay rent[,] . . . makes minimal economic contributions to this residence," and "has an ability to pay support" to the wife. The wife

struggled to obtain housing after leaving the marital home due to her poor credit and limited income.

For purposes of alimony, the judge found that the wife was in need of support and that the husband had an ability to pay. Recognizing that the parties' financial resources were insufficient to maintain the marital lifestyle after the divorce, the judge considered the wife's need, the husband's ability to pay, and achieved a "fair balance of sacrifices" by ordering the husband to pay weekly alimony of $322 (equivalent to twenty-five percent of the difference between the parties' respective incomes). See G. L. c. 208, § 53 (b) ("the amount of alimony should generally not exceed the recipient's need or [thirty to thirty-five percent] of the difference between the parties' gross incomes"). The judge then calculated the wife's postminority child support obligation to the husband using the same weekly income figures that she used to calculate alimony ($1,769.38 for the husband and $480 for the wife), arriving at a child support order of seventy-seven dollars per week. This resulted in a net alimony payment from the husband to the wife of $245 per week.

With respect to the marital estate, the judge stated that she had "crafted an equitable division of assets and liabilities by which each party receives fifty percent of the total equity of the marital estate." Pursuant to the assets and liabilities

division chart included in the judge's findings, the husband was to receive assets totaling $186,645.38, and liabilities totaling $78,462.10, and the wife was to receive assets totaling $130,989.36, and liabilities totaling $22,806.08, with each party netting $108,183.28 (after deducting liabilities from assets). Included in the marital estate were the parties' beneficial interests the nominee trust. The judge declined the husband's request that the wife's interest be assigned to him, instead assigning each party their respective ten percent beneficial interest in the nominee trust. The judge found the fair market value of each party's ten percent beneficial interest to be $65,800. At the time of the divorce, the marital home was encumbered by a $90,0000 home equity line of credit (HELOC). The judge found that both parties were liable for the HELOC (the husband's mother was not responsible for it). In calculating each party's beneficial interest in the nominee trust, the judge therefore deducted the fifty percent portion of the HELOC for which each was liable (i.e., $45,000 each), and found that each party's equity interest was worth $20,800. In calculating the assets and liabilities of the marital estate, this net amount was included in each party's share of the assets. However, in the "Division of Liabilities" section of the divorce judgment, the judge ordered that the husband alone "shall timely pay the HELOC loan on the [marital home] each and

every month." As described in the discussion that follows, below, husband's contention is that this reduced the judge's allocation of the husband's marital estate "equity" from $108,183.28 (the amount he was supposed to receive according to the judge's assets and liabilities division chart) to $63,183.28.

The husband filed a motion to amend the findings and judgment, challenging, among other things, the manner in which the judge calculated child support and the provision in the divorce judgment leaving him solely responsible for the repayment of the HELOC. The judge denied the motion without explaining her rationale for assigning sole payment responsibility of the HELOC to the husband. The husband thereafter timely appealed from the divorce judgment, challenging the alimony and child support orders, and the distribution of the marital estate.

Discussion. We first address the support orders and then the division of marital assets. With respect to the support orders, because these are reciprocal orders in which the payor of the alimony obligation is the payee of the child support obligation, we begin first with the husband's alimony obligation, and next discuss the wife's child support obligation.

1. The husband's alimony obligation. The husband argues that it was error to order him to pay alimony, principally contending that the judge miscalculated his income and failed to consider the effect of the marital debt allocation on his ability to pay alimony.

"A judge has broad discretion when awarding alimony" under the Alimony Reform Act (act), G. L. c. 208, §§ 48-55. Zaleski v. Zaleski, 469 Mass. 230, 235 (2014). "In reviewing both the form and the amount of an award of alimony, we examine a judge's findings to determine whether the judge considered all the relevant factors under G. L. c. 208, § 53 (a), and whether the judge relied on any irrelevant factors." Zaleski, supra at 235-236.[3] Despite the many changes brought about by the act, it did not "alter the principle that the central issue relevant to a financial award is the dependent spouse's 'need for support and maintenance in relationship to the respective financial circumstances of the parties.'" Hassey v. Hassey, 85 Mass. App.

[3] "In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material." G. L. c. 208, § 53 (a).

Ct. 518, 524-525 (2014), quoting Partridge v. Partridge, 14 Mass. App. Ct. 918, 919 (1982).

Here, the amount found by the judge to be the husband's annual gross income, $92,007.98, was the amount of the husband's "gross pay" reported by his employer on his 2018 W-2 tax form and earnings summary. The husband contends the judge erred by using the gross pay amount, rather than the lower amount of $82,243 reported as "Medicare wages in Box 5 of his 2018 W-2." However, it is well settled that "income for purposes of alimony is calculated on the basis of gross income." Vedensky v. Vedensky, 86 Mass. App. Ct. 768, 776 (2014). See G. L. c. 208, § 53 (b). The judge in this case was well within her discretion to rely on the gross pay figure reported on the husband's 2018 W-2. See Zaleski, 469 Mass. at 243 ("The language of the act is clear that all of the payor spouse's income . . . must be included in any calculation of alimony").

The husband further contends that the gross pay figure included "the cost to the employer of providing benefits to him of $9,156," which did not reflect "cash paid to him" by his employer. However, "gross income" for purposes of calculating alimony and child support has never been limited to cash paid by an employer. See Massachusetts Child Support Guidelines § I(A) (2018) (guidelines) ("income is defined as gross income from whatever source, regardless of whether that income is recognized

by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority," including but not limited to, "salaries, wages, overtime and tips; . . . perquisites or in-kind compensation to the extent that they represent a regular source of income; . . . [and] any other form of income or compensation not specifically itemized above").[4] See also Whelan v. Whelan, 74 Mass. App. Ct. 616, 625 (2009) (for purposes of calculating support, gross income "is not necessarily the equivalent of a [party's] taxable income").

We are likewise unpersuaded by the husband's claim that the judge's alimony analysis was tainted by certain erroneous findings and omissions. The husband contends that the judge erroneously found that the parties relied primarily on the husband's mother for economic support, despite evidence demonstrating that they relied heavily on credit cards and loans to support their lifestyle. The husband asserts that his mother only paid for a handful of recurring expenses benefiting the parties (namely, real estate taxes, homeowner's insurance, and heat) and some nonrecurring expenses (including the down payment on the wife's car). However, he fails to acknowledge that the

[4] For purposes of calculating alimony, "income shall be defined as set forth in the Massachusetts child support guidelines." G. L. c. 208, § 53 (b).

parties were able to live rent-free in the marital home paid for by the husband's mother. Moreover, the judge did indeed make findings regarding the parties' reliance on credit and loans, including the $90,000 HELOC (which was secured by the marital home paid for by the husband's mother). On this record, we discern no error in the judge's finding that the parties were able to live beyond their means largely due to the generosity of the husband's mother.

Moreover, there is no indication that this finding resulted in an inflated alimony award to the wife. The judge acknowledged that the parties would not be able to sustain the marital lifestyle after the divorce, and she did not order the husband to pay alimony that would enable the wife to maintain the marital lifestyle. Rather, the judge arrived at a "fair balance of sacrifice," Pierce, 455 Mass. at 296, by ordering the husband to pay alimony that would meet some, but not all, of the wife's need (as measured in part by the marital lifestyle). The husband asserts that the judge did not, in fact, achieve a fair balance, because she failed to consider how the debt allocation in the divorce judgment would affect the husband's ability to pay alimony. However, the judge's rationale reflects a careful balancing of the parties' financial circumstances and the husband's ability to pay alimony in light of his reasonable, credible expenses. Accordingly, we discern no abuse of

discretion in the judge's calculation of the husband's alimony obligation.

2. The wife's child support obligation. The husband next contends that the judge abused her discretion in failing to include the alimony paid by the husband to the wife as income available to the wife for purposes of calculating her child support obligation. We review child support orders for abuse of discretion. See J.S. v. C.C., 454 Mass. 652, 660 (2009).[5] On these facts we discern no abuse of discretion or error of law in the child support calculation.

With two exceptions, income is generally calculated in the same manner for both alimony and child support. See G. L. c. 208, § 53 (b). One such exception is set forth in G. L. c. 208, § 53 (c), which provides that "[w]hen issuing an order for alimony, the court shall exclude from its income calculation . . . gross income which the court has already considered for setting a child support order." This provision was intended to remedy the seeming inequity in cases where one spouse is ordered to pay both child support and alimony to the other spouse, but the alimony is calculated in a vacuum without any consideration

[5] "[A] judge's discretionary decision constitutes an abuse of discretion where we conclude the judge made a clear error of judgment in weighing the factors relevant to the decision such that the decision falls outside the range of reasonable alternatives" (quotation and citation omitted). L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014).

of the effect of the child support order on the payor's ability to pay alimony. Acknowledging the prohibition contained in § 53 (c) (2), the guidelines provide that, "[d]epending upon the circumstances, alimony may be calculated first, and in other circumstances child support may be calculated first. Judicial discretion is necessary and deviations shall be considered." Guidelines § II(A)(3) (2018). This language is intended to provide judges with necessary flexibility to address the needs of the parties in a particular case without running afoul of the act.[6]

The husband contends that because the judge elected to calculate alimony first, she was obligated to treat the alimony as income to the wife, and to deduct the alimony from the husband's income, when calculating child support second. While we agree that calculating alimony first usually necessitates using the parties' adjusted, postalimony incomes when calculating child support to avoid running afoul of G. L. c. 208, § 53 (c) (2), this principle typically applies in cases where one spouse is the sole payor of both alimony and child support. This is not one of those cases.

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[6] "When issuing an alimony order, 'the court shall exclude from its income calculation gross income which the court has already considered for setting a child support order.' G. L. c. 208, § 53 (c) (2). However, the converse is not stated in the statute." Guidelines § II(A), commentary (2017).

Rather, the parties here are subject to reciprocal orders, i.e., each party is both a payor and a recipient of support. Accordingly, the inequity that G. L. c. 208, § 53 (c) (2), was intended to prevent in cases involving a sole payor of both alimony and child support is not present here. Regardless of how the judge characterized her approach to calculating alimony and child support, she effectively took a snapshot of the parties' incomes and simultaneously calculated their respective obligations to each other. This snapshot approach is an appropriate one in cases such as this, where the parties are facing a reduced lifestyle and each spouse is obligated to pay one form of support to the other.[7]

We emphasize that our reasoning in this case is limited to its facts, i.e., two payors whose combined income is less than $250,000, who have reciprocal support obligations to one another, and a materially reduced postmarital lifestyle. As each case must be judged on its own unique facts, whether this

[7] Indeed, the snapshot approach appears to be the only method of calculating reciprocal orders that does not give rise to the need for additional calculations and adjustments. By way of example, if the judge had added the alimony to the wife's income for purposes of calculating child support, that would have resulted in a higher child support order, which in turn would have increased the wife's need for alimony due to the reduction in her ability to meet her own needs, thereby resulting in the need for an upward adjustment of the husband's alimony obligation.

approach may have utility in other circumstance must await further developments in the law based on the facts presented.

We do not, however, suggest that taking a snapshot in time and simultaneously calculating alimony and child support would be an appropriate application of the act in cases where one spouse pays both child support and alimony and the parties' combined income is less than $250,000.[8] If the judge in such a case exercises discretion to calculate alimony first, see guidelines § II(A)(3) (2018), the alimony payment should be treated as income available to the recipient (rather than to the payor) for purposes of calculating child support, see guidelines § I(A)(29) (2018), to avoid the inequity that G. L. c. 208, § 53 (c) (1), was designed to prevent.[9]

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[8] This case does not involve, and we do not address, an unallocated support order.

[9] The husband also argues that the judge erred in failing to limit his obligation to provide health insurance for the wife and the children for so long as it remains available to him through his employment; however, he cites to no relevant legal authority that supports his claim that G. L. c. 208, § 34, imposes such a requirement. Although the husband contends that the order amounted to a prohibited "self-modifying order," the case on which the husband relies, Hassey, 85 Mass. App. Ct. at 528, is inapposite as it involved a self-modifying alimony order that automatically increased alimony without requiring any increase in the wife's need. Accordingly, we see no error or abuse of discretion in the orders pertaining to health insurance.

3. Equitable distribution of the marital estate.[10] "Our review of a judgment pursuant to the equitable distribution statute, G. L. c. 208, § 34, proceeds under a two-step analysis. 'First, we examine the judge's findings to determine whether all relevant factors in § 34 were considered.'" Adams v. Adams, 459 Mass. 361, 371 (2011), S.C., 466 Mass. 1015 (2013), quoting Bowring v. Reid, 399 Mass. 265, 267 (1987). "The second tier of our review requires us to determine whether the reasons for the judge's conclusions are 'apparent in his findings and rulings.'" Adams, supra, quoting Redding v. Redding, 398 Mass. 102, 108 (1986). "A judge's determinations as to equitable distribution will not be reversed unless 'plainly wrong and excessive.'" Adams, supra, quoting Redding, supra at 107. The husband contends that the property division was plainly wrong and excessive primarily because the judge (a) failed to adequately consider the discretionary "contribution" factors under § 34, (b) failed to assign the wife's interest in the nominee trust to

[10] The husband further contends that the judge failed to "accurately assess" the wife's credibility and "should have made findings regarding [the wife's] lack of credibility." Assessing the credibility of a witness is "quintessentially the domain of the trial judge" and is "close to immune from reversal on appeal except on the most compelling of showings," Johnston v. Johnston, 38 Mass. App. Ct. 531, 536 (1995) -- a showing that the husband has not made here. We therefore decline to disturb the judge's assessment of the wife's credibility. See id.

the husband, and (c) made the husband solely responsible for repaying the HELOC. We address his arguments in turn.

a. Contribution. In addition to the mandatory factors that the judge is required to consider under G. L. c. 208, § 34,[11] the judge "may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit." Id. The husband argues that the judge should have considered the discretionary contribution factors under § 34. However, the judge did indeed consider the discretionary contribution factors. The judge found that both parties made economic and noneconomic contributions to the marital partnership. The judge also made numerous findings regarding the significant financial contributions made by the husband's parents during the parties' marriage.

Insofar as the husband contends that his parents' contributions entitled him to a greater share of the marital estate, he is essentially challenging the judge's weighing of

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[11] The mandatory factors for the judge to consider are "the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, [and] the opportunity of each for future acquisition of capital assets and income." G. L. c. 208, § 34.

the relevant G. L. c. 208, § 34, factors. "The weight to be accorded each of the § 34 factors . . . is committed to the judge" (citation omitted), Ross v. Ross, 385 Mass. 30, 37 (1982), and "[t]here is no mathematical formula to determine what weight a judge should accord to any of the factors in § 34." Williams v. Massa, 431 Mass. 619, 631 (2000). It is clear that the judge considered the contributions from the husband's parents; however, she weighed that factor against other relevant factors, including but not limited to, the wife's lower earning capacity, cf. Loud v. Loud, 386 Mass. 473, 475 (1982) (awarding two-thirds of marital assets to wife was justified, in part, due to her "much lower earning capacity"), and the length of the parties' marriage. Indeed, the judge explained in her rationale that she "assign[ed] the most weight to the length of the marriage," finding that "[t]his was a long term marriage of twenty-two years and ten months" and that "[n]one of the evidence suggested that one party should receive a greater share of the marital estate than the other party." We discern no error in the judge's weighing of the relevant § 34 factors here.

b. The nominee trust. The husband next contends that the judge should have ordered the wife to transfer her ten percent beneficial interest in the nominee trust to him, because he was

living in the marital home and he had sufficient assets to reimburse the wife for her share of the equity.

"General Laws c. 208, § 34, empowers the courts to deal broadly with property and its equitable division incident to a divorce proceeding." Rice v. Rice, 372 Mass. 398, 401 (1977). See G. L. c. 208, § 34. To that end, a judge "may assign to either [spouse] all or any part of the estate of the other," including any "separate nonmarital property," because "[a] party's 'estate' by definition includes all property to which he holds title, however acquired." Rice, supra at 400-401, quoting G. L. c. 208, § 34.[12] A party's beneficial interest in a trust may be included in the marital estate if, by virtue of the specific attributes of that trust, the beneficial interest is a "fixed and enforceable" property right. Levitan v. Rosen, 95 Mass. App. Ct. 248, 253 (2019). "[A] nominee trust is 'an entity created for the purpose of holding legal title to property with the trustees having only perfunctory duties'" (citation omitted). Guilfoil v. Secretary of the Executive Office of Health & Human Servs., 486 Mass. 788, 793 (2021).

[12] "Upon divorce . . . the court may assign to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance." G. L. c. 208, § 34.

Here, as beneficiaries of the nominee trust,[13] the parties each held an "undivided interest in real estate" as the "true owners" of their percentage interests in the marital home. Goodwill Enters., Inc. v. Kavanagh, 95 Mass. App. Ct. 856, 860 (2019). Accordingly, the parties' beneficial interests in the nominee trust were "fixed and enforceable" property rights, Levitan, supra, and the judge correctly included them in the marital estate for purposes of § 34.

The husband maintains, however, that the judge erred in declining to order the wife to transfer her beneficial interest in the nominee trust to him. In arriving at this decision, the judge first looked to the trust language to determine whether such a transfer was permitted by the terms of the trust. See Guilfoil, 486 Mass. at 797 (although "a nominee trust is not subject to traditional trust law" because it "is not a true

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[13] We agree with the parties that this is a nominee trust created for the purpose of holding title to the marital home, as it includes all of the "common characteristics of a nominee trust" which "are as follows: '(1) the names of the beneficiaries are filed with the trustees rather than being publicly disclosed; (2) a trustee may serve simultaneously as a beneficiary; (3) the trustees lack power to deal with the trust property except as directed by the beneficiaries; (4) a third party may rely on the disposition of trust property pursuant to any instrument signed by the trustees, without having to inquire as to whether the terms of the trust have been complied with; and (5) the beneficiaries may terminate the trust at any time, thereby receiving legal title to the trust property as tenants in common in proportion to their beneficial interests.'" Guilfoil, 486 Mass. at 793-794, quoting Roberts v. Roberts, 419 Mass. 685, 687 n.2 (1995).

trust," court will "examine the provisions of the trust" to determine what it does and does not permit). The judge correctly determined that the trust expressly requires the consent of all three beneficiaries to amend the schedule of beneficiaries.[14] The judge also correctly determined that she could not compel the consent of the third beneficiary, the husband's mother, since she was not a party to the divorce action.[15] The husband asserts, however, that there was nothing

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[14] The "Beneficiaries" section of the declaration of trust provides, in relevant part, that "[t]he [t]erm 'Beneficiaries' shall mean the person or persons . . . listed as Beneficiaries in the Schedule of Beneficiaries" and "[d]ecisions made and actions taken hereunder (including without limitation, amendment and termination of this Trust . . .) shall be made or taken, as the case may be, by all the Beneficiaries." The declaration of trust further provides in a section entitled "Amendments," that "[t]his Declaration of Trust may be amended from time to time by an instrument in writing signed by all of the Beneficiaries." See Guilfoil, 486 Mass. at 796 (nominee trust's amendment provision applicable not only to declaration of trust, but also to schedule of beneficiaries). The consent of all three beneficiaries is also required to terminate the trust prior to the automatic termination ninety years after its creation, as otherwise provided in the declaration of trust.

[15] The judge also determined that she lacked authority to amend the schedule of beneficiaries herself because such authority would only "lie in an action brought pursuant to G. L. c. 203E," the Massachusetts Uniform Trust Code (MUTC). We note that the MUTC only applies to "express trusts . . . of a donative nature," G. L. c. 203E, § 102, and the record does not show whether the beneficial interests in this nominee trust were "created incident to a donative transfer" (citation omitted). Matter of the MacMackin Nominee Realty Trust, 95 Mass. App. Ct. 144, 149-150 (2019) ("A nominee trust may or may not be covered [by the MUTC], depending upon whether the shares of beneficial interests are created incident to a donative transfer" [citation

preventing the judge from simply ordering the wife to transfer her beneficial interest to the husband. To be sure, judges have broad authority under G. L. c. 208, § 34, to order the transfer of assets from one spouse to another, see Rice, 372 Mass. at 400-401, and the judge here could have ordered the parties to use their best efforts to effectuate a transfer of the wife's beneficial interest to the husband. See Stabile v. Stabile, 55 Mass. App. Ct. 724, 725-726 (2002) (order requiring party to use "best efforts" sufficiently clear to be enforceable). However, the judge was well within her discretion to decline to issue such an order, especially where the consent of a third party was needed to effectuate the transfer and the potential avenues of relief available to the parties if such consent could not be obtained were unclear, at best.[16] Accordingly, we discern no error in the judge's decision to assign the parties their respective beneficial interests in the nominee trust.

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omitted]). We need not decide that question, however, as we are affirming the judge's decision on a different basis.

[16] As we previously noted, the availability of relief under the Massachusetts Uniform Trust Code is not apparent on the record. See note 15, supra. Neither party has briefed or argued whether he or she would be entitled to a partition, and the issue was not raised before the judge. Compare G. L. c. 241, § 1 ("Any person . . . owning a present undivided legal estate in land . . . shall be entitled to have partition"), and Goodwill Enters., Inc., 95 Mass. App. Ct. at 860 (beneficiary of nominee trust holds "undivided interest in real estate"), with Sullivan v. Lawlis, 93 Mass. App. Ct. 409, 412 (2018) (real property held in trust not subject to partition).

c. The HELOC. The husband contends that the judge failed to achieve her intended result of an equal division of the marital estate when she made the husband solely responsible for the payments of the $90,000 HELOC. He argues that the judge's inclusion in the divorce judgment of the monthly payments for the HELOC among the liabilities for which he is responsible effectively transferred the entire HELOC debt to him, altering the judge's allocation of the husband's marital estate "equity" from $108,183.28 (the amount he was supposed to receive according to the judge's assets and liabilities division chart) to $63,183.28. On the basis of the record before us, we cannot fully reconcile the judge's findings and the divorce judgment without further explanation, and therefore we vacate that portion of the divorce judgment and remand for further proceedings.

Here, the judge specifically stated in her rationale that each party would receive "fifty percent of the total equity of the marital estate" (emphasis added). As provided in the judge's findings, each party was to receive marital estate "equity" of $108,183.28 calculated by deducting their respective liabilities from the assets assigned to them. With respect to the marital home, the judge found the fair market value of each party's ten percent interest to be $65,800, deducted from that amount "the portion of the [$90,000] HELOC for which each party

is respectively liable" ($45,000 each), and assigned each party their $20,800 "share" of the marital home equity. Thus, in the judge's findings, the HELOC was treated as an encumbrance on the marital home (reducing the fair market value of the parties' respective interests in the home by $45,000 each). In the rationale accompanying the findings, the judge stated that the husband and the wife "are liable for the HELOC debt in equal shares." There was no further mention of the HELOC -- or of the payments due upon it -- in the findings or rationale. However, in the "Division of Liabilities" section of the divorce judgment, the husband was made solely responsible for making the monthly payments on the HELOC balance. The husband contends that the judge double counted the HELOC by using it to reduce the value of an asset (i.e., the marital home) in the findings, and also assigning liability for the debt on the reduced asset to the husband in the divorce judgment. The husband contends that he has been ordered to pay a debt of the wife -- i.e., her $45,000 share of the HELOC --and that as a consequence his marital estate equity has been reduced from $108,183.28 (the amount he was supposed to receive according to the judge's findings) to $63,183.28.

While "[t]here is no requirement in G. L. c. 208, § 34, or cases under it, of precise parity in equitable division of marital assets," Cabot v. Cabot, 18 Mass. App. Ct. 903, 905

(1984), "[i]t is the duty of the reviewing court to consider whether the apportionment of assets flows rationally from the judge's findings under § 34" (citation omitted), Casey v. Casey, 79 Mass. App. Ct. 623, 629 (2011). The judge did not explain how or whether the order imposing on the husband the obligation to make the HELOC payments can be squared with the assignment of the HELOC debt in equal shares to the parties in the findings and rationale and with her expressed intent to make an exactly equal division of the net marital estate equity (i.e., assets minus liabilities). See Martin v. Martin, 29 Mass. App. Ct. 921, 921 (1990) (judge's findings must "lead logically to" distribution of marital estate in judgment). Thus, while the judge may have had valid reasons for ordering the husband to make the HELOC payments, because those reasons are not readily apparent in the findings and rulings, a remand is required.

Accordingly, the portion of the divorce judgment pertaining to the division of assets and liabilities is vacated and the matter is remanded to permit the judge to explain the rationale for assigning the HELOC payments to the husband, or otherwise amend the divorce judgment or findings. We leave it to the judge's sound discretion whether additional evidence is necessary or appropriate.[17]

[17] The husband also contends that the judge's decision to make the parties solely responsible for the liabilities held in

Conclusion. Sections E, F, and G of the divorce judgment dated August 2, 2019, are vacated, and the matter is remanded for further proceedings consistent with this opinion. The divorce judgment is otherwise affirmed.[18,19]

So ordered.

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their individual names resulted in an inequitable distribution because the husband was left with substantially greater liabilities than the wife. But for the assignment of the entire HELOC to the husband, each party would have netted approximately $108,183 after deducting their respective liabilities from the value of the assets assigned to them. This is entirely consistent with the judge's intent to "craft[] an equitable division of assets and liabilities by which each party receives fifty percent of the total equity of the marital estate."

[18] To the extent that we do not address the husband's other contentions, they "have not been overlooked. We find nothing in them that requires discussion." Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

[19] We deny the husband's request for appellate attorney's fees.